



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

First Round

Between

The Cayman Islands Delegation

- and -

The United Kingdom Delegation

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

Professor Jeffrey Jowell, QC – Consultant to the Cayman Islands Government to assist in the Constitutional Modernisation Initiative

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. McKeever 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

Ms. Theresa Pitcairn-Lewis – UDP Legal Adviser

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

TABLE OF CONTENTS

PRAYER	1
PASTOR SHIAN O’CONNOR	1
 PROPOSAL 4 – BILL OF RIGHTS	 1
PROFESSOR JEFFREY JOWELL, QC.....	2
MS. MELANIE MCLAUGHLIN.....	3
PASTOR AL EBANKS	4
HON. W. MCKEEVA BUSH	5
PASTOR AL EBANKS	8
PASTOR SHIAN O’CONNOR	9
MS. MELANIE MCLAUGHLIN.....	10
MR. CLINE A. GLIDDEN, JR.	11
 DEFINITIONS	 11
 “GOVERNMENT”	 11
PROFESSOR JEFFREY JOWELL, QC.....	13
 “PUBLIC OFFICIAL”.....	 13
PROFESSOR JEFFREY JOWELL, QC.....	14
PASTOR AL EBANKS	15
 SECTION 2	 15
PROFESSOR JEFFREY JOWELL, QC.....	15
MS. JULIANNA Y. O’CONNOR-CONNOLLY	16
PROFESSOR JEFFREY JOWELL, QC.....	16
HON. ALDEN M. MCLAUGHLIN, JR.	17
 SECTION 3	 17
HON. ALDEN M. MCLAUGHLIN, JR.	19
MS. JULIANNA Y. O’CONNOR-CONNOLLY	19
HON. ALDEN M. MCLAUGHLIN, JR.	20
 SECTIONS 4 and 5.....	 21
HON. V. ARDEN MCLEAN, JP.....	21
HON. ALDEN M. MCLAUGHLIN, JR.	22
HON. SAMUEL W. BULGIN, QC, JP	22
HON. V. ARDEN MCLEAN.....	22
HON. SAMUEL W. BULGIN, QC, JP	22
MS. JULIANNA Y. O’CONNOR-CONNOLLY	22
PROFESSOR JEFFREY JOWELL, QC.....	24
HON. W. MCKEEVA BUSH	25
PROFESSOR JEFFREY JOWELL, QC.....	25
MS. JULIANNA Y. O’CONNOR-CONNOLLY	26

HON. ALDEN M. MCLAUGHLIN, JR.	26
PROFESSOR JEFFREY JOWELL, QC.....	26
MS. JULIANNA Y. O’CONNOR-CONNOLLY	27
PROFESSOR JEFFREY JOWELL, QC.....	27
MS. JULIANNA Y. O’CONNOR-CONNOLLY	27
PROFESSOR JEFFREY JOWELL	28
MS. JULIANNA Y. O’CONNOR-CONNOLLY	28
PROFESSOR JEFFREY JOWELL, QC.....	28
MS. JULIANNA Y. O’CONNOR-CONNOLLY	28
PROFESSOR JEFFREY JOWELL, QC.....	28
MS. JULIANNA Y. O’CONNOR-CONNOLLY	29
HON. ALDEN M. MCLAUGHLIN, JR.	29
MS. JULIANNA Y. O’CONNOR-CONNOLLY	30
HON. ALDEN M. MCLAUGHLIN, JR.	30
PROFESSOR JEFFREY JOWELL, QC.....	30
MS. JULIANNA Y. O’CONNOR-CONNOLLY, JP	30
PROFESSOR JEFFREY JOWELL, QC.....	31
HON. D. KURT TIBBETTS.....	31
MS. JULIANNA Y. O’CONNOR-CONNOLLY	32
PROFESSOR JEFFREY JOWELL, QC.....	32
PASTOR SHIAN O’CONNOR	33
HON. ALDEN M. MCLAUGHLIN, JR.	33
MS. JULIANNA Y. O’CONNOR-CONNOLLY, JP	34
PASTOR SHIAN O’CONNOR	34
MS. MELANIE MCLAUGHLIN.....	34
PROFESSOR JEFFREY JOWELL, QC.....	35
HON. SAMUEL W. BULGIN, QC	35
MS. MELANIE MCLAUGHLIN.....	35
SECTION 6	36
MS. JULIANNA Y. O’CONNOR-CONNOLLY	36
HON. SAMUEL W. BULGIN, QC	36
HON. ALDEN M. MCLAUGHLIN, JR.	37
HON. D. KURT TIBBETTS, JP	37
HON. SAMUEL W. BULGIN, QC	37
HON. W. MCKEEVA BUSH	38
HON. ALDEN M. MCLAUGHLIN, JR.	39
HON. W. MCKEEVA BUSH	39
HON. D. KURT TIBBETTS.....	40
SECTION 12	40
HON. D. KURT TIBBETTS.....	40
HON. ALDEN M. MCLAUGHLIN, JR.	41
SECTION 15	42
PROFESSOR JEFFREY JOWELL, QC.....	42

