



**Formal Negotiations on a  
New Cayman Islands Constitution**

**First Round**

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**Between**

**The Cayman Islands Delegation**

**- and -**

**The United Kingdom Delegation**

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**Monday, 29 September 2008 – Thursday, 2 October 2008**

**Held at**

**The Ritz-Carlton, Grand Cayman**

### **The United Kingdom's Delegation**

Mr. Ian Hendry - The Chairman  
Ms. Susan Dickson - Legal Counsellor, Foreign and Commonwealth Office  
Mr. Michael Bradley - Constitutional Adviser, FCO Overseas Territories Directorate  
Ms. Helen Nellthorp - Deputy Head, FCO Overseas Territories Directorate  
Ms. Sarah Latham - Desk Officer, Cayman Islands FCO Overseas Territories

### **The Cayman Islands Delegation**

His Excellency the Governor Mr. Stuart Jack  
Hon. Samuel Bulgin, QC, Attorney General

and a National Negotiating Team comprising representatives of:

#### **The Elected Government**

Hon. D. Kurt Tibbetts, JP - Honourable Leader of Government Business, Minister of District Administration, Planning, Agriculture & Housing

Hon. Alden M. McLaughlin, Jr. JP – Minister of Education, Training, Employment, Youth, Sports & Culture

Hon. Anthony S. Eden, OBE, JP - Minister of Health & Human Services

Hon. Charles E. Clifford, JP - Minister of Tourism, Environment, Development & Commerce

Hon. V. Arden McLean, JP - Minister of Communications, Works & Infrastructure

#### **The Government Backbench**

Ms. Lucille D. Seymour, BEM  
Mr. Osbourne V. Bodden

Mr. W. Alfonso Wright  
Mr. Moses I. Kirkconnell, JP

#### **The Official Opposition**

Hon. W. McKeeva Bush, OBE, JP, Honourable Leader of the Opposition

Mr. Rolston M. Anglin  
Capt. A. Eugene Ebanks, JP

Mr. Cline A. Glidden, Jr.  
Ms. Juliana Y. O'Connor-Connolly, JP

**The Cayman Ministers' Association** - Pastor Al Ebanks

**The Cayman Islands Conference of Seventh Day Adventists** - Pastor Shian O'Connor

#### **The Chamber of Commerce**

Mr. Will Pineau – CEO Chamber of Commerce  
Mr. Eddie Thompson, President Elect      Mr. Stuart Bostock, Vice President

#### **The Human Rights Committee**

Ms. Melanie McLaughlin, Chairperson HRC Constitutional Working Group  
Mrs. Sara Collins, Partner and Head of Specialist Trust Disputes Group

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**MONDAY, 29 SEPTEMBER, 2008**  
**2008 CONSTITUTIONAL NEGOTIATIONS**  
**HELD BETWEEN**  
**CAYMAN ISLANDS DELEGATION AND**  
**THE FOREIGN AND COMMONWEALTH OFFICE**

**WELCOME BY HIS EXCELLENCY THE GOVERNOR**

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** I would like to welcome everyone to this, the opening session of the constitutional talks. A welcome to the delegation from the Foreign and Commonwealth Office, to the Cayman delegation, to the representatives of the media and to other observers. Clearly, the Constitution is a document of vital importance for the welfare of the people of these Islands and for the smooth running of the relationship between the Cayman Islands and the United Kingdom. These are therefore very important talks.

Before handing over to the two delegations, I should like to ask Pastor Al to say a prayer.

**PRAYER**

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Shall we pray?

*Almighty God, it is our distinct honour to call upon Your name on an occasion such as this. We thank You for Your presence with us that these meetings have already been under guarded by prayer by the peoples of these Islands. We ask Your blessings on all of the discussions that will take place over the next four days. We ask for peace and harmony among ourselves. We pray that we would debate vigorously but with dignity, and*

*honour, and we pray that in all that is done, Your name would be glorified and that as a community that we would reflect the Christian character and nature that we are so distinctly proud of. So, we ask Your blessings on all of these activities, in the name of Your Son Jesus Christ. Amen.*

### **OPENING STATEMENTS**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I would like to thank the Governor for introducing us and welcoming us to the Cayman Islands.

First of all, I should like to say what a pleasure it is to be back in the beautiful Cayman Islands, and to see so many old friends again. It is a particular pleasure and a privilege to be here on this occasion, to resume the constitutional review discussions that it made much progress in 2002, but stalled in 2003/2004. Much water has passed under the bridge since then, and I should like to pay tribute to the careful and considered way in which the Cayman Islands Government has pursued the process here on the Islands. As a result of the information campaigned and public consultations that have taken place, as well as the work done in 2002, I believe we have a sound basis for the work we shall do this week and in any future rounds of discussion.

I should next like to introduce my colleagues from the UK Government team. I am fortunate to be advised by: Susan Dickson, a legal counsellor at the Foreign and Commonwealth Office, who knows the territory very well; by Michael Bradley, to my far left Constitutional Adviser to the FCO Overseas Territories Directorate, who, of course, is very well known here in the Cayman Islands and should need no further introduction; by Helen Nellthorp, Deputy Head of the FCO Overseas Territories Directorate, who will be our policy adviser and political "commissar" this week; and by Sarah Latham, to my far right, the new

desk officer for the Cayman Islands in the FCO Overseas Territories Directorate.

Next, I should like to make a few points about the process.

First of all, the process of constitutional review is one of discussion and agreement between the Cayman Islands and the United Kingdom, reflecting the process with the other Overseas Territories. In the absence of agreement, the current Constitution of the Cayman Islands will of course continue. On the other hand, if agreement were reached between Cayman Islands and United Kingdom delegations to revise the current Constitution, the United Kingdom government would not seek to put that agreement into legal effect (by Order in Council under the West Indies Act 1962) until there was evidence that it had the support of the people of the Cayman Islands. That evidence should, as a minimum, consist of the endorsement of the Cayman Islands Legislative Assembly, as the elected representatives of the people. But it would be open to the Cayman Islands Government to undertake additional means of public consultation and the United Kingdom would welcome that. For example, in Gibraltar the new Constitution was approved in a referendum. In the Turks and Caicos Islands and the British Virgin Islands, further public consultation was undertaken by the local constitutional review commission before the new Constitutions of those territories were debated and approved by their respective Legislative Councils. My understanding is that here in the Cayman Islands the intention is to seek the approval of the people in a referendum.

Secondly, and indeed as the foregoing necessarily implies, nothing is finally agreed in the process of negotiations until everything is agreed. In other words, it is the package as a whole that must be acceptable both to the Cayman Islands and to the United Kingdom.

Thirdly, in the light of experience with other Overseas Territories, the process of constitutional review may well require more than one round of discussion, if necessary with a final round in London with the

responsible UK Minister to try to resolve the most difficult outstanding issues.

Fourthly, the objective—at least from the United Kingdom perspective—is to explore thoroughly the constitutional arrangements for the Cayman Islands with a view to agreeing a modernised Constitution with which both the Cayman Islands and the United Kingdom are comfortable.

Fifthly, the United Kingdom negotiating team approach constitutional review with no preconceived agenda. We are ready to explore and discuss any proposals the Cayman Islands delegation might advance. The United Kingdom team would wish to discuss some changes to the current Constitution; for example, the United Kingdom has a strong interest in the inclusion of an up-to-date fundamental rights chapter in the Cayman Islands Constitution.

As the FCO Minister for the Overseas Territories said in her letter of 3rd April 2008 to the Leader of Government Business:

"The British Government would not agree to a new Cayman Islands Constitution that did not include an up-to-date human rights chapter. This chapter would need to reflect the fundamental rights set out in international human rights treaties that have been extended to the Cayman Islands for many years."

But in all respects the United Kingdom team will be striving for the best possible outcome for the Cayman Islands that is consistent with the United Kingdom's continuing responsibilities for the Cayman Islands. These responsibilities include ensuring good governance, a non-political civil service and police force, the independence of the judiciary, the maintenance of law and order, the fulfilment of international obligations, and the minimisation of contingent liabilities.

Finally, the Cayman Islands delegation can be assured of our constant good faith in this matter, and of our determination to work hard



for an excellent outcome for all concerned, and of our wish to conduct discussions in as friendly a spirit as possible. Thank you very much.

Leader of Government Business.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Thank you very much. Mr. Chairman, thank you.

Mr. Chairman and other members of your delegation (who I notice are outnumbered by the fairer sex this morning); Your Excellency; the Honourable Speaker; colleagues in the Cabinet; the Honourable Leader of the Opposition; other colleagues in the Legislative Assembly; representatives of the Cayman Ministers' Association, Pastor Al Ebanks; the Cayman Islands Mission of Seventh-day Adventists, Pastor Shian O'Connor; the representative from the Chamber of Commerce, Mr. Will Pineau; the Human Rights Committee, Ms. Melanie McLaughlin; observers; ladies and gentlemen; and our viewing and listening audience.

On behalf of the elected Government and you, the people of the Cayman Islands, first of all, I wish to extend a very warm welcome to the delegation from the Foreign and Commonwealth Office of the United Kingdom Government. We are delighted to have you here and look forward to a very productive first round of negotiations over the next four days.

I also wish to recognise the stakeholder groups which are represented on the national negotiating team, namely, the official Opposition, the United Democratic Party, the Chamber of Commerce, the Human Rights Committee, the Cayman Islands Conference of Seventh-day Adventists and the Cayman Islands Ministers' Association. The Government certainly values your participation in this historic exercise, and we wish to thank you for your contributions thus far, especially to the effort to achieve a consensus going into these important discussions.

With the formal start of negotiations with the United Kingdom Government this morning, the process of modernising our Constitution has reached a very crucial point. Government's overriding objective is to achieve an outcome which provides a modern framework for our continuing constitutional relationship with the United Kingdom Government as an Overseas Territory on terms that are acceptable to the vast majority of our people. Constitutional modernisation has been on the national agenda now for some eight years awaiting a final determination. The Government believes it is time to bring closure to the issue. Further delay is not in the country's best interest. Let us work assiduously, therefore, to make this happen.

Nine months ago, in fulfilment of an election promise, this Government relaunched what was effectively a stalled process. Since then the Constitution Modernisation Secretariat has traversed our three Islands as it mounted the biggest public consultations exercise in the history of this country. Altogether, some 18 public meetings were held. A considerable amount of public education literature was produced and distributed. Additionally, the Secretariat either sponsored or participated in numerous radio and television discussion shows.

The issue was also given prominence in the print media, and every opportunity for engaging stakeholder groups and the general public was fully used. The aim was to produce a high level of awareness of the relevant issues and to canvass as wide a cross-section of the country as possible so as to determine how Caymanians felt about constitutional modernisation. We have largely succeeded in doing so. Unfortunately, because of space limitations, not every interest group which was consulted could be included on the national negotiating team. However, they can rest assured that their views have been included.

To kick start national debate on constitutional modernisation, the Government published and widely circulated a set of proposals in January of this year for public consideration. The idea behind this was to

give insights into Government's thinking and to solicit feedback from everyone else. Acting on this feedback, the proposals were subsequently revised and those revised proposals were published in May of this year for further public consideration and comment. These revised proposals, which were further fine-tuned following last Thursday's national stakeholders' meeting, constitute the basic negotiating document. Since the UK has been similarly engaged in reforming its own system of governance to make it more relevant to today's needs, we certainly look forward, Mr. Chairman, to hearing the FCO delegation's perspective on our proposals.

Through these negotiations, the Cayman Islands are seeking a new Constitution which is anchored in a continuing relationship with the United Kingdom. In other words, the Cayman Islands wish to remain an Overseas Territory of the United Kingdom in keeping with the general desire of our people.

There is a consensus within our community that despite evidence of some strains over recent years there are real and tangible benefits in continuing a constitutional relationship with the United Kingdom. There is absolutely no interest in and no desire for independence. Instead, what is desired and being sought are reforms which enhance this relationship to reflect our changing needs and our growing maturity as a nation.

The present Cayman Islands Constitution was introduced in 1972, some 36 years ago. As you can appreciate, Caymanian society and, in fact, the wider world have undergone fundamental change since then. You only have to look at the amazing transformation of our economy to see the extent to which this country has changed. Yet, we have as the supreme law of the land a Constitution which was designed for a different time and context. The fact that the United Kingdom Government requested the Cayman Islands and its other Overseas Territories to modernise their Constitutions suggests that London itself recognises there are deficiencies rendered by the passage of time.

The inadequacy of the 1972 Constitution to effectively address today's challenges is becoming increasingly apparent, and for that matter, obvious. Nothing has highlighted this inadequacy more than recent troubling issues related to national governance. Our growing maturity as a nation underscores the need for a Constitution which gives Caymanians, through their elected government, a greater say in crucial decisions affecting our country. The people of the Cayman Islands, through their government, need to play a greater role in key decision making which affects local matters and local interests. This is particularly true in relation to key aspects of governance like national security and the conclusion of international agreements.

In essence, what we are seeking is a sharing of decision-making responsibility with the United Kingdom. For example, in certain areas where the Governor currently has exclusive responsibility, we are asking for these decision-making functions to be shared with the elected government. Oversight of the police—and I stress the word *oversight* of the police—represents a good example. Caymanians are calling for more accountability from the police because their services are directly funded by the Caymanian taxpayers. However, as it currently stands, the office of the Governor has responsibility under the Constitution for oversight of the police to the exclusion of the elected government.

When issues arise, Caymanians look to their elected government for decisive action to represent their interests, but the elected government's hands are effectively tied. Except for raising their concerns with the Governor, there is nothing else that the elected government can do. The 1972 Constitution does not give the elected government a basis on which to act. It must be apparent that a system which does not allow full public accountability by key organs of the state cannot always be relied upon to ensure the delivery of good governance.

We also believe that the Cayman Islands have reached a stage in their development where the composition of our Legislature and the

Cabinet should fully reflect the democratic will of the people. Subsequent to the end of the Cold War, the world has witnessed a democratic revolution. Countries which were once ruled by dictatorships are functioning democracies today. Countries which were democratic have enhanced their systems to further empower their people.

The United Kingdom has actively supported this worldwide trend of democratisation. The presence of non-elected Members with casting votes in both the Legislature and the Cabinet goes against the trend of greater democratisation.

If our Legislature is to become truly democratised, it must reflect the will of the people as expressed in their vote in the ballot box.

There has been much concern and widespread debate about a Bill of Rights for the Cayman Islands and how it will impact Caymanian culture, values and morals. After a great deal of public discussion and indeed education, we believe there is now general agreement that we should have a Bill of Rights, although I should add that there remain some abiding reservations about its inclusion in the Constitution. Hopefully this particular issue will be resolved during these talks. I should say, however, that support for a Bill of Rights is largely contingent on the content of the bill, as Caymanians are concerned to ensure that it does not permit or encourage an undermining of traditional Caymanian values or morals, and that it does not result in bizarre judgments or rulings as have occurred in some other jurisdictions.

The Government is keenly aware of the local concerns and of the need to ensure that while the Bill of Rights protects the fundamental rights of the individual, that the document should recognise and respect the Cayman context in which it will operate. Over the course of the past months, therefore, we have been working on developing a draft Bill of Rights which is intended to do all of the above, and this morning we will

circulate it to the various delegations present so that it can serve as the basis for the discussions on the subject over the course of these talks.

I wish to pause for a second just to say we do respect the fact that once it is disseminated that we will need a little bit of time, Mr. Chairman, for everyone to digest its contents. So, I would not expect for us to be looking at it early during these talks. This is a critical issue and we must strive to get it right. I am satisfied that we can and will.

Ladies and gentlemen, these negotiations represent a golden opportunity for us to refashion our system of government, to make it relevant to our times and the foreseeable futures. Let us make the most of it. In years to come, long after we have passed from the political scene, let history applaud us for having the courage and foresight to have done what is right for the Cayman Islands. It is not so much about our future but that of our children and grandchildren. Let us give them a legacy of which they can be proud.

May the almighty God, who we serve, who has guided and protected the people of these Islands since they were first settled more than 300 years ago, guide our deliberations over the coming days. May He fill us with the spirit of compromise and the wisdom to make the right decisions as we seek to establish a constitutional framework for the future. Thank you very much, Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. Would the Leader of the Opposition now like to make a statement?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Your Excellency the Governor; Honourable Speaker; Mr. Tibbetts and other Cabinet Ministers and Members; Mr. Hendry and other FCO officials; fellow Members of the Legislature; other distinguished delegates; other distinguished friends; members of the

media; ladies and gentlemen. Mr. Hendry, I want to take the opportunity also to welcome you and the team to the Islands again.

The last time you were here our talks with you were not fruitful in that you told us you were here but you had no discussions with the government on Constitution. These meetings are all about the Constitution and, therefore, we'll have that full opportunity.

The United Democratic Party (UDP) welcomes this opportunity to participate in this very and most important meeting to allow us to represent the wishes of the Caymanian people to the United Kingdom delegation. We are grateful that these meetings are being held in the Cayman Islands, in accordance with the recommendations of the Foreign Affairs Committee July 2008 report on the Overseas Territories, but we are disappointed that the full benefits of having these meetings here and not being realised by having them closed to the public. We believe that the public should have been given the opportunity, if they so wanted, to sit here, to listen to you help guide us, as I believe you will, and to listen to us, their representatives. And, sir, before I go on, let me say again that this is most important to the people, because every time we have had constitutional talks, it has been purely a he-say and she-say and blame back and forth, with no real records, only those when we were sitting in the Legislative Assembly. And therefore, I have made an appeal publicly for reconsideration here this morning for the goodness of openness and transparency, pure transparency, to allow people to come and go as they please in this open forum.

I also wish to say before I move on that if you are not going to do that, and I believe that the Government should put all their feet forward and say let's do it, I believe that we should stop here on Wednesday and go to the Brac for that next day to discuss their proposals that affect them. I say no more on that but that I am disappointed that the balance of the meetings after these opening remarks by ourselves are completed

totally private in a day when we are talking about full transparency and us spending money for that purpose.

