



The Cayman Islands Constitution: *A Reflection of Who We Are*

SUMMARY OF PROPOSALS



*“Let’s Shape
Our Future
Together!”*

**Message from the Leader of Government Business,
Honourable Kurt D. Tibbetts, JP, MLA**

Our constitutional relationship with the United Kingdom sets the stage for how we function as a country. It is our framework for the future. Nothing is more important to the welfare of the country.

So my message is short and simple:

Please study these proposals;

Please come to the meetings being organized by the Constitutional Review Secretariat;

Please make sure that you are registered as a voter no later than February 29, 2008;

Please vote on the referendum next May.

We hope these proposals raised by the PPM government will encourage national conversation on the issues. As Leader of Government Business, I hope all Caymanians will participate in the constitutional debate as we believe that it is perhaps the greatest exercise of democracy that can be afforded to each and every one of us.

Summary of Proposals

A. INTRODUCTION

Consultation, Referendum, Negotiation

Before we resume negotiations with the United Kingdom government it is important to give the public an opportunity to discuss the modernisation of the country's Constitution, and to express their views in a referendum. The views of the Opposition will also be sought.

This paper outlines the main issues, including those which we think might be controversial, here or in London. We indicate the positions that we, the PPM government, presently intend to take, but these are subject to the views and suggestions we receive from the public.

Those who would like more information should contact the Constitutional Review Secretariat which has prepared explanatory notes and other material that can be provided to interested persons. The Secretariat is located at Phase 3, 2nd Floor, Elizabethan Square, and may be contacted as follows: (tel) 244-3603, (fax) 946-4023, (e-mail) constitutionalreview@gov.ky

We plan to hold a number of public meetings, and then to conduct the referendum in May 2008. We hope that the referendum will give us a confirmed mandate to proceed immediately to negotiations with the United Kingdom. After that, the timetable will necessarily depend on whether our proposals are agreeable to the United Kingdom.

Continuing as an Overseas Territory of the United Kingdom

We believe that there is no desire in the country to seek independence. Our aim is to improve the relationship with the United Kingdom, to make our internal government more democratic, efficient and accountable and to prevent any recurrence of the unfortunate incidents that have in the past strained our relationship with the Mother Country.

The "Westminster System"

There have been suggestions that we should radically change our existing system of government. Some have suggested a Senate comprising non-elected members. Others have suggested a US-

style presidential system under which executive authority would be given to unelected persons chosen by the president, rather than vesting executive authority in elected Ministers, as in the Westminster system. We are not in favour of these suggestions. We feel we should be developing and improving the present system, not experimenting with different systems.

The Preamble

It is proposed that the Constitution should begin with a preamble that provides some historical context and sets forth our aspirations as a country. The preamble set out in the 2003 draft of the Constitution reflects many views. A copy can be obtained from the Secretariat.

B. HUMAN RIGHTS

Both the 1991 and 2001 Constitutional Review Commissions supported a constitutional bill of rights, based upon international conventions, accepted by all major democracies, to which we have already subscribed for many years. Our adherence to these rights in our Constitution will signal to the world our respect for values such as the rule of law, access to justice, free expression, property, freedom of religion and liberty. More details can be obtained from the Secretariat.

Having these rights in our own Constitution has the advantage of “Caymanizing” our rights, adding rights based on our own aspirations, such as respect for our heritage and environment, the right to government information, the right to be treated fairly by all public officials and the rights of children to not be exploited.

As in most Commonwealth countries, any decision by a public official or the Legislative Assembly which breached our rights would, if challenged, have to be justified in a court. But, as in the United Kingdom and other countries with a strong tradition of parliamentary sovereignty, we propose that if the courts declare a law passed by the Legislative Assembly to have breached a fundamental right, it should be up to the Legislative Assembly to decide whether and how to respond.

C. THE LEGISLATURE

Generally

Apart from the items noted below, and the Human Rights rules noted above, we believe there are no objections to the existing constitutional rules concerning the Legislative Assembly.

Parliament

We propose that the name of the Legislative Assembly be changed to “Parliament of the Cayman Islands”. MLAs would then be referred to as Members of Parliament (MPs). To avoid confusion, this paper uses the proposed titles.

The Speaker

The Speaker of the Parliament should not be an MP. The Deputy Speaker may be an MP. The qualifications for Speaker should continue to be the same as for an MP.

Standing Orders

Standing Orders should establish fair procedures, ensuring that all members have adequate notice of all bills and motions, to enable them to prepare for and contribute to the debate, and to ensure that all members are given a sufficient opportunity to speak. Standing Orders should not be suspended without good and sufficient reason.

Overriding Powers

We should seek to limit the circumstances in which the United Kingdom may enact legislation applicable to the Cayman Islands, and establish the procedure for doing so. The overriding powers of the Governor and of Her Majesty under our Constitution to make laws for the Cayman Islands without the assent of the Parliament should be limited. These powers should be exercised only in situations of emergency, and only after consultation with the Cabinet, unless consultation is impracticable.