MS. MELANIE MCLAUGHLIN.....	43
PASTOR SHIAN O'CONNOR.....	43
MS. MELANIE MCLAUGHLIN.....	43
HON. ALDEN M. MCLAUGHLIN, JR.	44
MS. MELANIE MCLAUGHLIN.....	44
HON. ALDEN M. MCLAUGHLIN, JR.	45
PASTOR SHIAN O'CONNOR.....	45
HON. ALDEN M. MCLAUGHLIN, JR.	45
PASTOR SHIAN O'CONNOR.....	45
HON. ALDEN M. MCLAUGHLIN, JR.	46
PASTOR AL EBANKS	46
MS. MELANIE MCLAUGHLIN.....	46
PASTOR AL EBANKS	46
PASTOR SHIAN O'CONNOR.....	47
MS. MELANIE MCLAUGHLIN.....	47
HON. W. MCKEEVA BUSH	48
HON. ALDEN M. MCLAUGHLIN, JR.	48
HON. W. MCKEEVA BUSH	48
HON. ALDEN M. MCLAUGHLIN, JR.	48
PROFESSOR JEFFREY JOWELL, QC.....	48
HON. W. MCKEEVA BUSH	49
MS. THERESA PITCAIRN-LEWIS	50
PROFESSOR JEFFREY JOWELL, QC.....	50
MS. THERESA PITCAIRN-LEWIS	50
PROFESSOR JEFFREY JOWELL, QC.....	50
MR. WILL PINEAU	51
HON. W. MCKEEVA BUSH	52
MS. SARAH COLLINS	52
HON. W. MCKEEVA BUSH,	53
HON. ALDEN M. MCLAUGHLIN, JR.	53
HON. W. MCKEEVA BUSH	53
HON. ALDEN M. MCLAUGHLIN, JR.	54
HON. W. MCKEEVA BUSH	54
HON. D. KURT TIBBETTS.....	54
PROTECTION OF CHILDREN	55
HON. W. MCKEEVA BUSH	55
PROFESSOR JEFFREY JOWELL, QC.....	55
MS. THERESA PITCAIRN-LEWIS	56
PASTOR AL EBANKS	56
HON. ALDEN M. MCLAUGHLIN, JR.	56
MR. ROLSTON M. ANGLIN.....	57
PROFESSOR JEFFREY JOWELL, QC.....	58
SECTION 18	58
HON. W. MCKEEVA BUSH	58

PROFESSOR JEFFREY JOWELL, QC.....	58
MS. JULIANNA Y. O’CONNOR-CONNOLLY,.....	59
HON. SAMUEL W. BULGIN, QC.....	59
PROFESSOR JEFFREY JOWELL, QC.....	60
EDUCATION	60
HON. ALDEN M. MCLAUGHLIN, JR.	61
HON. W. MCKEEVA BUSH	62
HON. ALDEN M. MCLAUGHLIN, JR.	62
MR. WILL PINEAU	63
HON. ALDEN M. MCLAUGHLIN, JR.	64
PUBLIC EMERGENCIES	64
PROFESSOR JEFFREY JOWELL, QC.....	64
SECTION 21	65
HON. ALDEN M. MCLAUGHLIN, JR.	65
INTERPRETIVE OBLIGATION.....	66
PROFESSOR JEFFREY JOWELL, QC.....	66
SECTION 24	66
PROFESSOR JEFFREY JOWELL, QC.....	67
HON. SAMUEL W. BULGIN, QC.....	68
PROFESSOR JEFFREY JOWELL, QC.....	68
SECTION 26	69
HON. W. MCKEEVA BUSH	69
HON. ALDEN M. MCLAUGHLIN, JR.....	71
MS. MELANIE MCLAUGHLIN.....	72
MS. SARAH COLLINS	72
HON. W. MCKEEVA BUSH	72
MS. MELANIE MCLAUGHLIN.....	73
PROPOSAL 22	75
HON. W. MCKEEVA BUSH	76
MS. JULIANNA Y. O’CONNOR-CONNOLLY	80
HON. ALDEN M. MCLAUGHLIN, JR.	81
MS. JULIANNA Y. O’CONNOR-CONNOLLY	82
HON. D. KURT TIBBETTS.....	82
MR. ROLSTON M. ANGLIN.....	83
HON. ALDEN M. MCLAUGHLIN, JR.	83
HON. W. MCKEEVA BUSH	84
SECTION 23	85
HON. ALDEN M. MCLAUGHLIN, JR.	85