As I said, the desire of this recommendation was to ensure that the local population did not feel distant from the process. Failing to allow the people an opportunity to listen in has negated the benefit of these talks being in Cayman. And I believe that since you are here that we should be open, or else they might as well have been in the United Kingdom.

A fundamental premise to the constitutional modernisation initiative of the United Democratic Party is to ensure that the pace of modernisation does not go outside the wishes of the people. Public airing of these negotiations would have allowed for the continued development of our people on key constitutional matters.

Let no one fool you or mislead you into believing that all that has been done that our people are satisfied and we can do no more. I don't accept that and I don't believe that the vast majority of Caymanians accepts that either.

A further recommendation of the UDP, to this end, is for the Secretariat to be restructured as an objective and dynamic body that continues its educational role even after the current process has concluded.

In our current capacity as the official Opposition, and as the previous administration who laid the last series of negotiations, we welcome the resumption of the modernisation exercise and have fully embraced that opportunity. We have expressed various concerns over the legitimacy of the process from its outset, and are of the firm view that the process has not done full justice in bringing about constitutional consensus. Our concerns are centred on the lack of objectivity and balance in the process.

The ruling People's Progressive Movement administration and their constitutional machinery was coordinated by a government-appointed Constitutional Secretariat, who reported directly to the Leader of



Government Business, the Honourable Kurt Tibbetts. This is in contrast, sir, to the previous appointments of constitutional commissioners by His Excellency the Governor with the advice of the government and a word to the Opposition.

In my opinion, the Secretariat, in large, is merely an instrument to advance the Government's position.

Secondly, the opposition was afforded no assistance in the form of developing or promoting our proposals. From the formal commencement of the current initiative on January 12<sup>th</sup>, 2008, the Opposition was merely invited to the launch function, a big party. They didn't even invite us to plant a Shamrock tree or a Tamarind limb as others were doing at the Pedro Castle on the great day of the great function, the launch of the Government's proposals which were made, *the Government's proposals which were made*, prior to any and all consultation with the general public. No input from the Opposition was sought at that time.

Thirdly, the Government has used their inherent advantage of the control of the government's purse, the treasury, to propagate their positions, including contracting with a local newspaper publisher to provide a public relation appeal, and that he did. Straight down to the editorials. No similar benefit as much, as we begged and pleaded, was afforded to the Opposition. I had to spend my own personal money for whatever we did, and that of my colleagues.

We wrote to the Government when they stopped the referendum late June or early July to say the way forward as we saw it. We were willing to sit down with the Government to get the consensus that they claimed they wanted. The Government did invite the United Democratic Party to meet with them to attempt to build a consensus, but it was a stormy summer, with the start of the hurricane season and the rainy season, and a time when it's normally that people and their families are overseas on vacation and has never, in my opinion over the years, been the time you have these kind of discussions.

Nevertheless, we proposed a meeting for September 22<sup>nd</sup> at the Legislative Assembly, and I stress, this was not to be a regular meeting of the LA. This was to be a meeting with the Government and ourselves and the NGOs present and recordings present and people present. Open to the public.

The Government refused to attend on that day. Instead, the Government arranged a meeting on September 25<sup>th</sup>, 2008, in which the Opposition participated, albeit disadvantaged by not having an agenda or notice of format in advance of the meeting. The Opposition was not invited to make any opening remarks at this meeting. But as you would suspect, Mr. Hendry, we did make remarks during the course of the meeting. I am glad that you have provided that opportunity this morning, and the FCO won't be blamed for that.

Notwithstanding these disadvantages, the Opposition is determined to proceed with these negotiations in a spirit of full cooperativeness and committed to carrying out a modern day partnership with the United Kingdom that fits within Britain's new international role as a participant in the new global order and the new global economy and that of the Cayman Islands' aspirations and desires. I do not need to tell you, sir, my desire to protect, and that of our party to protect these Islands. The FCO and the Treasury know full well my determination on that fixation.

In an attempt to contextualise these discussions, sir, we must reflect on the impetus for the modernisation initiative. Shortly following a change of government in the United Kingdom in May 2007, and informed by several exercises including the National Audit Office report on Contingent Liabilities of the Dependent Territories on May 30<sup>th</sup>, 1997, and the Foreign Affairs Select Committee enquiry into the Overseas Territories in the same year, the White Paper entitled "Progress for Partnership and Prosperity" was introduced calling for a modernisation exercise in all Overseas Territories.

A major tenet of the White Paper was placing the responsibility and choice of constitutional format and structure in the hands of the people. To this end, we maintain that the PPM administration (that's the current administration) has failed in bringing about national consensus on some of the more salient aspects of this proposal. Putting the exact merits and demerits of their proposals aside, the Caymanian people have not been convinced that these proposals will enhance our current well being or our future sustainability. This is largely due to the flawed modernisation process that I believe has lost its legitimacy in the eyes of the people.

A greater major tenet for the White Paper is a right to greater autonomy and more say in the direction of the country by its people. In principle, this concept is welcomed, but must always be conditioned by the readiness and political maturity of the elected leaders to manage such new responsibilities. To devolve certain powers that have been held by the UK to elected representatives is—more powers, I should say, and some of the more detrimental ones in our eyes is not consistent with what the White Paper have said.

We hear much, sir, about giving the Caymanian people a say. We wish to hear, sir, clearly from the United Kingdom of what the Cayman Islands can expect, because this is what it boils down to. If we take the Governor's powers, put him under Judicial Review, and if we move the Honourable Attorney General and others out of the Cabinet and the Legislative Assembly, we want to hear clearly from the United Kingdom where do we go if this is where people will vote for because it will come down that lane for the referendum. These are issues which worries the people, and no one can tell you that they have full support on these, and which issues which we as a party have not found majority support.

The UDP is cognisant more than most that our political system is not as mature as other territories, and considers the timely and systematic approach of devolving power to elected representatives as is

being talked about as opposed to the sweeping approach embedded in the Government proposal.

Members of our party played an instrumental role over the years in whatever changes that we have had from the old and strict colonial path that we were on. We removed the Governor from the Legislature, where he was the speaker, the presiding officer, he was the head of Cabinet and everything else that he could be. Sometimes good. Sometimes not so good. And that motion took several years of trying to convince people that that should happen, but it happened. It was our group, and a part which I played greatly in, in the creation of the present ministerial system.

Even under our administration, prisons were placed under an elected Member. These advancements were slow, even if they took 36 years, but what is that to a country? And they were done with the consensus of the people.

In the current climate of unprecedented global upheaval and geopolitical transformations, the Caymanian people have adopted a conservative approach of waiting to see "how the dust settles" before making any further advancements as is proposed by the Government of the Constitution. Never before in our history has stability been so important as it is today, when we are nearing \$1 billion in loans and other liabilities. When people cannot pay their electrical bills, when families can't buy shoes for children to attend school, when many people are out of work, and so, thoughts are not so much here.

Our party has devoted its own resources, limited as they might be, to ensuring that the people have access to a process that will allow for their views to be developed. We have held meetings in every district throughout this country back and forth and back again, so that when we sat here this morning facing you, sir, that we would be able to say confidently that this was what we heard.

Whether the group was the 700 at the Adventist First Church, the largest attendance yet, or whether it was only five people or four people

at the meeting, we have held meetings in every district of this country and have met with many private groups, including the young people. We have confidence that we have a firm grasp of the wishes of the people, but only truly the referendum will determine that.

The UDP commences negotiations recognising the increased pressures faced by the United Kingdom that may influence these negotiations. These include the growing significance of offshore financial services in the global community, and the role played by the Cayman Islands; increased integration of European laws; policies and human rights obligations; the UK's need to adhere to their commitment for what has been deemed as inalienable right for self-determination of Overseas Territories; and the evolving role of the UK in the new world order.

These recognitions must be balanced by the Cayman Islands economic model being heavily reliant on the stability of our current constitutional relationship with the UK, the desire for the Caymanian people to maintain its culture, Christian heritage and moral standings. It cannot be, *cannot be*, because of any matter that surrounds the judiciary, one issue. It cannot be balanced on that.

The UDP looks forward to the forthcoming days of productive and constructive discussions for the mutual benefit of the Cayman Islands and the United Kingdom. This is not about the PPM, the current administration, or the UDP, our party, but it's about all the people of these Islands.

I trust the Lord. He has declared in his word that: "I know the plans I have for you and where I deem you should be."

Thank you, sir, for allowing these very few words. And I want to stress before closing finally that you, sir, should agree for these meetings to be open so that one and all cannot get up later on and blame you, and blame the UK, and blame the Foreign and Commonwealth Office, and blame the United Democratic Party and say: "No, that's not what was

said." The people cannot make formed decisions unless they hear whether that's ten people or whether that's ten thousand.

I thank you and may the good Lord bless our deliberations here in the next few days.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. I turn now to the Cayman Ministers' Association.

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION (CMA)):** Chairman of the FCO delegation, Mr. Ian Hendry and his delegates; His Excellency the Governor, Mr. Stuart Jack; Speaker of the House, the Honourable Ms. Edna Moyle; Leader of Government Business, the Honourable Kurt Tibbetts and his delegation; Honourable Samuel Bulgin, our Attorney General; Leader of the Opposition, the Honourable McKeeva Bush and his delegation; representative of the Chamber of Commerce, Mr. Will Pineau and his delegation; representative of the Human Rights Committee, Ms. Melanie McLaughlin and her representative; representative of the Seventh-day Adventists Mission of the Cayman Islands Conference, Pastor Shian O'Connor; the media; and other observers.

The CMA is both honoured and humbled by the opportunity granted to take part in these historic discussions on a modernised Constitution for the Cayman Islands. The membership of CMA is made up from most of the major established churches in the Cayman Islands and represents, among ourselves, significant diversity in denominational and doctrinal distinctives, as well as capturing a fair representation of the social, cultural and national diversity that exists in these Islands. Yet, on these issues of which I speak, there is substantial unity. We are in many ways uniquely positioned to represent the views of a substantial portion of the populace of both Caymanians and expatriates because of

that diversity, and we also recognise that many of our churches are located in every electoral district in these Islands.

The CMA is also no stranger to this process as we have been engaged in these discussions since the publication of the White Paper and constitutional modernisation became a topic of debate locally. We have also worked diligently alongside of others, including the Government and the Opposition and with the Non Governmental Constitutional Working Group, which includes the Chamber of Commerce, Concerned Citizens Group, People For Referendum and the Forum.

In 2002, in a historic move, the then PPM Opposition gave up two of their seats in order for two local NGOs to be present at the negotiations which took place in London. Because of a personal tragedy, I was unable to remain in London for negotiations, but was pleased to see that some of the recommendations made by the CMA were adopted and included in the 2003 Draft Constitution including our recommendation for a Preamble.

Time and circumstance has made it possible for us once again to participate in these discussions, and we believe that we are now far wiser and better prepared to contribute positively to this process. Some have questioned our involvement in these discussions and consider our inclusion unusual or even undesirable; but we believe our presence here today to take part in these historic discussions is very consistent with the development of these three beloved Islands that we call home and desire so passionately to protect our culture and our heritage.

When the very first elections were held in these Islands in these Islands and representatives were chosen by the people, among the participants involved with framing of some of Cayman's first laws was a Pastor. History records: **"In 1831 the Rev. Mr. Sharpe arrived in the islands as its first regular and ordained Minister. He was a very active and energetic person and well adapted to conciliate the**

**affections of such people... In his capacity of Justice of the Peace he framed many of the excellent laws in the island code, which were carried and became statutes through instrumentality. The plans of schools and other public works would not have been carried out so effectually into execution but for his unceasing exertions among the people. In my opinion he laid the foundations of the respectability of the laws and government of the island."** And this is an excerpt from a document that is in the National Archives. The quotation is there for all to see.

We are therefore pleased to be a part of a historic community that is unashamed of its Christian heritage, and applaud our government leaders past and present who have given due regard to the undeniable positive contribution the Christian church has had on the development of these Islands, and that is inclusive of the political process. I am therefore pleased to present the 14 points that the CMA has particular concern with in relationship to the constitutional modernisation exercise.

We make clear again that we believe that the whole idea of human rights finds its roots in our Judeo-Christian heritage. The baseline is the obligations which all human beings have towards each other, and our accountability for living out those obligations before God who made us in His image. We therefore fully support the protection of an individual's God-given values and believe that we must equally support and promote human responsibility alongside of human rights.

We've also continually raised the issue of the necessity to include human responsibilities in these discussions. Jack Straw is quoted as saying that: **"Intellectually we all know that rights cannot exist without responsibilities, freedoms without obligations, liberties without duties. But it is crucially important that we spell this out... Putting rights and responsibilities together brings our constitutional agenda down to earth, gives it real relevance to Britain's families and communities."**



The people of the Cayman Islands desire, and indeed we demand, no less than the same for our families and community. We are aware of the discussions currently taking place in the UK regarding a Bill of Rights and Duties and we commend that exercise. We firmly embrace the undeniable need to balance an individual's rights with their responsibilities to their communities.

In relationship to Human Rights Acts being enshrined in the Constitution verses on a separate bill or legislation, the CMA is aware from communications with our government and through the local media that the Foreign and Commonwealth Office has instructed the Cayman Islands government that the "**British government would not agree to a new Cayman Islands Constitution that did not include an up-to-date human rights chapter.**" And you made reference to that in your discussions this morning. We would be extremely disappointed if this position is maintained, as there is strong and growing local support for a separate law, as can be seen in the Chamber's recent survey. It appears that if the UK denied us this option from the beginning of these negotiations, the UK would itself be infringing on the very rights, human rights that they are advocating that we enshrine in our own Constitution.

We have further put forward that we believe that consideration should be given to our human rights being non-compensation based. People should have a remedy to correct violations, but we do not believe we should add the added incentive of financial compensation. We support the Government's position to apply these rights vertically, and we support that a Bill of Rights should be in as simplified a language as possible.

In relationship to the separation of powers of the legislative, executive, and judicial, the separation of powers has proven fundamental for the protection of human dignity and rights throughout history. The separation of our legislature and executive from the judiciary has always played an important role in the development and health of democratic

societies. This delicate balance between the legislature and judiciary must be maintained. The courts should not be able to strike down laws that have been passed by the duly elected legislature of this country.

An important issue to the people of the Cayman Islands has been the whole issue of marriage and family. The people of the Cayman Islands have made clear that we believe that marriage is between one man and one woman only, and we are pleased with the recent decision of our legislature to amend the Marriage Law. However, for all the reasons that we state in our document, we remain concerned that the judiciary should not be able to strike down laws enacted by our legislature.

The recent case, for instance, in Bermuda of *David Thompson vs. The Bermuda Dental Board* offers no comfort to us in this regard, and indeed is very troubling given the decision of the Privy Council in relying on the Bermudian rights legislation in making its decision and stating emphatically "**as a British overseas territory, there is no Bermudian nationality as such.**" It appears that our warnings of the unintended and unexpected effects of a Bill of Rights or rights legislation to change a society have once again proven true, and Caymanians cannot reasonably expect that we're going to be treated any differently than the Bermudians have been, and this is troubling indeed.

Our schools and our churches, our religious organisations should not be prevented from promoting and teaching the values that are so vital and important for their survival. We believe that the documents should be subject to a referendum vote by the people, that in relationship to the bringing in effect of a Bill of Rights that this should not take place under a minimum of 24 months, in order for proper planning, funding and training. We are well aware that the UK set aside some £4.5 million for the training of judges and magistrates prior to the coming in effect of the Human Rights Act, and we believe that is critical for our discussion in the Cayman Islands. We also recognise that there is the need that there should be an audit of activities of public bodies prior to the

bringing into effect of the Bill of Rights in order to make sure that our laws comply.

In regard to a Code of Conduct, again, we support the Government's proposal.

In relationship to Human Rights Commission and their role, we believe that it should be clearly defined and have no quasi judicial powers. The CMA has grave concerns about this, as again can be referred to in the case of the Bermudians, and again, we believe that it is important that the HRC would have no quasi judicial powers.

The CMA looks forward to the next four days of talks with great anticipation and expectation that the objectives of partnership founded on self-determination creates responsibilities on both sides and is designed to give us the opportunity to maintain our individual character and diversity, and gain a substantial measure of control over our own affairs as stated in the White Paper. We are looking forward to seeing that happen. The UK's stated commitment to uphold the right of the individual territories to determine their own future and enjoy a high degree of autonomy is commendable, and we believe that together we can develop a document that truly reflects the wishes and aspirations of the Caymanian people, a document that will strengthen democracy, achieve open and transparent government for the benefit of our people.

Thank you once again for this opportunity to be a part of this history making moment in the Cayman Islands, and may God bless and guide us as He has thus far. Thank you, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. Seventh-day Adventists.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Thank you, Mr. Chairman. Mr. Chairman of the FCO delegation, Mr. Ian Hendry and his

delegates; His Excellency the Governor Mr. Stuart Jack; Leader of Government Business and his delegation; Honourable Samuel Bulgin, Attorney General; Leader of the Opposition and his delegation; representative of the Chamber of Commerce, Will Pineau; representative of the Human Rights Committee, Ms. Melanie McLaughlin; representative of the Cayman Ministers' Association, Pastor Al Ebanks; ladies and gentlemen.

The Seventh-day Adventist Church is grateful to the Government of the Cayman Islands for the opportunity to participate in such fundamental and historic discussions forging the path to a constitution for these Islands. It symbolises Government's recognition of our significance and worth in the nation building of these Islands and the role we have played, and continue to play, in the communities of our nation for the past 114 years. (Recently I was corrected on that.) Over these 114 years since the Seventh-day Adventist Church has been active in the Cayman Islands, it has become part of the Caymanian tradition and has grown to one of the largest denominations, with approximately 4,000 members in 15 congregations across Grand Cayman and Cayman Brac.