D. THE EXECUTIVE

Full Ministerial Government

We believe that there is general support for a move to full ministerial government. This is a question of basic democracy. At present three members of Cabinet (the Chief Secretary, the Financial Secretary, and the Attorney General) are civil servants appointed by the Governor in his discretion. In other words, these appointments are controlled by the United Kingdom. It is time that the country moved on, to a position in which all the members of Cabinet are elected representatives of the people (Members of Parliament) to be known as Ministers. There should be a total of seven (7) Ministers, including the Premier. The Attorney General should not be a member of Cabinet. See section (F) below.

Premier

We believe that there is general support for having a Premier (another possible title would be Chief Minister) who chooses the other Ministers from among the MPs and allocates portfolios – rather than, as at present, a Leader of Government Business who officially has no special powers. The Premier should be the MP who has the support of a majority of the Members of Parliament of the winning party – or, if there is no winning party, a majority of all Members of Parliament. Provision should also be made for one of the other Ministers to be appointed as Deputy Premier.

Executive Responsibilities

The revised Constitution should make clear that:

- (a) the Cabinet has responsibility for formulating and directing the implementation of government policy in all areas, except those for which the Constitution gives responsibility to the Governor or others;
- (b) the Premier has responsibility for summoning and chairing Cabinet meetings, and setting its agenda. At present it is the Governor who chairs Cabinet meetings and sets its agenda. The Governor should be entitled to attend Cabinet meetings.
- (c) the Civil Service has responsibility for implementing government policy as directed by the Cabinet (or other responsible person or body – see (a) above).

Checks and Balances on Executive Power

The revised Constitution should provide:

- (a) A clear rule that Ministers and Public Officials must exercise their powers in the interests of the country and not for their private interest or benefit;
- (b) term limits for the Premier: we feel that a person should not serve as Premier for more than two successive terms;
- (c) limits on public debt: there should be constitutional backing for the limits in the Public Management and Finance Law, so that they cannot simply be changed by the government of the day;
- (d) oversight bodies: see section G below;
- (e) public access to information: the Freedom of Information Law should have constitutional backing, so that its key features (including the whistle-blower provisions) cannot simply be changed by the government of the day;
- (f) people-initiated referendums: see section I below.
- (g) human rights that may not be invaded by the government: see section B. above.

E. THE GOVERNOR'S RESPONSIBILITIES

Generally

We believe there is general support for the Governor continuing to have responsibility for certain areas of government, but with some modification and clarification of his powers and duties. At present the Constitution gives the Governor (and, through him, the United Kingdom) special responsibility for defence, external affairs, internal security, the police, the appointment of civil servants, and the appointment of the judiciary. In other matters the Governor is generally required to consult the Cabinet and act in accordance with its advice unless he considers it expedient in the interests of public order, public faith or good government.

The revised Constitution should as noted under “Executive Responsibilities” above, give Cabinet the primary executive role and limit the Governor to his special responsibilities (modified as set out above) and his emergency powers.

The Governor should be required to exercise his powers for the benefit of the Cayman Islands and in a way that is justified and proportionate. The Governor should also be required to communicate to the Premier the reasons for his actions.

The present Constitution purports to exempt from enquiry by the courts certain questions concerning the Governor's actions. In order to conform with the rule of law, it is proposed that all the Governor's actions should be open to judicial review.

Provision should be made for a Deputy Governor, who should be a Caymanian.

External Affairs

The Governor should in all cases consult the Cabinet in advance of any international agreement, and should require the approval of Cabinet if the agreement would affect internal policy or require implementation by legislation. We should seek corresponding assurances from the United Kingdom. Furthermore, provision should be made for giving the Cabinet power and responsibility over external affairs in which the interests of the United Kingdom are not significantly affected.

Internal Security and Police

There should be greater Cabinet participation and accountability, consistent with the recent report of the UK National Audit Office entitled "Managing Risk in the Overseas Territories." In particular there should be a National Security Council to advise the Governor on questions concerning internal security or the police. The Governor should act in accordance with this advice unless he considers it would be contrary to Her Majesty's interests. The Police Commissioner should provide the National Security Council with regular briefings.

It is proposed that the membership of the National Security Council should comprise the Governor as Chairman, the Premier, the Attorney General, the Commissioner of Police and two other Ministers appointed by the Governor acting in accordance with the advice of the Premier.

The Civil Service

The Public Service Management Law is currently under review by the Chief Secretary. While it is essential that the Civil Service remain independent of political influence, it is also essential that the Governor and those to whom his power is delegated ensure that civil servants discharge properly and efficiently their duty to implement government policy as directed by the Cabinet.

The Judiciary and the Director of Public Prosecutions

The revised Constitution should require the Cabinet to provide adequate financial support to the judicial administration.

Appointments of Judges and Magistrates and related matters including the creation of divisions of the courts, should be the responsibility of a Judicial and Legal Services Commission comprising the Chief Justice, the President of the Court of Appeal, one member nominated by the Law Society, one member nominated by the Bar Association, one non-lawyer member nominated by the Premier, and one non-lawyer member nominated by the Leader of the Opposition.