HON. D. KURT TIBBETTS, JP 86

CLOSING REMARKS 89

MR. ROLSTON M. ANGLIN..... 89

HON. W. MCKEEVA BUSH 90

MR. WILL PINEAU 91

PASTOR AL EBANKS 92

PASTOR SHIAN O’CONNOR..... 92

HON. D. KURT TIBBETTS, JP 92

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):..... 96

THURSDAY, 2 OCTOBER, 2008
2008 CONSTITUTIONAL NEGOTIATIONS
HELD BETWEEN
CAYMAN ISLANDS DELEGATION AND
THE FOREIGN AND COMMONWEALTH OFFICE

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Good morning everybody. Before we start I'd like to invite Pastor Shian to say a praiser this morning.

PRAYER

PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE): Let us bow our heads as we praise.

Our Heavenly Father, we stand indebted to You this morning for Your faithfulness to us as You watched over us as we slept last night, You woke us up this morning, and You have given us yet another opportunity, a brand new day with opportunities and challenges. As we begin this session, this final day, we invoke Your presence here, we ask Your spirit will lead and guide that the goals and objectives that we have today will all be met with a successful session, and at the end we will return the honour and the glory to You. This is our prayer we pray in Jesus' name. Amen.

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

PROPOSAL 4 – BILL OF RIGHTS

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, we've reached the last day of our deliberations of this particular round of discussions, and I think we're in pretty good shape to achieve my much desired objective to have a look at every point in the set of proposals before us.

I think, as I advertised yesterday afternoon, we should start with Bill of Rights, Proposal 4, and we have the benefit of a proposed draft Bill of Rights circulated on Monday. And I invite first the Cayman Islands delegation, if they would like to do so to say some introductory words about it. For our part we have a few questions about it, having studied

the draft, but I'll come to those after any introductory remarks anyone would like to make.

Alden?

HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Morning, Mr. Chairman, good morning everyone. I'm going to leave most of the technical discussion on this point to the professor, but I just want to say, by way of introduction, that I think we're all keenly conscious of the various concerns about the implications for a Bill of Rights for these Islands.

This has easily been the most controversial aspect of the whole constitutional modernisation initiative, and a great deal of work has been done on the education front, a great deal of time is spent in consultations both publicly and privately, with a wide range of stakeholders coming out of those discussions, or coming out of the education campaign really I think we now have a much better — as a country we must have a better grasp of what human rights is all about and particularly what a Bill of Rights should aim to achieve.

And the draft that we have prepared ... well, it's one of a number of drafts that we have gone — that we have developed, and we hope this reflects and meets the various objections, the concerns that we've heard first about the possible horizontal application of rights and that it meets the concerns raised by the CMA in particular in that regard, and the concerns about judicial activism or “judicial creep” that we hope that those have been met by the inclusion of a provision which provides that the courts will have the power to declare legislation as incompatible with the Bill of Rights rather than to strike the legislation down outright. Those were the two principal concerns raised, I believe, by most stakeholders in this regard. So, I am hopeful that with continued discussion today and with observations from the FCO team, and obviously everybody else around the table, that we'll be able to come to an agreement about the wording of the Bill of Rights and that we'd be able to leave here being able to say to the country that there is a draft Bill of Rights which we believe the whole country can get behind.

Thank you, sir.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): If I just may add to that. The — on the technical side the draft Bill of Rights is based on the 2003 Draft, with a number of amendments and additions and simplifications.

Yesterday you mentioned the desirability of plain English, and of course, that is very desirable, but you also mentioned quite rightly that in order to leave no room for doubt and to be clear about the scope of a Bill of Rights things often have to get rather convoluted and complicated.