As part of our tradition, the church has historically respected any democratically elected government unless the actions of government are such that makes it ungodly to do so. Being part of the body of Christ, the church seeks to work in unity with the rest of the Christian community for the common good of our nation, our people, and our country. Albeit informed by our theology, the church has always sought to make its contribution to matters of national interest, and seek to secure for our people the benefit of modern globalisation without the attending ills.

We are aware of the opportunities and the challenges that will present themselves to us at these talks. Despite the differences of opinion and our international obligations, we have an opportunity to carve out for our people and our nation a constitution that will preserve

the rich, spiritual and cultural heritage that has been the bedrock of our civilisation. We have an opportunity to preserve the moral fibres and the social boundaries that have guided our society through over 500 years of generational changes despite the flood of secularism that is persistently knocking on our front doors. It is with this in mind that we have approached these discussions. And as such, we have considered Government's revised proposal for our constitutional modernisation and have responded accordingly. I'll now share a summary of these points. Our position paper contains more information on them.

As it relates to the Bill of Rights, the church is in support of a Bill of Rights which will protect the fundamental rights and the freedom of all people of these Islands, and preserve the moral and spiritual values of our country and our people. With respect to its enshrinement as noted in our position paper, while the church is inclined to support enshrinement of the Bill of Rights into the Constitution, the church reserves its position in the absence of a draft bill until its wording is considered. And we're delighted this morning as the Leader made mention of that, that we'll be having that today. We want to congratulate Government in that regard.

Mr. Chairman, fundamental for us as a Seventh-day Adventist Church is point number 3, the separation of church and state. Throughout the history of this country, the church has always had a healthy and cordial relationship with successive governments. We encourage the preservation of this relationship. However, as referenced in our position paper, history reminds us of how easily this can change into a church and state alliance, resulting in intolerance and persecution of minority and unpopular groups. Hence, we strongly propose a constitutional provision which will prohibit any alliance between church and state.

As it relates to the Human Rights Commission, we share the concern expressed by a number of the other - the CMA and some other stakeholders. The church shares the view that the Human Rights

Commission may be helpful if its functions are limited to the education, promotion and the observation of human rights activities. We also hold the view that the financial compensation for violation of human rights should not be granted unless those violations resulted in pecuniary loss.

On the matter of removal of elected Members from Parliament, the church believes that while such move may be consistent with modern democracy, any removal should be replaced by a more sophisticated layer of checks and balance.

And finally, sir, it is to be understood that the church has no objections to the other proposals in principle. However, no formal position can be made definitively until and unless we have considered the final draft and are satisfied with the construct of its provision. It is the prayer of our church as we enter these negotiations that our objectives might be achieved, our mission accomplished, the future of our children be safe, and our people be satisfied. I thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. I turn now to the Chamber of Commerce, if they would like to make an opening statement.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman of the United Kingdom's Foreign and Commonwealth Office delegation, Mr. Ian Hendry and your delegates, His Excellency the Governor, Mr. Stuart Jack; the Honourable Speaker of the House, the Honourable Edna Moyle; Leader of Government Business, the Honourable Kurt Tibbetts and the delegation; Cabinet Members, the Honourable Samuel Bulgin, Attorney General; Leader of the Opposition, the Honourable W. McKeever Bush and your delegation; representative from the Human Rights Committee, Ms. Melanie McLaughlin; representative of the Cayman Ministers' Association, Pastor Al Ebanks;

representatives of the Cayman Islands Conference of Seventh-day Adventists, Pastor Shian O'Connor; ladies and gentlemen, good morning.

Chamber president, Mr. James Tibbetts unfortunately is off Island and he offers his apologies. I'm joined today by President Elect, Mr. Eddie Thompson and Vice President, Mr. Stuart Bostock, who will be accompanying me during these talks over the next few days.

The Chamber's 12-member council includes: Mr. James Tibbetts as President, Mr. Eddie Thompson as President Elect, Mr. Stuart Bostock as Vice President, Mr. Brian Barnes as Secretary, Mr. Wayne Cowan as Treasurer, Ms. Angelyn Hernandez as Immediate Past President, and councilors Paulette Anglin-Lewis, Gelia Frederick Van Genderen, Mr. Richard Hew, Mr. David Kirkaldy, Mr. James O'Neill, and Mr. Farried Sulliman. The Council has approved this statement I am about to read, which is also available on our website, as well as our position paper.

The Cayman Islands Chamber of Commerce welcomes this historic opportunity to present a position paper which reflects the views of our membership on the constitutional proposals that have been released by the Government and the Opposition.

We would like to thank the Government, Opposition and the United Kingdom for permitting our participation in these discussions. We regard this decision as a concrete step to introduce a more transparent and open process for constitutional modernisation that allows direct representation from civil society.

Before sharing the membership's views, we believe it is important for us to provide some background about our organization (which was established in 1965), so that there is no uncertainty in anyone's mind about who the Chamber of Commerce represents during these deliberations and to explain the process that the Chamber Council approved in order to arrive at our collective position.

As of 24th September 2008, 663 corporate entities (businesses that hold a valid license to operate locally) and 73 associate members (including Industry Associations, the Cayman Islands Civil Service Association and not-for-profit and charitable organisations and individuals) were listed as members in good standing. Collectively, these businesses and associations employ 20,216 persons living in the Cayman Islands.

With a membership as diverse as ours, it is challenging in the best of times to reach consensus on any issue, particularly on topics as complex as a Bill of Rights, Human Rights and constitutional modernisation. We are therefore grateful to all of our members and their employees for taking the time to participate in the Chamber's consultative process.

The Chamber council and staff have attempted in various ways to encourage our members and their employees to review the proposals and to participate in the constitutional discussions. We believe that everyone has a right to let their voices be heard on these issues that could potentially change the way that our government operates forever.

The Chamber council's approach with developing the position paper was to:

- Inform the membership and the wider community about the key issues under discussion for constitutional modernisation and self-determination by producing a nonpartisan special publication and holding a Chamber initiated public forum to allow the leaders of each political party to express their positions;
- To review the 2001 Chamber of Commerce membership survey results dealing with constitutional issues;
- To consider the ruling Government's 30-page revised proposals for constitutional modernisation;



- To consider the United Democratic Party's 13-page position paper released on Tuesday, 23rd September;
- To develop and release an online membership survey on Monday, 22nd September listing the proposals from the ruling government and discussion points by the Opposition for final review;
- To evaluate the results of the current survey and segment the results into two categories reflecting the views of those indicating that they are registered voters and the overall membership;
- To compare the results of the 2001 and 2008 surveys and determine if there were any changes of position as they relate to the proposals developed by both political parties and issues not included in the proposals but considered important to our membership;
- To produce a final position paper that has been reviewed and approved by the Chamber council for presentation at the constitutional talks that begin on 29th September.

This participatory approach is in keeping with the Chamber's mission to support, promote and protect the interests of its membership and the public welfare.

During this consultative process it became abundantly clear to the Non Governmental Constitutional Working Group, which includes the Chamber, the Cayman Ministers' Association, the Concerned Citizens Group, People For Referendum and the Forum, that there is a need to develop a more structured grassroots public education programme about various aspects of our Constitution in the community and in our schools and to discuss and examine the more complex issues.

While the Constitutional Secretariat's office did an outstanding job reaching out to the community to discuss many

of these issues, we believe that the education process should continue following the conclusion of the constitutional talks. Issues such as whether or not to include a Bill of Rights in the Constitution, Human Rights generally and the United Nations options for Self Determination require in-depth discussion and debate. The United Kingdom has grappled with the introduction of its Human Rights Act for more than five years – and we believe that a similar national education programme is required in our community and we look forward to receiving the support of the United Kingdom in this regard.

While there is no support for moving towards independence from the United Kingdom, the results of the most recent membership survey and public forums and discussions indicate that there is a strong agreement to introduce changes to the current system of government that includes greater accountability of the actions of our elected officials and more checks and balances between the powers of the elected government and the United Kingdom.

Extraordinary events involving inappropriate behaviour and actions by the United Kingdom through a former attorney general and serious allegations against senior officials in our courts and police systems have alarmed our membership and have cast a dark shadow over the jurisdiction as a whole in the eyes of the international community. These matters reinforce our membership's firm belief that constitutional modernisation is urgently needed.

It is our hope that the constitutional talks that we are about to begin will produce a constitution that addresses any imbalances in power that currently exist between our local legislators and the United Kingdom so that democratic systems with robust checks and balances for the various arms of government are introduced.

We believe the majority of the proposals currently under discussion will achieve this objective.

In conclusion, the Constitution is the Territory's supreme law and we believe it is crucial that it is written so that the public can understand its provisions. Past versions of the Constitution are difficult to read and interpretation is often left to persons with legal degrees. Following these discussions, we urge the United Kingdom and our legislators to produce a revised Constitution that can be interpreted by anyone who reads it. By writing the document in plain English, Caymanians, residents and future generations will embrace its provisions as a modern blueprint for democratic governance. It is our hope that the Chamber's participation and contribution to these discussions will be considered helpful in the process

The Chamber's final position paper and this statement can be downloaded from our website, [www.caymanchamber.ky](http://www.caymanchamber.ky)

Thank you for your attention.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. And last, but by no means least, the Human Rights Committee.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE (HRC)):** Mr. Ian Hendry Chairman of the Foreign Commonwealth delegation and his delegates; His Excellency the Governor Mr. Stuart Jack; Honourable Edna Moyle, Speaker of the House; Honourable Kurt Tibbetts, Leader of Government Business and his delegation; Honourable Samuel Bulgin, Attorney General; Honourable McKeeva Bush, Leader of the Opposition and his delegation; representative of the Chamber of Commerce, Mr. Will Pineau and his delegation; representative of the Cayman Ministers' Association, Pastor Al

Ebanks; representative of the Seventh-day Adventists Cayman Islands Conference, Pastor Shian O'Connor; observers; our listening audience. Good morning. I am Melanie McLaughlin, representative of the Cayman Islands Human Rights Committee. I must also formally extend apologies on behalf of the Chair of the Human Rights Committee Mrs. Sara Collins, who is returning to Island today from business travel overseas.

For my part, I have been a member of the Human Rights Committee since its formation in 2005. The HRC is the national institution vested with competence to promote and protect human rights in the Cayman Islands. The HRC is a non-aligned body, and we are committed to objectivity and impartiality in our work. Our membership consists of a wide cross-section of the Caymanian community, including Caymanian and expatriate attorneys, a physician, a reverend, womens' rights advocates and prominent business persons.

Although it does not provide a formal legal remedy, the HRC is currently able to receive, investigate and seek remedies to complaints on human rights issues. In the absence of constitutionally enshrined rights, the HRC therefore provides a useful and inexpensive resource for resolution of human rights issues to the general public. In addition, the HRC also reviews existing and proposed new legislation to provide input on whether the provisions conform to fundamental human rights principles.

The HRC also advises the government on Cayman's compliance with various international treaties which have been extended to us. Against that background, the HRC considered it essential to provide its comments and views on certain aspects of the constitutional reforms given the importance of a Constitution, to the development and protection of human rights.

The HRC is grateful for the opportunity to participate in these talks and to outline our position on the Government's constitutional reform proposals, most particularly those relating to the Bill of Rights and on

Proposal 17 relating to the establishment of the Human Rights Commission. While there are some areas that give us pause, the HRC is largely very supportive of most of the Government's proposals in relation to human rights.

Our position maybe summarised in the 12 following points:

For the respect and inclusion and enshrinement of the Bill of Rights, the HRC fully supports the inclusion of a Bill of Rights in the Constitution as is proposed by the Government. Moreover, the Bill of Rights should be enshrined in the Constitution rather than in ordinary legislation, which can be amended or appealed far more easily by the legislature. Otherwise, our rights may be subject to change and variance after each election.

With respect to the scope and drafting of the Bill of Rights, we concur with the position that has been stated by some of the other NGOs and the public, that the Bill of Rights should be accessible and applicable to all persons in our Islands. The Bill of Rights should be drafted in plain English, with the rights also being phrased as positive affirmations (rather than as residual rights). The Bill of Rights, and the Constitution more generally as well, should be drafted in gender-friendly language ("he" or "she", "his" or "her", "man" and "woman") to take proper account of the entire collective of our population both male and female.

With respect to the enforcement of rights, as Cayman has a written Constitution, direct enforcement by the local courts is an available option for the Cayman Islands. However, the Government's proposal is for the courts to only be able to make a "declaration of incompatibility" that a law conflicts with the Constitution and the legislature then be left to amend the offending law.

The disadvantage to this method, however, is that enforcement of our "rights" may then be left to the vagaries of the political process. On the other hand, one of the advantages to this proposed method is that it does leave the matter in the hands of the elected legislature, rather than

with the judges, who are appointed. The HRC is also mindful of the concerns raised relating to upholding the principles of parliamentary sovereignty, on which our government is based, and of "judicial activism".

The HRC would prefer direct enforcement of rights by the courts. However, if the declaration of incompatibility option is to be used (and as mentioned there are advantages and disadvantages to both), careful consideration will need to be had to the practical implications and workings of such a system for Cayman.

With respect to the application of rights, the current Government proposals seek vertical application of rights only. However, the HRC believes that direct, horizontal application to private bodies should also be considered at a later stage for Cayman, in order for us to develop a full human rights culture.

Some indirect horizontal application of rights may flow through the obligation of the legislature to consider human rights principles when passing new laws, including those which impact private businesses and individuals. Accordingly, considerable care will have to be taken in relation to the definition of "government", against whom the Bill of Rights will be directly applicable, particularly in relation to quasi public bodies, associations, entities, sporting clubs and so on. Any of those entities and bodies which receive government funding.

Nonetheless, the HRC believes that the Cayman Islands would benefit from clearly addressing the issue of horizontal application of rights in its Constitution. This is one of the deficits in many Commonwealth Caribbean Constitutions, and is currently an issue now for reconsideration as part of the reform process in a number of those jurisdictions. Accordingly, it is most sensible for this issue to be properly and fully addressed for Cayman so that we can learn from those experiences.

With respect to the rights to be included in the Bill of Rights, the HRC supports and agrees with the inclusion of all of the human rights listed in the constitutional modernisation proposals, such as the right to a fair trial, to privacy, to marriage between a man and a woman, the right to life, freedom from torture and slavery, free speech, freedom of conscience and religion, and the right not to be discriminated against on the basis of race, creed, colour or gender.

In addition, however, we believe the Bill of Rights and the Constitution could also usefully include a number of aspirational rights which are relevant to Cayman, particularly the right to education, the right to housing and the right to healthcare for all.

Further, having stated that there is no desire for independence, it is nonetheless prudent for Cayman to expressly reserve the right to self-determination.

Upholding the basic principles of equality, the Constitution should not seek to discriminate against any person or group on any basis, including sexual orientation. Human rights fundamentally are based on the notion that all human beings have dignity and value. Accordingly, all rights should be secured without discrimination.

In relation to the right to marry, if the principle of equality is again to be recognised, the HRC takes the view that there should not be discrimination against any other types of legal union which may eventually come to be recognised in Cayman law. Any civil rights to be granted to any form of legal union should remain a matter for ordinary law, but again, should not be discriminatory.

Lastly, in relation to the establishment of a Human Rights Commission, the HRC supports the establishment of a Human Rights Commission in the new Constitution to formally establish a national body responsible for the promotion and protection of human rights. The establishment of a Human Rights Commission, with a similar mandate to the existing HRC, will be beneficial.

For ease of reference, the delegation has been provided with copies of the terms of reference for the existing Human Rights Committee. However, it is very important to remember and recognise that the Bill of Rights should not be introduced in isolation. In order to ensure that the Bill of Rights is effective and fully utilised, our people will require ongoing education, guidance and support, and that is one of the roles which a Human Rights Commission can usefully undertake for us.

We remain on hand to expand further on the foregoing positions outlined in the coming days. For ease of reference, I can also helpfully confirm that the HRC does not take any formal position or comment on the other constitutional modernisation proposals which are outside our mandate. Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. And thank you, too, to all those who made opening statements. I think they're all very helpful and informative. Most of them are far more informative than mine. But I'd just like to make two comments before we break. The first is an easy one, and the second is a difficult one.

The easy point is that I was almost going to put in my opening statement, that any new Constitution should be drafted in gender-neutral or gender-friendly language as has happened in the new Constitutions of Turks and Caicos and British Virgin Islands. This is not just because, as you observed, Leader, that the UK delegation, for the first time, has a majority of the "fairer sex", as you put it, but this is a matter of principle we agree with. But just taking in the time I had available to look at the first page of your draft Bill of Rights, freedoms and responsibilities I noticed was drafted in gender neutral language which we welcome.

The second point is more difficult, and that is to respond to the Leader of the Opposition's challenge/request/argument to us to agree



that these talks this week should be held, in some way, in public and I cannot agree to that. I have no authority to agree to that. And, furthermore, I do not believe it would be a sensible way of proceeding.

It's not just a matter of precedent. There is no precedent for constitutional review negotiations with Overseas Territories being held throughout in public, but there are very good reasons for that.

You can have your public debate, and you have been having your public debate, and you can engage in your local politics as much as you like in public, and I don't want to be any part of your local political arguments. That is for you. However, if these discussions took place throughout in public, I know—I don't just think, I know—that you will not reach a conclusion which is sensible. This is a negotiation. This is not an academic debate. And in a negotiation the key is forbearance and compromise and persuasion, and a result which I said earlier must be acceptable to both sides, both the Cayman Islands and the United Kingdom. And I know from bitter experience, as I suspect everybody here does, that if negotiations are held in private and then reported to the public, you are more likely to get concessions, forbearance, tolerance and an outcome instead of public grand standing. I speak brutally. So, I cannot agree to that.

And on the other hand, at the end of this four days, I am prepared to come and join briefing of the press, answer questions, report how we've got along from our point of view (as I'm sure any of you on the Cayman Islands' side will want to do), and I'm prepared to subject myself to that as long as necessary so that people can be informed what has gone on.