A Director of Public Prosecutions should also be appointed by this commission. The DPP should be given responsibility for criminal prosecutions. This is presently the responsibility of the Attorney General.

Delegation

The Governor's discretion to delegate responsibilities to members of Cabinet should be extended to all his responsibilities and powers.

F. OFFICERS

The Attorney General

The Attorney General is currently appointed by the Governor in his discretion, and has a multiplicity of potentially conflicting roles. He presently sits as a voting member of both the Legislative Assembly and the Cabinet. He is the principal legal adviser to the Government, and he is also responsible for criminal prosecutions.

The revised Constitution should require the Governor to make this appointment upon the advice of the Premier. But the appointee's qualifications, independence and suitability for the office must be acknowledged by the Judicial and Legal Services Commission. With the creation of a Director of Public Prosecutions, the primary responsibility of the Attorney General would be as the principal legal adviser to the Cabinet. The Attorney General should not be a member of Parliament or the Cabinet, but should be required to attend sessions of both bodies.

The Cabinet Secretary

The Cabinet Secretary should be appointed by the Governor after consultation with the Premier. The primary roles of the Cabinet Secretary should be to give advice and administrative support to the Cabinet, and to oversee and coordinate the submission of Cabinet papers and the implementation of government policy between the ministries. This office should be held by a Caymanian.

G. OVERSIGHT BODIES

The revised Constitution should provide:

- (a) a Standards in Public Life Commission, reporting to the Parliament;
- (b) a Human Rights Commission to ensure that human rights are being respected, and to assist the bringing of complaints;
- (c) constitutional backing for the key responsibilities of the Auditor General.

Their remit, and that of the Complaints Commissioner (already in the Constitution), need to be adjusted to avoid duplication or the disruption of existing procedures for complaints and appeals.

H. ELECTIONS

Generally

Apart from the items noted below, we believe there are no objections to the existing constitutional rules governing elections.

One Person, One Vote

Although this has been a controversial issue, we believe there is widespread support for the 'one person, one vote' principle. It is proposed that there be single-member constituencies throughout Grand Cayman. It is proposed that the Sister Islands remain a single constituency, sending two members to the Parliament, but that each voter should have only one vote. So the two candidates who receive the greatest number of votes would be elected. The effect of these proposals is that the total number of Members of Parliament would increase from 15 to 17.

The revised Constitution also needs to enable suitable representation of the Sister Islands if no Sister Islands Member of Parliament is in the Cabinet.

For reasons of practicality and fairness, these changes to constituencies and voting rights may not come into effect before the 2009 election; however, if they do not, they would apply to all subsequent elections.

Eligibility to Vote or Stand for Election

We propose the compromise reflected in the 2003 draft of the Constitution. This would make several adjustments to the existing rules. Because of changes in the United Kingdom rules, the existing requirement of Caymanian Status and British Overseas Territories Citizenship by virtue of a connection with the Cayman Islands needs to be extended to include those with Caymanian Status who have British citizenship by virtue of a connection with the Cayman Islands.

As regards the right to be registered as an elector (voter), the existing requirements concerning residence, domicile and parentage would be replaced by a single residence requirement, for 2 out of the 4 years preceding registration. Of course, those who now have the right to be registered would not be affected.

As regards the right to stand for election, the domicile requirement would remain, but the parentage/residence rules would be adjusted. For those with a Caymanian parent, the residence requirement would be 5 out of the 7 years preceding nomination. For those without a Caymanian parent the requirement would be Caymanian Status for at least 25 years, and residence for 20 years out of the 25 years preceding nomination.

The Elections Law

Significant changes to the Elections Law should not be made without either:

- (i) The recommendation of the Supervisor of Elections,
- (ii) A declaration by the Premier (see below) and the Leader of the Opposition that the change is minor or not controversial, or
- (iii) A referendum.

We note here that the PPM government intends to amend the Elections Law prior to the constitutional revision, in part to restore and reform the Campaign Finance Rules.

I. REFERENDUMS

The revised Constitution should provide for people-initiated referendums. This should require a petition signed by not less than 20% of the electorate. It would then be the duty of the Parliament to settle the wording of the referendum question(s) and cause the referendum to be held within a reasonable period.

The decision of the referendum should be binding (provided that there is no inconsistency with human rights or other parts of the Constitution) if passed by more than 50% of the electorate – advisory if passed by a lower percentage.

J. AMENDMENTS TO THE CONSTITUTION

Further amendments to the Constitution should not be made without the authorisation of a referendum, except for amendments that the Premier and the Leader of the Opposition declare to be minor or not controversial.

This Summary of Proposals is issued the 12th day of January, 2008 on the instruction of the PPM Government.

Please Note

If you have any questions about these proposals, please contact the Constitutional Review Secretariat which can provide you with the explanatory notes and advise you of the public meeting dates.

If you are not already a registered elector, and you do wish to vote on the referendum, you must get registered no later than February 29, 2008.



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