Legislative Assembly of the Cayman Islands

PRIVATE MEMBER'S MOTION NO. 2/2016-2017

Public Rights of Way and Access to the Beaches and the Sea

WHEREAS there has been much confusion and controversy over the years with regards to the Public's rights of access to and use of the beach and access to the sea for the purpose of recreational and/or fishing activities and the consequent impact on private owners rights regarding coastal development;

AND WHEREAS there are various outdated and/or inadequate provisions in various laws in the jurisdiction as outlined hereunder that hamper or prevent the recognition, protection and/or enforcement of the public's rights of access, which laws need to be updated;

AND WHEREAS it is incumbent on Government to ensure that legislation is updated so as to ensure that the public's interests are at all times protected and that any existing rights of the public are protected from encroachment and/or extinguishment;

AND WHEREAS the Development and Planning Regulations have always empowered and required the Central Planning Authority of Grand Cayman to impose a condition of planning permission requiring the dedication of a public right of way to the sea in certain circumstances and in certain zones;

AND WHEREAS despite such conditions of planning permission being imposed, there has been many instances of breach of such conditions by affected landowners blocking or significantly impeding such public rights of way, and despite such flagrant and egregious breaches of planning control, little or nothing has been done to seek redress on the public's behalf;

AND WHEREAS there is no express provision in the Registered Land Law for the registration of such dedicated public rights of way on the encumbrance section of the relevant register and there is legal impediment to such dedicated public rights of way being so registered, as there is no provision in the Registered Land Law for the registration of public easements in gross, thereby preventing the legal enforcement of such dedicated rights of way;

AND WHEREAS the Prescription Law has not been amended since its original enactment on the 1st of January 1964, which law provides for the acquisition, recognition and enforcement of public rights of way acquired by prescription, and is woefully outdated and consequently practically unenforceable as regards the public's right of access to and use of the beach and/or the sea;

AND WHEREAS any rights acquired by the public or any class of the public pursuant to the Prescription Law cannot be registered on title of any registered land affected thereby, due to the aforementioned legal impediments contained in the Registered Land Law to the registration of such rights of way as easements enjoyed in gross;

AND WHEREAS these circumstances are clearly disadvantageous to the interests of the public at large and landowners alike;

BE IT THEREFORE RESOLVED THAT the Government consider bringing the necessary Bills within three (3) months to amend the Registered Land Law (2004 Revision) and the Prescription Law (1997 Revision) in the necessary and appropriate manner, so as to give full recognizance to and enforceability of any public rights of way which have been gained or given by way of prescription and/or dedication pursuant to some legal process, and such legislated changed shall include, but not be limited to provisions for the determination and registration of all existing public beach areas and accesses thereto and/or access to the sea and the necessary and appropriate provisions for the enforcement of the same by way of penal sanction.

Moved by: _____

Mr. V. Arden McLean, JP, MLA
Elected Member for East End

Seconded by: _____

Mr. D. Ezzard Miller, MLA
Elected Member for North Side

Tabled in the Office of the Clerk this 19th day of May, 2016.

Passed by the Cayman Islands Legislative Assembly this 20th day of October, 2016.

Acting Clerk of the Legislative Assembly