So, with that, thank you very much. We should now break, I think, for about 20 minutes, and I hope we can all reassemble at noon, or shortly after noon, and have a bit of time in private session before we break for lunch at 12:45. Thank you.

**RECESS****RESUMED**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** [Portion not recorded] ... that these are private rooms for delegations to retire to if they would like to at any point. The Cayman Islands delegation—the Cayman Islands Government room is Goldfield. Don't ask me where any of these are, or people. Opposition room is Kirk B; is that right?

[laughter and inaudible comments]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It sounds quite a religious room to me.

[inaudible comment from Leader of the Opposition]

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** The FCO room is Alsons, and the NGOs room is Wilson. Okay?

[inaudible comments]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** What I'd like to just take a little time doing is to try to agree a sort of way of using the next four days productively, and my—I'll be straightforward, my main concern over these four days is to try to cover the whole ground of what might be in a new Constitution, at least in a first reading sort of way.

In some subjects we'll no doubt get into some detail. Others I suspect we won't be able to. But we should at least end up, at the end of

the four days, with a clear idea of the points that are easily resolved, and I imagine we can—I hope we'll be able to resolve quite a number of them this week, tick them off so that we don't have to come back to them, unless anyone has a change of mind. And then a clearer idea of the more difficult points that we will need to come back to and discuss in more depth after we've had opportunity to reflect upon them. And so, it means we have to be quite disciplined in how we go through things.

I would be happy, subject to one exception which I'll mention in a moment, I would be happy to go through the revised proposals in the Cayman Islands Government document, read together with the Opposition's Paper and papers by the NGOs in relation to those proposals sequentially, beginning at the beginning and ending at the end, alongside the Draft Constitution of 2003 because that is the only document at the moment which sets out, in legal detail, a possible new Constitution.

Now, I quite appreciate that that draft is now somewhat out of date in terms of proposals that you, on your side, might want to make. It's also out of date, incidentally, in terms of some of the proposals we have, particularly in the fundamental rights chapter. But there are one or two other things that I've spotted in re-reading it that I would like to draw to your attention and discuss.

The one exception to that suggested sequence is the Bill of Rights, fundamental rights chapter, which comes fairly early on, Proposal 4 I think it is in the revised proposals, and I would prefer to postpone consideration of that until possibly Wednesday. The reason for that is that we have—I see already we have in our folders here the Draft Bill of Rights and Responsibilities that was alluded to, and we'll need time to read and consider that and focus on it.

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** My copy was in this document, in this folder. But perhaps I'm being premature. Is that the right paper that you wanted to table? It is. Okay.

**HON. ALDEN M. MCLAUGHLIN, JR. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Referring back to your comment that the 2003 document should be used as part of these initial considerations in conjunction with the revised proposals of the Government and the proposals of the Opposition, we have been working for some time on preparing a draft document, constitutional document, which reflects our revised proposals, and we would be prepared to circulate that, if that would also assist in the deliberations as they go on. I'm offering that at this stage.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I mean is that—what is the status of that document? Is that a document which is agreed amongst the whole Cayman Islands delegation?

**HON. ALDEN M. MCLAUGHLIN, JR. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** No, sir. It's a document which reflects our revised proposals.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, I'm just—I'm only slightly worried—well, I'm worried on two counts: one is overload, because we've got an awful lot; but also if it's a thing which

is still not a consensus document amongst you all, then, it's part of your delegation. Perhaps it's best to hold it back.

**HON. ALDEN M. MCLAUGHLIN, JR. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Yes, sir. We're not pushing it. I'm just saying that if one wanted to see how the revised proposal would translate into constitutional or legal language, we have a document which might be helpful.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I think with that clarification, well, then, I think it might be helpful when we get to particular proposals if you have a page which actually shows how you envisage it, looking in terms of the legal provision. It might very well help to clarify the scope of the proposal. So, perhaps we could draw upon it, you know, as we go—as we go along.

Would there be any objection to proceeding in the way I've suggested? That is to say, starting with the Revised Proposals document, Proposal Number 1, but when we come to Number 4 on the Bill of Rights, we put that aside for the time being. But we must come back to it this week, and I would guess something like Wednesday might be a good day, and we try and go through and make sure we get to the very end. And as we're going through we look at not—we don't have to look at in, you know, tiny detail the drafting of the 2003, that's not what I'm suggesting. It's the principles in there that are reflected in that text, many of which are not covered by the Revised Proposals. And also, as I said earlier, we have a couple of points that we've noticed that need to be addressed.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, the Government doesn't have any objections,

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** If no one else has any objections. Pastor Al.

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Mr. Chairman, I think from at least from our perspective, you know, there's been an enormous amount of time and energy put into the exercise locally; and at a minimum, if the Government has that document, I believe that it would be appropriate, even if we're not going to be discussing that right at this point in time, for those that are involved in this process to have access to it, to look at it, in order that, again, some comparisons can be made where there may be differences or consistencies with the 2003 Draft. And as I said, even if you choose not to have us discuss that, you know, we have—I believe that that document would be an important part, or would form an important part, of these discussions, even if not right at this particular moment in time.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just to let you know that we would be happy to distribute that later on, while it's all being prepared and put together. But just so that you will know, we're happy to distribute it later on today.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right, fine. I mean, if it's the wish of your delegation to have it out here, we'd willingly receive it, and it might throw light on some of the proposals as we go through. And I understand the—

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** If I might, Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, go ahead.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Just so that you know, not to change your suggestion but I understand what Pastor Al is saying, and we're happy to let delegates have it and it can be used at will whenever it is thought necessary.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right, that's fine. Well, shall we try and just use the 20 minutes we have before lunch to make a start and then I think—

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman, could I just raise a couple of points? What has been the process for these discussions, could you be more clear on whether these discussions are, indeed, confidential, and that we should not take documents outside this Ritz-Carlton, and that they should not be placed on—can you be more specific as to what your expectations are for these discussions?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, as far as documents are concerned, the Revised Proposal document is in the public domain here obviously. The 2003 Draft, as I understand it, was

published here, too, so that's in the public domain. It is really a question for the Cayman Islands delegation whether the draft Bill of Rights they have tabled and this wider draft document they're talking about distributing later today, whether they would like that to be kept private within this room or available outside. I don't know. I mean, it's their—both of those are their documents.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just so that it will be clear, these, just like our very first set of proposals, are simply meant as starting points to work from. We have no problem with it being public knowledge, but understand that it's totally in draft form. It is first start so that we can make comparisons, and with the full understanding that at the end of the day there may well be changes once we get to consensus wherever there are differences as we go along.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think that's clear. Can I just add another point on documents? If in the course of the work we actually work on text which might be compromised language, I think we should then be very wary about—I mean, if we put forward a proposal, I will indicate whether I would like it to be treated confidentially for the time being for the very reasons I explained earlier, that, you know, if I'm going to be making concessions, I would expect the privacy of proposed language to be respected.

Look, you know, in truth no one can do anything other than to ask those who are participating to respect the wishes of other participants to keep things private, if that's what they prefer, until an appropriate time. I mean that is, I regard, fundamental of any good negotiating process, to respect your fellow participants' wishes in these things.



**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** And just on another point, Mr. Chairman, whether these discussions are being recorded and whether the transcripts of these discussions will be given to each of the participants.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, my understanding is that they are being recorded, are they? But I have requested that—I mean, they can be recorded and used for those who want them for their own purposes, but I specifically requested that they should not be broadcast for the same reason as I explained earlier. But for the purposes of the record, you know, you could have—in fact, that's up to you. And notetakers take as detailed notes as you like for your own purposes for future reference. But please respect our wish, at any rate, not to conduct these negotiations on the streets. You know ... that's all I would say.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** And just another question. The previous discussions there were, I believe, minutes taken of those previous discussions, and I wondered if it would be beneficial for all of the delegates here to have access to those minutes of the previous discussions.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You mean in 2002?

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** That's correct.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, there were no agreed minutes, as far as I know. Each side took its own notes. I

mean, there were several people here who were at those talks, so you probably had your own records I guess and we had ours. But there was no agreed minutes or anything like that.

**HON. ALDEN M. MCLAUGHLIN, JR. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, just as the final point. There is a tendency on the part of some of the people around this table to discuss just about everything on the talk show in the mornings. So, I would be grateful if you would give an indication as to what your view is about that while these talks are proceeding. Obviously when the talks are finished people may say whatever they think. I, as a politician, as a representative, I don't have any difficulty with that, but I am keenly conscious of the fact that if that practice continues on the talk show that it is going to impact how we deal with each other in here. Because if things that are said in here wind up on the talk show the following morning and are the subject of public debate and criticism, it is bound to affect how these talks are conducted and, ultimately, the outcome. So, I think that we would all be grateful for an indication from the Chair as to how we should conduct ourselves during the course of these talks.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I appreciate the problem, and I think all I can say, really, is to ask those participating to respect the wishes of other participants as regards the way these talks are carried out. I mean, as I have said earlier, and as I said publicly when the media were here, there will be the opportunity for full briefing of the press and answering of questions at the end of the four days, and I'm prepared to take part in that. And I think—my own view is that that is the right time for comments to be made and broadcast, and then after we have departed, or even before we have departed, you can begin your public debate here.

What I fear is if people comment publicly with the media while these four days are going on, we are going to lose the time and trust and it will—I agree with you, Alden. I think it could well affect the way the discussions proceed.

And what I really fear is that people will not speak frankly, and I won't speak frankly if I suspect that everything I say is going to be relayed to the media. My position will simply harden, and your position will harden, and your position will harden, and your position will harden. And it will be very difficult to make any meaningful progress. And if I'm asked at the end of four days why we haven't made any progress, I'll say. I'll say so.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, the only undertaking that we want to give is that whatever is said it will be truthful. And I think we better speak—always speak frankly whether we have a difference or whether we don't. We must always speak openly and frankly, and therefore, sir, it depends on what the Government do as to how we will have to answer. If they behave properly, then they will be treated in such fashion. But if they are outrageous, as I've heard them on the radio themselves, then they will be dealt with accordingly. Your wishes for any secrecy will depend on how much that affects the Cayman Islands. Thank you, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. Well, I conclude that we should proceed in an atmosphere of mutual trust and honesty, and I hope that's the way we can do that.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Honesty? Let's not fool ourselves. There is no trust. There can't be. There have been too many lies told already. And I don't

proceed—I do not proceed in any other fashion but to know who I am dealing with.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Is there anything else of a preliminary procedural nature, or can we look at Proposal Number 1?

Proposal Number 1. I give the floor to the Cayman Islands delegation, Leader of Government Business.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, you refer to the Constitution should be modernised? Well, the Revised Proposals have that the Constitution should be modernised, and the paragraph accompanying that reads: "**The Constitution should be modernised to give the country more democratic, accountable and efficient government, while continuing to be an Overseas Territory of the United Kingdom. The UK/Governor should continue to have responsibility for defence and external affairs; internal security and the police; and the civil service, but with some adjustments, as noted in other proposals.**"

And I think, Mr. Chair, by and large, the fact that the Constitution should be modernised is something that all are in agreement with, but other members of the various delegations may well have their individual comments. So, that again being the starting point, perhaps you could ask if anyone else has any other comments. But I think, by and large, there's agreement that the Constitution should be modernised.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Is there any other comment on this particular proposal that anyone would like to

make? I mean it is a very broad introductory statement of an objective really, and I'm prepared to say a few words on it, if you'd like.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yes. Mr. Chair?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Please, McKeeva.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** The Opposition Paper says that we agree that the Constitution should be modernised, supported by the people. But we have a Checklist which was given with the White Paper on constitutional modernization, and some of that, those checklists, are what the UK said we should be arriving at, and if those have changed, we would need to know that. But the modernisation we seek would go along that route and in accordance with what the people want.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think the Checklist you refer to, I remember it, it wasn't intended to be a sort of direction or a blueprint for something which one has to have, but it is was intended as guidelines, a sort of—exactly as a Checklist to "tick off" sort of things that as far as the UK government was concerned ought to be addressed.

Now, I have to be truthful. I don't have a copy of the Checklist with me at the moment, you probably have it there, but if there's anything in there that you think is relevant to raise at any particular stage of discussion, by all means say so.

My reaction to the... Shall I just finish, McKeeva, and then come back to? Or do you want to say—

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** No. No. I'm listening to you, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. My reaction to Proposal 1 is that as an objective, as a general objective for these discussions, this is perfectly acceptable. As a general objective. But you won't be surprised to hear me say that continuations of British Overseas Territory carries with it the need for the UK government to retain sufficient reserved powers, sufficient reserved powers to enable it to fulfil its responsibilities, both international and constitutional, for the Cayman Islands. And the trick will be to identify precisely what those reserved powers we shall need to retain are, why we need to retain them, how to express them, but not to go beyond what is a considered necessary.

And I want to make this clear right up front because the current Constitution of the Cayman Islands is covered with belts and braces and braces and belts. And, you know, you could validly ask: Do we need all these things? Isn't this concern covered sufficiently by this device rather than having all these various devices as well? And so, please understand that we on the UK side will have to examine very carefully every suggestion of a rebalancing of powers, as I think you call it in your paper, from the point of view of whether we will need, need not just desire, need a reserved power and, if so, whether that reserved power is sufficient.

And I genuinely mean that. We're not in the business of trying to inhibit sensible modernisation of a Constitution or advance of self-government in the Cayman Islands so far as it can be done in a way which allows the UK to continue to exercise its responsibilities. And, of course, if we cannot agree on that key point of what—of agreeing on sufficient reserved powers, then the answer is either no agreement, or if you're unhappy with that, or if people of the Cayman Islands are unhappy with that, they can choose independence. It's as simple as that.

So, the trick will be to find the ground whereby a constitution is modernised, advanced, more power is delegated, or there is more local economy, but with the reserved powers for the UK which are necessary and sufficient to enable it to fulfill its responsibility. Thank you.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, I refer to the Checklist because that's what was given to us to be a guide by the then Governor, which has followed the whole constitutional process. And two points speak to your last point. Fourteen says that:

**“As sovereign power with ultimate responsibility for the United Kingdom Overseas Territories, HMG should have the powers necessary to discharge its responsibilities towards them, to implement the UK's international obligations and to minimise the risk of contingent liabilities.”**

And 15 says:

**“Consideration should be given to whether the executive or legislative powers held and exercised by the Governor are adequate in respect of:**

- 1. his responsibilities under the constitution;**
- 2. the authorisation of expenditure required to enable him to discharge his responsibilities;**
- 3. finance,**
- 4. good government,**
- 5. periods of public emergency,**
- 6. public order,**
- 7. the passing or amendment of legislation, including the use of a “one line veto”;**
- 8. appointments to public offices; and**

**9. where relevant, oversight of offshore financial industries.”**

Quite a list.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just to quickly say that as I mentioned in my opening statement this morning, we are quite content, and I believe everybody around the table facing you left and right are all quite content with making the clear statement that there is no desire to seek independence. Therefore that not being on the table, we simply have to find the way that you speak to that would satisfy both the United Kingdom and the Cayman Islands as to what a new Constitution should contain in that regard.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Is there anything anyone else would like to say on this particular general objective proposal before we break in a moment or two?

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Just one question.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** In determining those reserved powers, who decides which powers will be reserved? Will it be the decision of the UK or will it be the decision taken from here?



**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Ultimately, while the Cayman Islands is a British Overseas Territory, the UK government and, ultimately, the UK Parliament can decide these things. However, as I made clear I hope in my opening statement this morning, we're determined to reach—to negotiate a new Constitution of the Cayman Islands, as with other Overseas Territories, in a process of agreement. Not only that, the process of agreement between the representatives who work out the text, but that the result must have the approval of the majority of the people of the territory, in this territory, in a referendum as I understand it, which is a very respectable way of proceeding. So, although, ultimately, the UK could insist—and we will insist because we won't agree. If we're not satisfied that there are sufficient reserved powers to enable the UK to discharge its responsibilities we will not agree, it's as simple as that, and the present Constitution will continue.

But I give you this assurance; that we will do our very best to examine the necessity and sufficiency of any reserved powers that might be thought appropriate.

And just lastly, in relation to the Leader of the Opposition's reference to the Checklist. That paragraph, the second paragraph—the first paragraph seemed to me entirely consistent with British government policy. The second paragraph sounds a bit out of date to me, to be perfectly honest. I think things have moved on since then. Paragraph that was read, I think probably all it was is, perhaps, a sort of list of—these are the areas where it might be necessary, depending on the circumstances of the territory concerned, to look at whether that paragraph might be needed. To take, for example, the last one, offshore finance, the Governor's never had responsibility of finance, I don't think. Right? No, it has in some other territories, where things went badly wrong, but not here. So, this is a thing where you could say, well, you have to look at the circumstances in history of the territory and how

things have been conducted in the past. And, to be perfectly frank, in one or two other territories we have had to insist on having some say or some responsibility for that subject, but I don't anticipate that we will argue for it here in the Cayman Islands.

I'm very keen not to upset the hotel lunch arrangements on the first day. They are expecting to serve us with their splendid buffet at 12:45. I think we should try and meet that. So, shall we call a halt there for now, and I'm very glad that we've managed to make a start, and come back at 1:50, an hour—in an hour. Thank you very much.

### RECESS

### RESUMED

### PROPOSAL NUMBER 2

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** [Portion missing from recording] I mean I don't see—Proposal Number, to save time, I think it's perfectly comprehensible, but there is one point I wanted to make about it, unless you wanted to say anything about it beforehand.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, you can go right ahead, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You know, everything I've heard from every quarter is that there is no public desire for independence, and that is fine with us. You know, we're not in the game of trying to push the Cayman Island to independence against the wishes of the people. There's only one element of this Proposal Number 2 that presents us with a problem, and that's the third bullet: "**This country wants the United Kingdom to agree that, after the present modernisation, no further change to our Constitution would be made without the approval of voters at another referendum (except as permitted under Proposal 25 below).**"

And we will—I can come back to that when we reach Proposal 25. It is more of a question of accepting a legal reality that under the West Indies Act, Her Majesty in Council has an unfettered power to change the Constitution of the Cayman Islands.

Now, in the modern day and age, as I explained before lunch, the policy of the British government is to do these things by agreement as far as possible. So, we'll need to come back and look at this in a bit more detail later on.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Yes. Mr. Chair, I hear what you're saying and I would have to take a minute to search, but there is in one of our proposals a subsection which speaks to any changes in any of our legislation, I believe—or maybe it's Constitution also—must be done by agreement, meaning no one-sided, but something that we're consulted with and find agreement with. So, from that perspective, I don't believe that we would have a really contentious issue.

Now, you mentioned the West Indies Act, which gives the UK unfettered authority, but perhaps when we get to that specific section we might find a better way. Part of this proposal is not just speaking of the UK's authority, but also the local legislative authority, meaning that for there to be any substantive change to our new Constitution once we have got to that point that it would require a referendum. So, it's really two different things we're talking about, all inclusive that we need to discuss, but one of them I'm sure you won't have any difficulty with, in that it is our desire once—and it is something that the wide consultative process has given us the feedback that the people of the country, in our view, are more than content to have that enshrined in our Constitution, that any substantive change to any future Constitution must be done by way of referendum. That is on the side of the Cayman Islands.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. Well, I hear what you're saying. I think we'll have to come back to that when we come to the specific Proposal 25.

But good, well, I think—I wonder if we should then just move to Proposal Number 3 and take a little time (not too long I hope) take a little time to look at the Draft Preamble which was prepared in 2002, and I think prepared here in the Cayman Islands. It was certainly not something we wrote in London because we have one or two suggestions of our own, and maybe you've got suggestions of things to add to or change in the Draft Preamble. And this is the Preamble on page 11, I think it is, of the 2003 Draft Constitution.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, we have a number of proposed amendments—it's actually additions to the Preamble as well, so I'm not sure whether you want to take those now or whether you want to come back to it. And I know the CMA had a proposal, and I believe the Opposition had a couple, based on the discussions we had in Bodden Town on Thursday.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, I think we ought to look at them. I mean, would you like to read out what you had in mind, and then I'll tell you the two or three that we have in mind? They may overlap.

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Mr. Chairman, generally speaking, we are happy with the Preamble, but we do believe that improvements can be made to it and therefore we're pleased to hear that we're going to look at that.

One of the things that we believe that should be part and parcel of this is from a historical point of view, our seafaring tradition, and I know that the Honourable Speaker of the House had also mentioned as a part and parcel of that again is the vital role that our women played as a part of that—as a part of that tradition. I would also say, just as a reminder of where this—the affirmations have come from, that those affirmations are actually extracted verbatim from the Vision 2008 document that were debated in our Legislative Assembly, was representative of the community as a whole, and recognised both within this country as well as by Her Majesty's government. So, we believe that those—specifically those two things are two important elements that are not captured in this that we would like to see captured.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I saw something about that. Did you see that bit of paper? That's it. Ah, yes. **“Recognition of seafaring tradition and include a statement on industriousness of Caymanian women.”** Both of these sound admirable elements to include, it's a matter of sort of working out the precise language, I suppose. And are there anymore, or should I tell you the ones that we thought of?

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Yes, sir, there are a few more. And what we can undertake on this side, Mr. Chairman, is that the document which we hand around tomorrow, that is our draft of the Constitution, will include these changes—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** —so that it will be helpful to everyone. But the others which we are proposing are below Bullet Point 2, to include an additional ground or provision: **“A country committed to the democratic values of human dignity, equality and freedom.”**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Splendid.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** And a penultimate point: **“A country which fosters the high standards of integrity in the dealings of the private and public sectors.”**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. I think the—it would be very useful to have tomorrow your revised, you know, revised proposed Preamble.

You know, I hasten to add that this is not a thing that we on our side would have a difficulty with, provided the wording is okay, you know. And in the 2003 Draft we were content with it as it was, but it occurred to us that the very first bullet—and this picks up something I think in the revised Proposals Paper. It would be good to say at the end of the first bullet: **“A God-fearing country based on traditional Christian values,”** add the words **“tolerant of other religions and beliefs”**. Tolerant of other religions and beliefs. And I think that is actually something which you proposed in your own, or mentioned as a possibility in your own paper, and I think it will convey a very good message.

Another suggestion we have is that in the last bullet, this is the one about immigration, it might end up with some additional words: **“Give security to long-term residents and welcomes legitimate visitors workers.”** And welcomes legitimate visitors and workers.

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And workers. Legitimate visitors and workers.

The third suggestion we have is some reference to the Queen, which, interestingly, does not appear at the moment, and something like—I mean this is really the people of the Cayman Islands speaking in a way, but something like a new bullet: **“A community loyal to Her Majesty the Queen”** or something like that assuming that you feel that way.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** She is your Queen a well as ours after all.

And then, lastly, and this is—I haven't got any form of words for this, but it does seem a rather inward looking list of intentions/affirmations, and we wondered whether it would be useful to make some reference to the place of the Cayman Islands in the Region and the place of the Cayman Islands in the global community and something referring to your neighbours. As I say, we haven't got any precise proposed language, but it would be—I think sends a nice message if it were one of these affirmations which was outward looking and, of course, reflecting the fact that the Cayman Islands does have an important role in the Region and in the global community, global economy.

Anyway, it's just—can I leave those thoughts with you, and if you're—if you're working on a revised Preamble to circulate for either tomorrow or—it doesn't have to be tomorrow, for a later time we could come back and review it and see how it looks.

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Mr. Chairman, if I might?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, please.

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Given the continual—to sort of pick up where we—part of our discussion this morning. Given the continual reference to this document that none of us have seen, it seems that as we go through this exercise we're going to keep referring back to a document that none of the rest of us here have set eyes on. And I believe that it would be extremely helpful in these discussions to—if we're going to be talking about proposals that the Government has developed, that as soon as is practical that we would have the opportunity to look at that.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Yeah, if—

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Maybe at least by the end of the day today so that tonight we could take a look at it, if at all possible?

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, if I might. Pastor Al, in taking these points that have been brought out into consideration, I think the idea is going to be to try to have that included in the document, which only means that in doing so, it's going to take a little longer to finish it. So, I suspect that physically that won't be ready till tomorrow.

And I do understand your point, but it still would be better, in general terms, if we can include these proposals in that draft document so that when we're looking at it we're looking at it altogether. And I'm only saying what I say to say to you that perhaps tomorrow is when we'll get it rather than today. But the idea—what Minister McLaughlin was talking about was to try to add these things into it. Now, obviously what others have said, and what the Chair has said on behalf of the United Kingdom government, are matters which we're all going to have to agree to. So, not to worry that we won't have a chance to go through everything and say yes, yes, no, no or yes, no, yes, no. Just want to make sure that we're on the same page. Thank you, Mr. Chair.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, insofar as concerns the Preamble, I mean, it's a fairly self-contained page really, and I think if we were able to do so in the course of this week, come back and take just a few minutes to run our eyes down it with such changes as have been worked in. I'm very grateful to you for your side agreeing to try to work those ideas in, or consider them. I mean, you may not agree with them, I don't know.

This is not a big stumbling block area I should hasten to add.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It's something, really, that you on your side need to be comfortable with, and that we on our side are really only looking to see whether there's anything prejudicial that we would have to object to in the lack. And I doubt that there will be, but we'll have to look at them closely just to make sure that it's—

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just before you—I suspect that you're moving on to something else now, and I think before you do, for the benefit of the Opposition, the

Opposition did have a point which they wanted to make regarding the Preamble.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** And perhaps would be best for you to hear it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Mr. Chairman, the point that the Opposition wanted to make was to see whether consideration could be given for the insertion of the following phrase: That religion—that our religion in the Cayman Islands finds itself expressed in moral living and social justice.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** And if I might, Mr. Chair, just to get it all out in the open. I think the Opposition also had a point where they were requesting that the people be informed of the limitations of the Preamble.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Just to follow on, Mr. Chairman, on what the Leader of Government Business has just intimated, we just felt that it should be brought completely out in the open as to the significance of our Preamble as it relates to the Constitution proper.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, I'm all for—I'm all in favour of it being made crystal clear to everybody what these things import. I mean, in what way did you have in mind that this would be done? I mean, I'm perfectly prepared to say publicly, if you would like that in some—in answer to a question posed by the media that , in my view, the Preamble would be an expression of the hopes, aspirations and a statement of the history and matters of importance to the people of the Cayman Islands stated in a Preamble to the Constitution, which would not be part of the substantive provisions of the Constitution. On the other hand, it would have no legal importance at all because it's in the text. And what is very difficult to predict is what ... I was about to say use, but what relevance a court might ascribe to something that appears in the Preamble.



It should be, in my view, scene setting and something—some expression which is specific to the territory concerned. But it—these are not substantive legal provisions, they are scene setting and could be applied by a court as part of the context of interpreting provisions of the Constitution. I don't know whether the other lawyers here agree with that, but that's my take on it. Do you want to say anything, Jeffrey?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I think that's been well said, except this, gentlemen, that if legislation, or indeed a constitution provision is in any way ambiguous or unclear, the interpretation of that provision, as happens in respect of many preambles, can simply inform the interpretation of that ambiguous provision. It doesn't directly apply, but if there's doubt, then the preamble can be used to inform the values that ought to shape the interpretation of a particular statute or law.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. Does anyone dissent from that proposition, which I think was quite close to mine, but more accurately expressed probably? I mean, look, we have—I have no—if you think it would be useful for us as the UK team to say something about this, the effects of the Preamble, I'm perfectly happy to do that.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Yes, Mr. Chairman. Our concern was just that the Caymanian public would get some false sense of comfort with feeling that the protection that was offered in a preamble would give some legal jurisdiction or standing, and we just wanted to make it clear that, like you said, the preamble was just tone setting, just setting the tone.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Was what, sorry?

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Was just setting the tone of the—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Tone setting. Yes, okay. No, I think as Professor Jowell has said, and as I tried to say, the courts could use a preamble to assist it to interpret a constitutional—a substantive constitutional provision. So, it isn't legally valueless, but one shouldn't overestimate the legal value of it, I mean, I think, to be perfectly fair. Do you agree?

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Right. I was just having a look at the most recent case called—involving *David Leo Thompson v. The Bermuda Dental Board and the Human Rights Commissioners*, and the way in which the Privy Council actually referred to the Preamble to identify and to support what certain things were meant in the context of the Human Rights Act 1981. So, I was just sharing my thoughts with Mrs. O'Connor.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think that's in-line with what Professor Jowell had tried to say, isn't it? You know, so a court, and even the highest courts, will, if they find it helps them interpret particular provisions or the objective of the law concerned, they will use it because they're looking for any tools they can find to help them arrive at the right conclusion or right meaning of words used elsewhere.

But I mean, what I'm still asking, is it me you want to do something on this, or do you want someone else to do it, or do you want to take on the burden of explaining yourself?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Perhaps, Mr. Chairman, at a press conference you would clear—that's something that—the point that you could make clear at a press conference.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, if no one else has any objection to that—

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** You have satisfied us, sir, that we were right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And that any—I mean, if somebody asked me the question I'll reply to it. I'm sure it wouldn't be difficult to get somebody to ask the question if you would like a public answer to it.

All right, now let's move to—let's move to Proposal 5, having put Human Rights on one side for the time being. Yes, sorry.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** This is a point of clarification. We had spoken before lunch on the—where you said that reserved powers in particular, which is relevant to some extent to this section, to this proposal, would not be conceded if they were necessary or sufficient, and for the exercise of the UK's responsibility. I think that's a very, if I may say, helpful criterion by which to examine these.

In terms of a precedent, when the draft is circulated tonight or tomorrow and it's just the draft for consideration, by no means written in stone obviously, the odd footnote will refer to various precedents from recent BOT Constitutions particularly BCI, Turks and Caicos, Gibraltar, and there may be something from the Falklands Constitution as well.

To what extent can we assume that the powers that have been conceded there-of course all of these places are obviously different—could be conceded here as well? In other words, they can be used as precedents unless, of course, there's good reason to retain those powers?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, that's a very good question. The—obviously the—each of the territories is different and has a different history and way of operating. And, to be perfectly frank, Territory 'X' might have given the UK problems or worries about certain things that all the other territories did not, and Territory 'Y' might have given concerns and problems about something quite different that all the other territories did not. And so, that helps to explain why there isn't a uniform model of a constitution, and a uniform set of reserved powers. It's slightly different.

Also, I ask you to bear in mind throughout something I said in my opening statement, which is that nothing is finally agreed until everything is agreed; it is a package. And so, where you may call it a concession, perhaps you may call it a concession, is made or some arrangement was made in a particular part of a constitution with another territory and the UK was prepared to agree it, it meant it was prepared to agree it as part of the overall package because it was satisfied that in other respects the constitution—the draft constitution as a whole was acceptable.

Now, this is very important to keep in mind, I would suggest, because you may say—I can envisage you coming forward and saying: Well, you've given so and so to BVI or to Gibraltar. True, you can look on the page and see that what we are asking be retained, or what we're asking to retain in the Cayman Islands does not apply in the BVI or Gibraltar or wherever, or it's a different way, but it's the whole package and it's a different background and history of the territory. I don't know whether that's a useful answer but it's the best I can do I think at the moment.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I think that would be easy then, sir, because it's known that the Cayman Islands have never given you any trouble at all.

[laughter]

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** But, Mr. Chair, just to make sure that we have clarity, the fact that you were probably intimately involved in most of those new constitutions means that whenever that comes up and that comparison is made, that you will be able to quite ably guide us to the overall picture so that if we are seeking similar provisions to what was agreed upon, you would be able to point us very quickly into the direction of what else obtained in order for that provision to be agreed upon.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I might be able to.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** That's a short order, sir, I know, not a tall one.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, but seriously, I will do my best and I will be honest with you. I'll be straightforward with you and if I—

[inaudible comment from the Leader of Government Business]

## PROPOSAL NUMBER 5

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, good.

Well, why don't we plunge into Proposal 5 which is about the Legislature: **“Upgrade the legislature and restrict the overriding legislative powers of the UK/Governor.”** And I would suggest that just so we—for good order, we have in front of us Part 4 of the 2003 Draft which is headed "The Legislature". And this is actually a very good example of what I was saying earlier, because there are a number of points added in the Revised Proposals Paper, but there are a whole lot of other points which arise out of Part 4 which we need to touch on at least, to see whether you have any different views about it—about them.

And perhaps before plunging into the elements of Proposal 5 from your paper, looking at section 43(1) of the—sorry, 43(2) of the 2003 Draft, this immediately—this mentions 17 elected Members. Now, I was assuming, I was assuming reading your revised proposals that you were still happy to go with 17. It's very important to know what numbers of elected Members you have in mind because elsewhere you propose an increase of Ministers, to seven I think it is altogether.

And our position, I'll make it clear to you now, our position is that if you were to have seven Ministers, we think there ought to be at least 17 elected Members, at least, as the 2003 Draft provided—provides for seven Ministers and 17 elected Members. And I say "at least" because maybe the 17 is an underplay really, in order to allow for backbenchers and people who will staff committees—on committees of the legislative body. But I'm in your hands. What was your intention on that?

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, you're very astute, as we all know. The "whole package" to use your earlier expression, hangs together or it falls apart, depending on what we do to it. And that package is, if there is to be increased responsibility for elected Members and the elected government, and if there is to be a devolution of certain powers including the—or authority/responsibility for certain things like finance to elected Ministers, any of us who have been around the government scene for any while will understand that the number of subjects that elected Ministers carry now are far too many and the result often is that particular areas of responsibility don't get the necessary attention.

If we are to eliminate the number—the Official Members from the legislature and from Cabinet, we need to have, as you say, at least 17 elected Members of the House to be able to have two additional Ministers in Cabinet to start with, so the whole thing hangs together. So, our proposal is as it was, as I think all of us—the position all of us took, that is, the Opposition who were then the government and ourselves took in relation to this matter back in 2002. It seems—not seems—the Opposition have now done a U-turn on this particular issue, and so I think to help take this process forward, perhaps if we can get an indication to them—or from them as to their rationale for this. It's not something we were able to achieve earlier.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** First he has to—I'm sorry, but you need to explain to me what's the "U-turn" you're talking about?

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I think we all agree that the 2003 Draft which came back to Cayman following the 2002 talks in December—in December of 2002, to a large extent, on this particular point, represented the views that were put forward by both parties.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think that's my recollection, yes.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** With the exception of the issue with the Attorney General and ... I can't remember off the top of my head where we got to about the Deputy Governor being in Cabinet. But I think, by and large, it represented the views that were put forward, and it certainly represented the views in the Position Paper of the Opposition—or the then government, who are now the Opposition, in relation to this matter (i.e. that we should have 17 elected Members of the House, that there should be a Premier and six Ministers, that one of those Ministers would have responsibility.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** For finance.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** For finance.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, that's right. Is that still—is that still acceptable?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** No, Mr. Chairman. Before I go to put my foot in, I want to hear the Government's position, except reading here they haven't explained why they want to do it, and I've asked them to give me some substance as to why.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You mean why—why there should be two more Ministers or...

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Ah.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I thought I had just done that but I'll do it again no problem.

The level of sophistication and the volume of work required by Members of Cabinet (and in this case elected Members) requires, we believe, an increase in the number of Ministers. When you add to that our proposal that the Official Members are eliminated from Cabinet, it

becomes readily apparent that at least two more Ministers are necessary if Cabinet is to function the way it needs to function and if Ministers are to discharge their responsibilities which they have under the Constitution. But even if we—even if we don't eliminate all of the Official Members from Cabinet, the first point still stands, is that elected Ministers still now have far too much work to be able to effectively discharge their responsibilities.

If you look at the makeup of the portfolios and the subjects with which Ministers are charged with constitutional responsibility, it becomes apparent. Mr. Bush has fairly recently been in Cabinet, and he will understand that of which we speak, and, in fact, that was his position until very recently.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, let me start with where he ended. The position wasn't fairly recently. That position was back in 2003, and it was a time when they opposed it, he forgot to add that piece, when they opposed the government.

When they derail the process, Mr. Chairman—Mr. Chairman, let me read, just so that we can have it for the record, Opposition Position: **“We have not found support for the provisions put forward in this proposal by the government. The feedback received is that the wider community remains largely supportive of the role”** [and we are talking about Number 5, I want to make certain of that]—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, but this is—

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** **“... remains largely supportive of the role that is currently played by the Governor and the United Kingdom.”**

Mr. Chairman, hitherto for, a Member of the House—or two Members of the House got the idea that there should be changes in the Constitution, and so they put forward a motion and either government got with it or they didn't, but if government got with it then it became a big sizable debate. And the procedure was for all changes, was that you debated that motion, you formed a committee, and you went a committee of the whole House. Then you went out and you talked to the constituencies about constitutional change. There was sometimes talk between Opposition and Government, but it was around a committee table, and for whatever reasons, people—each side took their positions and talked to the various districts on each point.

Then when that was all done they set up—and they sent their results to the UK, the UK formulated a Constitution and sent it back, and either you got the changes, and we can say that's—that's how it was done, there and then you got the changes that the UK had agreed on.

When we start out the process that more or less was it back in 2002. Commissioners was appointed. It was a little bit different than the years before when the Constitution was changed. And we, at that time, more or less took the same position. We would talk to people as a government; when I say we I mean the then government. We would talk amongst ourselves, we would talk to the Opposition at the time and come to the UK to ask for changes. We thought we was doing what was necessary. We were taking a vote in the House. We were doing what the 18-point Checklist said, trying to—and we thought we had a good consensus from the people by various attendance and discussion at the election before that of the issues. But people came and said: No way, these are different times. We want to do things differently. We want more say in this process. We want to be able to say what goes into the Constitution. And then they talked about having the referendum.

The then Opposition went to town and played as much politics with it as they wanted. Even when we changed our position, the government's position, to go with them, they still said no they were going with the people's wishes, which was you have a referendum. On top of that, the country, with all the issues that we faced, we couldn't get anywhere. We were not getting anywhere. We were spending time talking to the FCO, talking to the people, and the things that we thought needed to get done were not getting done and we were not getting anywhere with the Constitution.

I put forward to our party a proposal that we draw up a new position, which we did get someone to do, and we table it and we say: This is what the public will discuss, and if we can't get any further, if we can't find support, we are stopping the process. We found no support for those things. As much as we thought that we had support, by the then government—the Opposition had had their march, their demonstration and had ripped up the people enough, and the people were saying: No, we don't want this. We don't want the Official Members moved out of the House. We don't want a Minister of Finance. We want the status quo to remain.

And as I said, seeing all of that we stopped the process. When the process restarted in the way and manner as it was done by Mr. Tibbetts and his crew, we, as I outlined this morning, started our debate, went back to the people, knowing full well that there was going to be a referendum. We went from district to district not having the wherewithal that the Government had, but I nevertheless—we had some good meetings. But we didn't find the support for the changes that the Government was proposing, the same ones that we did not find back in 2003/2004. People were still more so because there was so much discussion, were still reticent about the whole business of modernisation and the various things that were being discussed and how a referendum should be held. But they were not supporting moving the Attorney



General out. They were not supporting moving the other two Members out.

Now, we went back, as I said, from Cayman Brac to the end of this country, West Bay, from one end to the next. East End. Everywhere. Not huge turnouts but enough to tell us that people had not changed their mind. And, therefore, we could say we found no support for these things. And that's where we're at, that's the position we put forward.

Now, the Minister has said that the workload is large. So, the workload is large, you're going to take on two more Ministers and you're going to take on two more Members who will become Ministers, and their workload will be that of the two—at least two. He's saying two so they might have come to their senses and say you're not going to move the Attorney General. I hope that's what I'm hearing them saying, but they're saying two now. But at least those two Members, that workload comes on who? The two new Ministers. And those are big workloads. They're not small. So what happened to the other five of them? Their workload remains the same.

I just can't see their argument about the workload. Yes, the workload is big. Tell the country what you mean, though. And you can get—if your workload is too big, then you can get two more Members. Tell the country we need two more Members, but we don't have to move out the Official Members, if that's what they mean. Tell the country that. Because what you're telling the country just don't gel. Those two Official Members has tremendous work. So, the five that they're claiming that their workload is too much, workload hasn't changed.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well—

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** A few things.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Our position is that as is written, sir. We don't find the support at present to move out those people.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, just on this particular point when we're talking about numbers, quite apart from anything else here, I will tell you, for what it's worth, what our view is on this matter. And it will not surprise you to hear that the arrangement in the 2003 Draft, as far as the numbers are concerned, is acceptable to the UK. We do not have a strong view on whether there are five, six or seven Ministers, 15, 16, 17, 18 or 20 elected Members. The thing that concerns us is that there is a reasonable proportion between the number of Ministers and the total number of elected Members so that

there can be enough backbenchers on the government's side to help to staff committees of the legislative body. And therefore the checks and balances on the government's—the elected government, the Ministers, is not solely a matter for the official Opposition. And we regard this as very important. I mean, you know that in the UK actually one of the most effective checks and balances on a government is from its own backbench. Well, I know things are different in smaller jurisdictions like this, but that is our concern.

Now, when we come to consider the related issue, which is Proposal 5(4), we do have a pretty strong view about the suggestion of removing from the legislative body the Attorney General and the Deputy—well, the Deputy Governor doesn't exist at the moment, but the Deputy Governor would take the place of the Chief Secretary in the 2003 Draft philosophy.

Do you want to say something before I—

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** No, Mr. Chairman, just for our benefit maybe because the Minister made the point about this package and that the fact that he mentioned how astute you were for noticing the need for increased Members. And I'm just wondering if the Minister can show us where in the Revised Proposals they made reference to that increase of two Members.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, it's in the proposal that relates to single-member constituencies. We propose the division of the Cayman Islands into seven— 17 single-member constituencies.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Well, Mr. Chairman, I'm sure that we're in agreement that that proposal also called for that to happen in 2013.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** The division into single-member constituencies obviously couldn't take—well, an election on the basis of single-member constituencies couldn't take place in time for the next election. I think that's fairly obvious.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Yes. I mean, let me make it perfectly clear. What I was trying to do was make it perfectly—what our viewpoint is because I think, you know, you will have to try and work out what your collective preference would be. But we

were convinced in 2002/3, and are still of the same view, that if you take away the office of Financial Secretary so that there would—finance would become a ministerial responsibility, there is already a case for an increase in the number of Ministers allowed for in the Constitution. That would mean six.

We were also open to the argument that in the way of the modern world, to spread the load slightly wider and make a seventh Minister to cover the amount of work that needs to be done, and done as well as possible, rather than overloading individuals with too much work for them to do reasonably, that there was a case for seven Ministers. And as I said earlier, that was acceptable to the UK and remains so provided there is a corresponding increase in the overall number of elected Members.

Now the precise numbers are less important to us, really, because I know there are financial implications on how many Ministers there are and how many elected Members there are, and it's your budget that you would have to cope with—would have to cope with that.

Our concern and my Minister's concern in London if asked difficult questions in the House of Commons will be: Is this revised democratic arrangement, which is at the heart of the democratic system here, acceptable? And I would want her to be satisfied, she will want to be satisfied, that the number of Ministers allowed for in the Constitution is neither too small nor too great and that there is a corresponding number of elected Members. And I'll come back in a moment, unless you'd like me to speak to it now, to the *ex officio* Members because, as I said, we have a strong view on that.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, I wanted to find out where the Minister is talking about two Members because I don't see that—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** —anywhere in their positions.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I don't know. McKeeva, I said right at the beginning of this little debate that I didn't see it either in their Revised Proposals, and this is why I raised the question myself. They do say elsewhere in the Proposal 7 batch of proposals that there should be seven Ministers. It's 7, Number. 2: **“The Cabinet should consist of the Premier, Deputy Premier and five other Ministers.”**

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** In Proposal 7, sir?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** So that was seven Ministers and that got me to thinking now where else are they—what are they—how are they going to be—how is this going to affect the total number of elected Members? That's why I raised it.

I just want to make clear, you know, please do—I'm not trying to decide anything now. I just want to get across to you that as far as those numbers are concerned, seven and 17, or at least 17, there may be an argument for more than 17 actually, to provide for a better—better staff committees to have 18 or 19 or 20 Members. I mean this is a territory of what, 40,000 people?

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Nearly 60.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, you know, is an LA of 17 representatives enough? Should it be 20? I'm raising the question. It's really—I'm not trying to impose any solution, but I do recognise that these things have financial consequences if these chaps have to be paid and so on and so forth.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, just let me clarify that point. As you correctly said, the proposal for seven Cabinet Ministers is in Proposal 7.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I concede that in the Revised Proposal it does not actually speak to the number of elected Members. But that was widely canvassed. It's in the Summary of Proposals, the first set of proposals that went out—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** —on page 9, in which we said—I won't read the whole of it, but the effect of these proposals is that the total numbers—**“... number of Members of Parliament would increase from 15 to 17”**. So, that's always been and I think everyone has proceeded on the basis that that has been the position.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Mr. Chairman—

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Mr. Chairman, if I may?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, I'll come back.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Please correct me if I'm wrong in the discussions here. I believe you said in the 2003—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** —proposals the HMG proposal was to have the Attorney General and the Deputy Governor being a part of the legislature, and Cabinet by extension, and it was represented in the 2003 Draft? Is that what you said?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. What—if you look at section 43(2) of the 2003—

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** It was—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** —Draft it's only the Attorney General.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** —only the Attorney General, yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And an *ex officio* Member, yes. However, I do remember very well arguing that there was a case for the Deputy Governor as we conceived that post at that time—

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** But I —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** —being an *ex officio* Member as well. And if you would like to go on to the point, I can elaborate on it, but perhaps—

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** But just to say, Mr. Chairman, I believe that it was conceded that we could—would just do the one, the Attorney General as—which was what came back in the 2003 Draft. He would be the only one to remain.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** And I think that was the basis under which we were looking at the 17.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS AND INFRASTRUCTURE):** One of the bases—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It's unrelated. It's unrelated, Arden. The number of elected Members is important because it is only from the elected Members that Ministers can be appointed. Only from the elected Members that Ministers can be appointed. So, there must be, in our view, enough elected Members to provide for the number of Ministers and a sufficient number of non-Ministers on the government side to help staff these committees. Otherwise, you would have ineffective committees. Therefore, there's a weakness in the checks and balances on the government in the legislature.

Now, I would say that if you got—if you got total of 17, the government of the day must have at least nine supporters at least, Michael, nine Members?

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Must have at least nine. Seven Ministers would leave only two, at a minimum anyway, two government backbenchers. That's not very many to sit on scrutiny committees. I mean, it is true that in the 2003 Draft we were prepared to go along with seven and 17. And—but it's nothing to do with the *ex officios*. I'll come back to them in a moment. These numbers are nothing to do with the *ex officio* Members, unless the Attorney General tells me I've got that wrong. It doesn't seem to me to matter too much.

What is a different issue, and which I can elaborate on in a moment, is whether it is a good thing—it would be a good thing to exclude from membership of the legislative body the Attorney General or the Deputy Governor taking the place of the Chief Secretary.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF THE PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, may I just raise a point quickly because it might help our thinking on this side to explore that a bit further with you?

We understand the need for an Attorney General, legal advice to be available to the legislature. We don't, and haven't been able to see why that individual needed to be a Member of legislature, which goes against basic democratic principles. The legislature ought to be made up of those people who have been elected. But we can see why we'd need an AG in one capacity or the other in the legislature and in Cabinet. What we have struggled with, and are still struggling with on this side, since you just reintroduced this idea (because it's not in the 2003 Draft) is why we would possibly need a Deputy Governor unelected in the legislature. We understand some of the functions that the individual would have and some of their responsibilities, but those, we believe as we discussed last time around six years ago could be discharged by other persons present in the Legislative Assembly. So, if you could elaborate on that point, it will help our thinking on this side.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well I think as far as the Deputy Governor is concerned, I remember we had this debate six years ago nearly, and it really depends on what functions it's envisaged that the Deputy Governor would have. And there's another provision in this 2003 Draft which states that the Governor would be the head of the civil service, under the authority of the Governor, that the Deputy Governor would have such functions not of a ministerial nature as are conferred on him, or by the Governor basically.

Now, of course, that conveys the clear idea that the Deputy Governor would have as a principal role looking after the public service, as head of the public service, head of the civil service and would answer for matters to do with public service. Now, there may be other things that the Governor delegates to the Deputy Governor, but according to this Draft provided they're not ministerial matters.

The argument for having the Deputy Governor in as a Member of the legislative body, as an *ex officio* Member is rather like why the Chief Secretary now is a Member; so that that business for which that office holder is responsible can answer questions without having to brief somebody else to deal with it.

And you're perfectly right—or Arden was perfectly right to say that at the time of 2003, we the UK, in the spirit of compromise, accepted that

the other arrangements could be made for the Deputy Governor to appear in the House and answer questions, or be invited to come. We weren't very happy with it, but since you guys all raised new proposals, we feel entitled to come back and have another go at this one. As for the Attorney General—

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** I'm not sure what you mean by that, but I'll think the best.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You should be think the best. I feel even more strongly about the position of the Attorney General, and this is perhaps because I am a lawyer myself. But I think if you require, as you obviously should, the top government legal adviser in the land to come and help you with the passage of your bills, to answer questions on matters to do with any legal matters, I think it is only right that the Attorney General should have membership, not just be someone who can be summoned when you think it is a good idea, because it is not to do with personal pride or anything, it's a matter of authority.

Now, I don't have any problem with the idea of an Attorney General as an *ex officio* Member or even a Deputy Governor as an *ex officio* Member having no vote, and that can be specified. And I think, for example, you'll find in the BVI Constitution the Attorney General is a Member but has no vote. I don't see why the Attorney General should have a vote necessarily, and sometimes it might even be an embarrassment for the Attorney General to have a vote and be expected to use it to proper to the Governor. But I do think, in view of the importance of the role that the Attorney General has to play in the affairs of the legislative body, that it would be wrong for the Attorney General



not to be a Member. I think it would be right for the Attorney General to be an *ex officio* Member, quite happy for that to be without a vote.

And I think if we—if we pause on that while we have a break, I think we should—it's five past 3 isn't it? Is it—we can take a break any time, I suppose, because the tea and coffee is at the back there; is that right? Ten minutes more?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Mr. Chairman, when we come back—

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** No, ten minutes break.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** —may I have an opportunity to speak, sir?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, I'm sorry, Julianna, because you asked a long time ago. Sorry. Go ahead.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Thank you. With reference to the 17 elected Members, through you perhaps if I could seek clarification. Are those two additional Members in the proper sense of the word, or were they deemed to be substitutions in the event that the Financial Secretary and the Chief Secretary would no longer be part of Cabinet?

And, secondly, on that clarification point, when did the Government seek to have that implemented, those two additional or two substitution seats? Would it be in May of next year because that would determine my following question?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, I—it's my understanding, but they will correct me if I'm wrong, you know, historically in 2003 we put through an Order in Council in London to set up an Electoral Boundary Commission to make recommendations about 17 constituencies, and that was with a view, had it been agreed that a new Constitution should take effect before the election, after that there could have been elections of 17 Members from the constituencies.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** This wouldn't come into force in the next elections.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, but it's quite possible to provide for if we have a new Constitution that came into force sometime next year or after the next election, to provide for the new numbers to come into effect at a later date, either at the next election, after that, or even the one after that. You know, there is—there is no inevitability about it because, you know, transitional arrangements need to be made. It's a serious business getting the constituencies right, you know, as more or less equally balanced as you can get them.

But as I—sorry, just one more point. As I understand it, the idea is that if there is agreement on a new Constitution and a Draft Constitution is published here, it would be put to a referendum at the same time as the next general election here. That's what I've heard. And if that is the case, it cannot possibly—no new Constitution can possibly come into force before the election, it would have to be done some months after it. So, you're then immediately looking at 2013 as the first time that this 17 could operate. The next election would, in any event, be for 15 Members on the current electoral system.

Sorry, Governor, you wanted to—

**HIS EXCELLENCY THE GOVERNOR, MR. STUART M. JACK:** Yes, I wonder if I could just remind everybody around the table of a dimension which is relevant to the issue that is just being discussed which you may wish to take into consideration.

If the intention, the general intention, is to improve accountability, or at least maintain the current levels of accountability, who in the Legislative Assembly is actually going to talk for those areas which the Governor will probably still retain responsibility, because at the present time, those tend to be the Chief Secretary and the Attorney General? I mean, such as matters relating to the criminal justice system, law and order and so on, not just the civil service.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just so that His Excellency would know, we quite understand that.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Mr. Chair, can I just ask—over here, sir. Just asking a question—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** You made the point that obviously the 17 Members would not come into effect before the next election, which will be 2013. So—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. No, I didn't say obviously not before that. I said if there were a new Constitution—oh, sorry, not before that, you're quite right. Yes.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** So—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Two thousand and thirteen would be the first time, yes.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** And so, if 2013 would be the first time for 17 Members, are we saying, then, that 2013 would be the first time that we could have the seven Ministers as well?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I think logically that is right. I think the two go together. I mean, that is our opinion because otherwise you've got an imbalance. I think if you have—if you go up until 2013 with 15 elected Members it unbalances things to have 17—seven—

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Mr. Chairman, that was my second point that I was trying to make, that it's very important as to the timing of these additional elected Ministers, because if we go to election next year with 15, we would have then to keep the Official Members in. In other words, you can't separate the two, as I understand it, because if you did, and remove the Official Ministers, even if we remove two of them, and we still talk about what's going to happen with the AG, whether he's going to vote or be a Member—let's take the scenario where he's just here as an

*ex officio* Member. If we take the scenario where the Speaker can be from in the House or out of the House, then you're going to end up with a simple majority proportional representation. There's a very distinct possibility that if you have the seven Ministers without the additional two and they're just substitution, then you could have eight to do the 15, and then how are you going to remove a government in no confidence? I mean, that's not the aspiration, but that possibility has to remain in the House.

And then I also think that the numbers are very important and the timing, because as we see democracy in Cayman, it has been at the two-third majority, and if it's the Government's proposal that we're going to shift to a simple majority based on their numbers, then I think that needs to be put on the table for discussion because that's not a point that we're willing to concede with.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, that has never been within our contemplation. And Ms. O'Connor Connolly is absolutely right, timing is everything in relation to this. But this proposal you have to look at all of the component parts together. The whole—the reason why we couldn't possibly increase the number of Members of the Legislative Assembly before 2013, in my view, would be on the basis there's a proposal to move to single-member constituencies. And so, during any one term, or any particular term, you couldn't just decide, you know, you're going to split that constituency up. It had to be done properly and there had to be adequate time for people to understand where the boundaries are, et cetera, et cetera, et cetera.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** But if single-member constituencies were not the result, which is what the Opposition are calling for, that we don't have single-member constituencies, there would be no—as I can see it, there would be no principled or legal or constitutional basis why two additional seats couldn't be added and an election contested. I'm not suggesting that's what we're after, I'm saying that I see no—we see no basis in principle why that couldn't be the case.

And to address the other point. If we wound up with—after May 20<sup>th</sup> next year if we wound up with same five Ministers, same balance on the backbench and in the Opposition, but with an *ex officio* Attorney General and an *ex officio* Deputy Governor, I don't see where the problem would be any greater than the current problem is in terms of load of work as far as Cabinet is concerned. We are not abolishing these offices.

The Financial Secretary, whether he's called Financial Secretary or whether he becomes the Chief Officer in that ministry, will still be there carrying out all the work, the technical work that he does absent his role in Cabinet and the Legislative Assembly. The Attorney General will continue to do what he ever did except he wouldn't have a vote.

So, it's not as though you're conferring all of this responsibility—and the Deputy Governor would still be—the Chief Secretary would still be around in the manifestation of Deputy Governor, albeit without a vote in the two Chambers under your proposal.

So, I don't see that there would be any radical change to the present arrangements and responsibilities if this were to transpire subsequent to May 20<sup>th</sup> as opposed to 2013 sometime.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Mr. Chairman—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It does—sorry, just for clarification. It would imply that you would—if you went to—wanted to go to seven Ministers, I think you suggested, Alden, that one could even before 2013 make some provision for two extra elected Members, yeah?

Irrespective of the—I think the only other single-member-constituency issue, provided the Constitution allowed for it, for example, I suppose you could have two additional elected Members appointed for the whole—without a particular constituency ... I mean what's the word ... at-large, isn't it, is the technical term? You could have two at-large Members for an interim period. Whether that's desirable or not, I don't know. But I can see—I do see that if finance becomes a ministerial responsibility that you could struggle to deal with that even though, no doubt, the Financial Secretary, as a senior official in the finance ministry, would continue to do an awful lot of the work, but he's still not the Minister. The Minister is answerable. So, I don't know.

I wondered if we should have a break there now. We're going to go through till 4:30, and we could just go through without a break, but I'd quite like one actually for reasons which I'm sure you can guess. Is it convenient now? Ten minutes. Ten-minute break?

[inaudible comments]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Ten-minute break?

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Yes, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**RECESS****RESUMED**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Shall we start up again? And I've been asked to remind everybody that when they're finished—when they speak, could they speak close to the microphone, please—I've got one of these vices on so it's easier for me—and when you're finished speaking, could you please turn the microphone off because there's some feedback and interference?

What I was going to suggest for the time remaining to us today is to try and move on to some of the other aspects of Proposal 5 to do with the legislature, because I think we've got quite a lot of food for thought on the points we were discussing before the break. I don't say we put them aside forever, we can always come back to them. But, unless anyone wants to make some further point on that issue now...

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, please.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I just wanted to make two points so that you have them for consideration when we come back to it, and the first one is this: If this exercise is, even in part, about bringing more democracy, about the Cayman Islands representatives actually taking on more responsibility for our own affairs, it means that we must push towards a



legislature which is made up of persons who are elected, not appointments of the United Kingdom government, point number one.

The whole question of the Attorney General sitting in the legislature is a matter, which you well know, sir, is the subject of much controversy in the United Kingdom. The Select Committee on Justice has declared it as undemocratic, and it therefore seems a bit surprising, really, that they would seek—that the UK would seek to push for this sort of thing to continue in one of its elected—in one of its Overseas Territories. So, I want to just make that point in relation to the Attorney General.

As far as the Deputy Governor is concerned, not only did the UK government concede that it was quite possible and reasonable for the Attorney—for the Deputy Governor not to sit in the legislature, and that the various functions that he or she would discharge in the House could be delegated for that purpose to a Minister, but recently in the British Virgin Islands Constitution you have conceded there that the Deputy Governor need not sit in the legislature.

With the greatest of respect, sir, I have been to the British Virgin Islands many times. They're a population that is less than half of ours. They are, in no ways, anywhere near the level of sophistication of these Islands, and I therefore—we therefore find it very difficult to understand why we would need to have, essentially, an appointment of the United Kingdom government in the person of the Deputy Governor sitting in the legislature.

So, I just want those points to be noted so that when we come back to it we can perhaps consider this matter a little further.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right, thank you very much.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF THE UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, can I ask the Government if it is undemocratic for the Attorney General to sit in the House—I thought that's what he said. If he's saying that, then what are they proposing? Who are they proposing would be there to deal with legal matters and advise the House?

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, we're not proposing that the Attorney General shouldn't be available to the House. What we are proposing is that he ought not to be a Member of the House.

Most—we have—let's just use the present example. Professor Jowell, on my right is not part of our delegation. He is an adviser to the delegation. Mrs. Pitcairn over to Ms. Julianna's right is not a Member of the UDP delegation. She is a legal adviser to the delegation. That does not mean that she cannot offer advice or address the Chair, but it means that she is not a Member. It has real significance, particularly in terms of our objective, our stated objective of moving towards more democracy in this jurisdiction. There's a fundamental problem with persons who have not been elected sitting in your legislature as Members.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF THE UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, he's right that it's fundamental, but on what side does he lean, for or against? He hasn't proven—he had not proven that point. They merely say that you can make him available to the House. And to use the example he used which is—I think it's not a good one because Mr. Jowell and Mrs. Pitcairn-Lewis is—this is not the legislature. This is ... public not even hearing us. It's not the legislature. And to merely try to say that you're making him available, he needs to explain that because I keep saying that what do you do if you come

across—when you need the Honourable Attorney General in the Chambers? If he's away, off the Island or he's someplace else, what do you do? Close down Parliament until you get him? So, what is he proposing? He needs to say what he is proposing.

It does not make sense for us to keep arguing that we can cover House that you do not have a legal mind. And, Mr. Chairman, they do not like the senate. But if you had a senate and you allowed it to run its extent that you could appoint someone from the Cabinet to the senate, then you could probably do what he is saying if the people accepted that. But what he is saying does not make sense. And, certainly, if I was in Cabinet, the government in the Cabinet, then I would want my AG to be able to vote. You're already stacked up against you, to put it bluntly, in the House. The government is still—while a majority, the Cabinet is not. And you don't know who gonna bolt from you, but maybe they have it so tight that they won't bolt. But it can happen.

But more than that, that's just the political aspect of it. But it's more than that it's the fact that you need a legal mind at all times in the legislature. The Cabinet needs a legal mind and let's get to the root of this. Our Cabinet—our Constitution as it sits says that the Cabinet—the AG is responsible to the Cabinet. When he's there in the House he is to the House.

The Government keeps holding this argument but refuses to put forward any matter of substance to prove their point. And this is what had made the public so reticent and we can't find support for it. So, I stop there, Mr. Chairman.

I don't know what—I haven't seen this report he's talking about, where the committee in the UK has said that it's undemocratic for the AG to sit in the House. I don't know where that coming from. I haven't seen that. But surely—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Nor have I.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF THE UDP, LEADER OF THE OPPOSITION):** —Mr. Chairman, I don't—I still don't know what they're talking about even, so maybe he should have explained it. I just can't agree.

**HON. CHARLES E. CLIFFORD, JP (MEMBER OF PPM, MINISTER OF TOURISM, ENVIRONMENT, DEVELOPMENT & COMMERCE):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. CHARLES E. CLIFFORD, JP (MEMBER OF PPM, MINISTER OF TOURISM, ENVIRONMENT, DEVELOPMENT & COMMERCE):** If we proceed on the premise, as I suspect we have, that this exercise is not about cosmetic changes to the Constitution but about changes to substance, this is not a matter on which I think we should gloss over and easily move on. I think this is a fundamental matter that we need to discuss in some detail.

I truly believe that it does, in fact, offend the principles of democracy when you have a House consisting of some Members who are not elected by the people. It also speaks directly, Mr. Chairman, to the whole issue of accountability, and who are these non-elected individuals accountable to. It is certainly not to the people of the country. And so, that becomes a much wider argument with respect to the whole issue of democracy.

And part of the justification that I've heard outlined with respect to why the Official Members, or at least some of them, should remain Members of the Cabinet and of the Legislative Assembly, is so they could be available to answer questions relating to their subjects. Well, in that regard, I wish to point out that there are not currently Members of

Finance Committee, and when matters come before Finance Committee, it is not one of the elected Ministers who are going to be answering those questions in relation to legal affairs, it would be the Attorney General who would then be summoned to Finance Committee to answer those questions.

I don't see why a similar arrangement or provision couldn't be made for the Legislative Assembly, but it seems to me that in this country there are quite a few people that seem to hold up the system of governance in the United States, as an example, as a true model of democracy. And while the United States is close to us, and we have a very good relationship with them, if we consider that system of government—and those of us who are familiar with it will know that the cabinet of the United States, as an example, consists of one elected person who is the president. Everyone else is appointed to that cabinet by the president.

I don't see that as a model for democracy, quite frankly, and I believe that we need to take some time, and not to rush on this issue, and let us fully consider this because this really is a fundamental issue and one which we need to ensure that we flush out all of the details and all of the rationales and all of the opinions so that we can reach some level of agreement on this matter because, Mr. Chairman, I wouldn't want us to walk away from this prematurely, without any indication as to where the majority view is on this point and how we truly feel about this in terms of the modernisation of our Constitution.

And I'll stop there for now, Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. Well, I—okay, please.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Mr.

Chairman, I agree with my—the Minister for Tourism that this is a fundamental point. Obviously, when it came down to the agreement and the position of the Opposition, this was a fundamental point that took much discussion just Thursday of last. And, obviously, our position was—we were criticised for being late with getting our position. We were criticised with delaying the referendum. And, obviously, what we've seen—or we see a position that obviously wasn't—that the Government has put forward, it wasn't well thought out, that obviously was supposed, on two occasions, to have gone to a referendum.

It would have been pretty embarrassing to have gotten a country's vote on this issue and recognise that it was pretty unworkable based on the discussions that we're now having. So, again, obviously the delays and the requirement for the Opposition to remove the referendum and first have a discussions with the United Kingdom, we recognise the value in that.

But for our purposes, we would like to know, because we've heard the Minister just before the break make a concession to the point that it wasn't included in the final—in the modernised—or the Revised Proposals that it was in a document earlier as 17 single Members. We heard the Member say that the reason for the need for two additional Members was a significant work that exists with the existing Minister, but he's just said that he saw no reason why even without the two Members—with the Member being an official—with the Attorney General being an *ex officio* Member, we still couldn't find some way of making the system work. It seems to be now that we recognise the problems.

Is the Minister saying that there was no way that the system could work without them conceding working on the point of single-member constituencies, and with all the meetings that they had all along up until their last meeting, promoting single-member constituencies, that for this system to work, while they weren't saying that to the public in their meetings, that they needed these two additional seats—we gave some

options here about Members at large—is he now saying that all the meetings that were held were, basically, a farce, and that for this to occur it required the two additional Members, or that—and they weren't recognising and they were just so intent on getting those two additional ministerial positions and removing the Official Members that no consideration was given?

It seems a bit still confusing as to what is actually being proposed by the Government. We've opposed the position. We've said that we need to retain the Official Members in the Legislative Assembly, and the Government has criticised us consistently on that point and we have a fundamental point of difference. And now we're hearing that we're not even sure what they're proposing could work or how it was supposed to work.

And for us to be able to adequately weigh in on the discussion and to give support or to oppose, we still haven't gotten the question that was asked by His Excellency as to who is going to be responsible, not only for answering questions, but for piloting legislation as well that—under his responsibility. We haven't heard any of those questions—answers for those questions, and it would help us, like he said, not to gloss over or leave this fundamental point, but to get some answers to those questions.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Yes? Please. No, please. They're giving the floor to you.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman, thank you for allowing me to speak on this issue.

Our membership has expressed concern in recent years about episodes of inappropriate behaviour by the United Kingdom authorities in exercising their duties of good governance and security. There were

episodes that have happened in recent times, which caused the business community some real worry, and it's a belief that these checks and balances need to be implemented to ensure that, you know, those episodes are not allowed to reoccur.

And, again, that situation has occurred due to the obvious conflicts of interest by some of our Official Members, particularly the Attorney General, who basically serves two masters: one; on one hand, the United Kingdom; and on the other hand, also providing legal advice to the Cabinet, in our view. If that's not correct, I was going to lead up to a question for you in terms of the "Partnership for Progress and Prosperity" paper and the list—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, before you do—

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** —of good governance—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Sorry. Before you do, it is not correct that the Attorney General serves the United Kingdom.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** No.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** The Attorney General is the legal adviser to the Cayman Islands government, and in the Legislative Assembly he advises the Assembly as a whole. He does not serve the United Kingdom government. If what you mean is that he is the legal adviser to the Governor as well as to the elected Ministers in the Cabinet, that is true, but that is not, in my view, two masters.



Constitutionally it is incorrect to say that there are two different masters because the Governor and the Cabinet are both part of the government of the territory, and the Attorney General is not in a conflict situation by advising them both. He might find it difficult when there's an argument between them, but this is what he has to do. He has to give honest legal advice to both, and I'm sure that the current Attorney General does that. I know him well enough.

So, please don't allege that the Attorney General is, in some way, a creature of the UK government because that's not right and I won't tolerate it.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Please carry on.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I wouldn't offend you by saying that, but I can tell you, sir, that as a legal matter of fact that the present constitutional arrangement which places the Attorney General in the position as principal legal adviser to the Governor, a practice—and to the government—a practice in which he advises the Governor quite separately on issues with which the Governor may disagree with Cabinet is an untenable one.

And the reality of the situation is that we have had an instance—we've had at least one instance like that since I've been in Cabinet in which the Attorney General has had to concede that he could not advise Cabinet because he had advised the Governor on a matter in which the

elected Government fundamentally disagreed with him. So, Cabinet, in that instance, was left without legal advice. That's a reality. But that is a relatively minor manner compared to the situation with former Attorney General David Ballantyne, and I think we all know the tragic consequences of that.

And there is no question that there is a real concern and perception in this jurisdiction that the Attorney General, in part because of the way he's appointed—and I cast no aspersions or question anything in relation to the ability or integrity of the present Attorney General, I want to make that absolutely clear. We have a good relationship with Sam, the elected Government does. But by virtue of the way the whole of that office is appointed, there continue to be real concerns, as articulated by the Chamber of Commerce rep, throughout this community about how much confidence the community can have in the holder of that office, whoever that person may be.

Now, we moved off the actual question of whether he should sit in Cabinet or—and moved on to the whole question of how he's appointed. I understand that. But I wouldn't want any of us to leave this discussion believing that what Mr. Pineau has said isn't real in terms of the way this office is viewed in the community.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, okay. I understand that, and it may be a perception, but you will find me absolutely fierce. I don't very often get fierce, but I am very fierce about allegations that the Attorney General of an Overseas Territory serves the United Kingdom. None of them do and I've known many, many, not just here, but in other territories.

And, you know, you mentioned David Ballantyne. I know the story intimately, and he was not serving the United Kingdom. And, in fact, I had very many bitter arguments with him when he was arguing for the

Cayman Islands against the United Kingdom. I get very upset about this, and I better shut up because I get quite riled up.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But anyway we'll come back to the position of the AG later.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** What I wanted to do now—McKeeva if you could just bear with me a moment—is—I'll give you the floor in a moment—if we could park this whole issue of the composition of the legislative body. It is very fundamental, I agree, and we need to think about it carefully in the modern situation, about the numbers of elected Members, whether there should be *ex officios* in it, how that all relates to a maximum number of Ministers, it's a very important question. But I think we've got a lot of food for thought which I think we can think over and come back to. It would have to be settled at some time, and I certainly don't want to rush it because I think we need to think about it carefully.

I would say, if it helps, that our main concern, and my Minister's main concern I know will be, that the arrangements in any new Constitution for the relationship between the legislative body and the Cabinet, a lot of which involves the numbers in the composition of those bodies, are defensible as being a good democratic system with checks and balances, with the Cabinet being answerable to the House, and the House being able to hold the government to account. That's what she'll be interested in obviously. And the side, I regard as somewhat

subsidiary, issues, although you may not agree with me, as to whether there are senior *ex officio* Members sitting in a tiny minority in the legislative body as a matter of making the conduct of parliamentary business more efficient and effective, that's our real concern. And then there is a question of whether such a person, such an office holder loses authority by not being formally a Member, with or without a vote—that's another question—or whether it is sufficient to, for example, write in that the AG, or the Deputy Governor, or whoever, has a right to attend in order to do parliamentary business. So, those are various things on the spectrum that we could think of.

And I'm not trying to be dictatorial here, but I would, after giving the Leader of the Opposition the floor in a moment—what I would like to do before 4:30, and this is partly a matter of morale, if only my morale, is I would like to tell you our view on some of the other points in Proposal 5, moving away from this particular point. And I'd also like to ask a question on one of the points in Proposal 5, but, McKeeva, you wanted to make a point.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah, I want to make a point on this matter about the AG not voting and being, I don't know because they still haven't said what they would call him or anything. And when they say it offends, I've heard these word it "offends the principles of democracy", I think, Mr. Chairman, that that is just rhetoric to unfluff, to fill in where they have lost ground.

The Finance Committee is elected Members and what happens is that they are called in when—Official Members, heads of department are called in to present their case, defend their position, or just informs the Cabinet—sorry, the House, the Committee. Finance Committee is not the House. It's still two separate and distinct matters, still two separate and distinct matters. He's not going to vote on finance. We're not allowing

that. We're not allowing that. That's understood, not only here, but throughout the Commonwealth. We know what that means. That is what—that is the fundamental point, whether they vote on finance, and even sometimes on matters of conscience they are released. And I've seen that here before. Mr. Bradley's here and I can say I've seen him, you know, the case was put and Official Members did not vote matters of conscience.

But they haven't—the government has not put forward a valid case in saying that it's a matter which offends democracy that we have these people in the House because—well, I will stop there. I—they have not proved their point to us on this matter. And I can tell you this, sir. The two—all of it is wrapped up in the question that you're moving away from about they have seen him vote and can't advise—support the Governor and can't advise them. They need to come clean on this because this is not just something you're going to wash over, not with me. They've got to come and tell this country what they're talking about.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** It's not a point that I can take just them saying so.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. I don't want to—we must come back to the—

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Okay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** —proposals about the AG which come later in the paper. And I know it's very important and very controversial here and so on and forth, but if only to

mark some, what I hope some progress today, I would like to say now that in relation to: Proposal 5, points 5, 6, 7 and 8: **“The Speaker should not be an MP. The Deputy Speaker may be an MP”**; 6, about Standing Orders; 7, **“The Governor should prorogue Parliament annually on the advice of the Premier”**; and 8, **“The Governor should consult the Premier before dissolving Parliament”**, all of those four are acceptable to the UK team. We find no objection to any of those points.

Now, the question I would like to ask going up the thing rather than starting from the top, is in relation to Number 3: **“Our Assembly should be renamed “the Parliament of the Cayman Islands”. Members would then be known as “Members of Parliament” or “MPs”.**” Now, I would just be interested to know what the thinking behind that change is. I mean, is it substantive/symbolic? I mean, why a change from Legislative Assembly, which it’s known as that for a long time, as far as I know, here? It would help for us to know because, to be perfectly frank, I don't have authority to say yes to that, certainly not now. I think it's a thing that our Minister would need to decide personally. I'm not ruling it out for her. She might very well be content with it. But it’s something that we would need to know the reasoning for, if you wouldn't mind.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, aside from precedent, which I'll get to in a moment—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH,**

**SPORTS & CULTURE):** —it is our thinking that a jurisdiction of our stature, sophistication, and given the proposals that we are making about increased responsibility for our own affairs, warrants a change such as this, to demonstrate, particularly to the outside world, that we are a true player in the international—on the international scene, notwithstanding the fact that we are not an independent nation. The term “Member of Parliament”, the term “Parliament” is widely known and understood. And we didn't just dream this up. Gibraltar has a House of Parliament. Even the Falkland Islands now have a House of Parliament. So—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Gibraltar yes, the Falklands no.

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Well—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It's a Legislative Assembly in the Falklands. Gibraltar, correct, it will be called —

**HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I take that back. Bermuda still calls their House a House of Assembly, but their elected representatives are known as MPs. So what we're proposing is not without precedent.

It is not the biggest point that we are seeking to make in these constitutional talks, so I'm not going to make some long grand speech about it. But that is our thinking. We have moved from Executive Council to Cabinet in recent times, and this seems a logical move as well.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Just a point of clarification because this has come up elsewhere. In Bermuda it's—according to their Constitution, it is formerly called the Legislature consisting of a House Assembly and the Senate, but I know that informally in Bermuda they call it Parliament and they call their members—but, constitutionally, that is not correct, but, you know, it is informal speak. In Gibraltar it is true that in their new Constitution the body is called—well, it used to be the House of Assembly, is now called the Gibraltar Parliament. And that is the only one. In the Falklands they did put to us the idea of calling it the Parliament, but then they withdrew that suggestion and moved to Legislative Council—to Legislative Assembly, I think that's right, isn't it? Anyway, I mean it's interesting for us to know.

So, what you're saying, in summary, is that the proposal is sort of designed to mark a move forward, as it were, to reflect your wish to have—to have greater responsibility of the elected representatives in the Cayman Islands for their affairs, and that it would be useful to call the body of Parliament rather than a continual Legislative Assembly, and it might have some beneficial effect externally in people looking in to see, well, this is a ... yeah, okay.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, on this matter of calling ourselves a Parliament, it's not a big one with our group, but we are satisfied to know that we can't be a Parliament because we're only a representative body. And I believe that it's really—we would become a laughing stock of the world to be trying to call ourselves “Members of Parliament”, and the people are more satisfied. They want to see gradual steps. They don't want to see the word "Premier" because they feel like, from what we gather, that it's like you're going towards independence. They would



rather see the word “Chief Minister”, and they are more familiar with that and understand more that those have been more gradual steps from where we are to go up to Chief Minister and so on. But to call ourselves “Parliament”, I mean, nomenclatures mean—sometimes they can have great meaning, but as we all know—but at other times it’s really nothing, and I think we’re fooling ourselves, and just to paint ourselves as Members of Parliament may be egos. But I just can’t see what good it does for us. Because even in Canada, as an older democracy as they are, their provinces are still called—many of them called MLAs, and I believe maybe one or two Members of the National Assembly, I think perhaps the French one, but most of them are still called MLAs. And it’s mostly in independent countries that the word “Parliament” comes in when they are a sovereign Parliament, and sometimes, really, with two Houses. Anyway, that’s as I see it, sir. That’s as we see it here.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Please.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, I’ve heard the Minister speak to the sophistication of the Cayman Islands. I think all of my colleagues here know my general position as it relates to the whole issue of us reflecting who we are, but more importantly, what we are. Absent a very sophisticated financial services industry, constitutionally, we are not sophisticated. To compare us to BVI, the earlier comparative, since when has the Cayman Islands ever had a Chief Minister and ever had a Caymanian be able to hire or appoint and fire Ministers? We are not. And so this whole push for what we’re not, I have—I’m also a member of the financial services industry, and I know that there are people who have asked me about this issue of Parliament and whether that means that there’s a shift in Cayman’s desired relationship with the UK.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah, that's what people are worried about.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** And the reality is, to talk about that title, reflecting the sophistication of this jurisdiction, the reality is, we agree on Point 1, Proposal 1, we need constitutional modernisation.

In my humble submission, it ought—we ought to follow the orderly steps that have been long established. I think the most important thing is that we start getting some of the very important principles that allow us to become sophisticated, to start having the types of local authority like a Chief Minister, a Minister who appoints the other Ministers, a Minister who has the authority to go to the Governor and revoke that appointment. Those are the important steps internally that we need to get, in the first instance, and grow.

For us to believe that we're this bright, shiny vehicle, which we're not, I'm not going to kid myself. The point that the Honourable Leader of the Opposition made is a point I made on Thursday, when we had our discussions on national radio. My researchers told me a Parliament is for an independent country. I am unwilling, on that basis, to support moving toward this change in nomenclature. Some may say it's just that, it's just a change, and no one's gonna notice, and no one's going to be worried. No one has shown me imperial evidence of that, and we don't know what the future holds.

In my mind, everywhere that I've went, when people ask you what you are, that's quite easy to explain. You're the Member of the National Assembly and people quickly understand what your National House is, and that you only have one House.

We—I believe when we look at this whole issue, we do need to pay attention and keep grounded in where we are. Let's take our steps. There's important steps and important milestones.

This one I just don't see, and I am still yet to be—to hear an argument that convinces me that it's the right move for us. I think we need to show the outside world that we're progressing, that we're moving forward internally. I believe that all the people are on board. There's differences about how we do that, and that's one of the key things that we're trying to hash out here, is how we move forward, what steps, what areas to touch.

You did mention, Mr. Chairman, the third item, fourth item from the bottom, the whole issue of speakership. And I can tell you, sir, that we still are of the—we, the Opposition, are still of the view that the House, the country ought to have, by Constitution, the option to appoint whomever it need—wishes to appoint as the Speaker of the House.

In this small jurisdiction in which we live history has proven time and time again that flexibility is a key—is a real advantage, constitutional flexibility where necessary. That flexibility should never compromise good governance and principles that could endanger our people and the country. Having the option of picking a Speaker from inside or outside of the House poses no danger to the people of the Cayman Islands.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** That's true.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** In fact, it's proven to be very handy. Just May 2005 it proved to be quite handy for—

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** For the Government.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** —for this country to have that flexibility.

At the end of the day, we have tried to paint a picture to this country that we want to engender as much flexibility in our constitution as possible, so that any time a circumstance arises, you can have whatever options available in order to run the country, and this one, I believe, would be a terrible mistake because we never know the day—just as this Government has to appoint a Speaker from inside the House, we don't know what the future holds and it's not a large country. And we don't have a plethora of people to choose from, and you can't just go and pluck someone from academia, irrespective of whether they're a brilliant lawyer or whatever, to come and run the House. Running the House is a serious matter.

I noted as everyone opened their speech today the position they put the Speaker in. Whilst that's not necessarily indicative of any real authority, it still goes to show how important that post is. And keeping flexibility in the appointment of that post, maintaining flexibility, in our humble submission, is of absolute importance.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. I just ought to make clear that in regard your last point about the Speaker, whether the Speaker should be exclusively appointed from outside the House or either from within or from without, the UK position is we could accept either. You know, this is really much more a matter for you to work out. I mean I do take your point, and I've heard it in other territories as well, that flexibility is desirable because you might not easily find somebody qualified for election, but not for the time being a Member, to serve in that office, so it's a practical question. One hears, on the other hand, the criticism that if the majority, the party holding the majority for the time being can actually have its own Speaker, and

therefore, there's a question about the impartiality of the Speaker. And this is a system in the UK, in the House of Commons, you know, and I sometimes wonder why there isn't more criticism. It all depends on the individual. But I just wanted to make clear that as far as we are concerned, we can go with either solution, with either solution, because there are arguments both ways.

I just wanted to, if I may, just mention—was it on this point or was it on—

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** Just on the Speaker point.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** The point you made in mentioning on partiality in the argument that we heard. If the majority is selecting—and this has always been our argument—if the majority is selecting the Speaker anyway, whether the person comes from inside or outside, the argument can still be made on partiality.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Yes.

Okay. I wonder if I could just, before we—

[inaudible comment by the Leader of the Opposition]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** —break at half past four, the—this is still Proposal 5, with its various elements. Number 2 I should like to come back to in the morning, if I may, first thing in the morning, because that is—involves a number of sub-

elements, and it won't surprise you to hear that we have some concerns about that proposal.

But number 1 is very interesting, and I—irrespective of what the Assembly is called, whether it continues to be called Legislative Assembly or some other title, it is right that, in general, the legislative power of the territory resides in the elected House, in the elected Assembly of the territory in general, and so, it's incontrovertible that this body should be responsible for making laws with the assent of the Governor or of Her Majesty rather than UK government. It is Her Majesty in her capacity as Queen of the Cayman Islands who, if she's asked to assent to a Cayman Islands bill, that's the capacity in which she's asked. But it's very rare. It's usually the Governor.

Now, I noticed—and this is perhaps just a thing to sleep on for those like me who are interested in these things—the current Constitution and the 2003 Draft in the section about making laws. Let's look at the 2003 Draft, section 52 on page 48, the foot of page 48 says: **“Subject to the provisions of this Constitution, the Governor, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Cayman Islands.”**

This a rather old fashioned formulation, and as I understand your Revised Proposals paper, you want to get away from that because it conveys the idea that actually it's the Governor who is still legislating, whereas in reality, the process is that the LA debates and passes a bill, and then passes it to the Governor for assent.

Now, I want to make a suggestion for you to think about, and that is if you look by contrast at the new Constitution of the BVI, there, in section 62—I'll read it, it's very short: **“There shall be a legislature of the Virgin Islands which shall consist of Her Majesty and a House of Assembly.”** Her Majesty and a House of Assembly. In the Cayman Islands' Constitution at the moment, Her Majesty is not part of the legislature. But in the BVI (I think it's the same in Bermuda, it's certainly

in TCI), the legislature is described in the Constitution of being composed of Her Majesty and the locally elected legislative body. And, actually, constitutionally speaking, that is a more satisfactory way to describe how the legislature is composed, because then the Governor assents on behalf of Her Majesty. I mean, the UK Parliament is composed of, as you know, Her Majesty, the House of Lords and the House of Commons. The Queen is formally a part of the legislature, and she assents to bills passed by the two Houses.

And then if you turn to—I'm sorry if this is being very boring, but I think it's actually quite important in terms at least of constitutional statements. The BVI, section 71, "How to Make Laws". **"Subject to this Constitution, the legislature shall have power to make laws for the peace, order and good government of the Virgin Islands."** You'll notice that the Governor is not mentioned here. It's not the formula "the Governor on the advice and consent of the Legislative Assembly", or whatever. It's the legislature.

Now, I think—and you may not agree with me, but I think this is actually—would actually be an important change to make in a new constitution of the Cayman Islands, first of all, to say that the legislature consists of the Queen, bearing in mind it's the Queen of the Cayman Islands, in your Constitution. Every reference to Her Majesty is to "Her Majesty as Queen of the Cayman Islands", and the Legislative Assembly, or whatever body it's called, and that the provision on the power to make laws is not expressed as "the Governor on the advice and consent of the Legislative Assembly", but "the legislature may make... ". Do you see? It's actually more than significant, I believe, and it will be a better formulation, and you've got in the folder the BVI Constitution. Don't respond now it it's too—

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF  
GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** No, Mr. Chair, it's not about responding. I would just like to ask a question just so that we could—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** — perhaps have a little bit more knowledge to think about it. In 71 of the BVI—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** — Constitution, which as you just read: **“Subject to this Constitution, this legislature shall have power to make laws for the peace, order and good government of the Virgin Islands.**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** If in looking at it, and then looking at the first one that you read speaking to the Queen, Her Majesty the Queen and the legislature, where, then, in the BVI Constitution does it give any authority for Orders in Council or anything of that nature?



**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, it gives authority for Orders in Council in section 119, the very last section.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** You understand why I am asking you the question?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Because 71 read by itself—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. Yes.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** —takes that away.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** “Subject to this Constitution”—

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** That's why I asked you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And also it says “**Subject to this Constitution**” for the very important reason that the legislature can only pass laws which are inconformative of the Constitution. You see what I mean? There's not an unlimited power to legislate, there's a power to legislate subject to the Constitution, i.e., in conformity with the Constitution. So, that's the other purpose of those words. Sorry. Professor Jowell.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I think that the Draft that you will see tomorrow proposes precisely that and the—both Gibraltar Constitution and the BVI Constitution was looked at very carefully in that respect. And I think—there I think we would see eye to eye exactly and take the points that you make about the constitutional significance of that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It is absolutely correct. It is true, too, that in the United Kingdom, laws are made by the Queen in Parliament and this would be an echo of that kind of thing.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** But the phrase “**Subject to this Constitution**” is—seems to be able to make it absolutely clear.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. And I think, if I may say so, as a final shot and then we should break, is that my own personal view—this is really my own personal view, I'm not speaking officially now—is what I've just talked about and what Professor Jowell said he agreed with in terms of constitutional significance, is if we reformulated those two sections the way I've suggested, it would be far more important and a far greater indication of a move forward, but not to independence, or at even towards independence than changing the name to “Parliament”, which seems to me a rather—this is my own personal view, I don't particularly care personally, but it seems to me a rather superficial thing. Of more significance is to move from a current Constitution which says that the Governor, with the advice/consent of LA legislates for you to saying that legislature composed of the Queen and the Legislative Assembly legislates for you. I think that is actually much more important and significant, but that's my—only my personal view.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Just a point of clarification, if I may. Are you suggesting the BVI and Gibraltar formulation which is “**Subject to this Constitution—**”?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** “—the legislature”.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Or are you saying—suggesting: **“Subject to this Constitution, the Queen and the legislature...”** because—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** No?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. I'm saying the one section about the—about what the legislature is.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, quite.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** —in the BVI—

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** No, that is perfectly—perfectly—

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** —162: **“There shall be a legislature of the Virgin Islands which shall consist of Her Majesty and a House of Assembly”** full stop. And then 71: **“Subject to this Constitution, the legislature shall have power to make laws of peace, order and good government of the Virgin Islands.”** Then it goes on to say, as happens here, and as you're not

suggesting any change for, the Legislative Assembly, or whatever it is called, passes bills and then they are submitted to the Governor to assent to on behalf of Her Majesty. And that's how—and it would be much—it would fit that model much better if it was expressed in that way I think.

But shall we at this point break? I think we've done very well. You can think about these things.

**MR. ROLSTON M. ANGLIN, (MEMBER OF THE UDP, MEMBER OF THE OPPOSITION):** One thing you might want, sir, is I always like to try and end on a positive note.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, that's what I was trying to do.

[laughter]

**MR. ROLSTON M. ANGLIN, (MEMBER OF THE UDP, MEMBER OF THE OPPOSITION):** And, sir, you—that has been dragged out and you've given us a good constitutional provision. But just to say the Opposition does agree with that position put forward by the Government. So I thought I would just give you that as a parting gift, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Excellent. I'm so happy. Thank you very much. Well, I do think we do leave on an upbeat note, and come back at 9:30 tomorrow morning. And thank you everybody for your cooperation and patience.

**ADJOURNED**