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*Fourteenth Sitting*

**STATEMENTS BY HONOURABLE  
MEMBERS AND MINISTERS  
OF THE GOVERNMENT**

**A Policy Paper – Protecting, Enhancing and Pro-  
moting the Cayman Islands**

**‘A Cayman Islands Constitution for the future’**

**The Speaker:** The Honourable Leader of Government Business.

**Hon. W. McKeeva Bush:** Thank you, Mr. Speaker.

In December last year when we called off the trip to London, we said that we would come back to the public on Constitution matters and to tell the people where we were at. We did not go to London because we felt that the Foreign Office was leveraging the constitutional talks against the European Union Savings Directive.

The Cayman Islands’ relationship with the United Kingdom dates back around five hundred years when Jamaica became independent in 1962. We decided to retain direct links of the Islands to the Crown and became a separate British Crown Colony. We continued to value our links with the United Kingdom and with the Crown, and our present Constitution took effect in 1972 with numerous revisions made since then. We have a long and proud history of political stability and economic dynamism coupled with a strong tradition of political and civil rights. The Cayman Islands have been a Parliamentary Democracy since 1831 when the first Government of the Cayman Islands was established.

The present Constitution established the Cayman Islands as a British Dependant Territory, now a United Kingdom Overseas Territory and these arrangements were reviewed by the Constitutional Modernisation Review Commission in 2002. It is our belief however that the proposals put forward by the Commissioners did not advance the Constitutional arrangements of the Cayman Islands sufficiently and that they too closely resembled those given to British Colonies seeking independence in the post second World War era.

The Cayman Islands should aim to modernise and advance its constitutional arrangements. This is especially needed in this era of globalisation and also given the United Kingdom’s membership of the European Union, the expansion of the European Union in terms of policy and the United Kingdom’s compliance with European Union’s legislation and regulations that will adversely affect these Islands and have

a significant impact on our economic well-being. We aim for a more progressive partnership with the United Kingdom. The Cayman Islands need a constitution fit for the twenty first century and we desire a step change from the existing colonial constitution. However, I must stress that the United Democratic Party has no desire to seek independence from the United Kingdom; that is not at question. Our main objective is to ensure that we establish a system whereby we have greater control over our destiny. We cannot allow the United Kingdom to make unilateral decisions, signing up to initiatives without first consulting us. This is totally unacceptable and we will do everything within our powers to ensure that the interests and wellbeing of our Islands are always taken into account. I am not going to stand idly by and have anyone impose unilateral regulations and laws which will have a detrimental impact on our country’s economy.

We will promote a positive alternative to the current Constitution to ensure the Cayman Islands have a modern Constitution to reflect the needs and ambitions of the people of these Islands. We want a constitution that will not only serve our Islands tomorrow, but one that will serve our children and our children’s children. In the immediate term however, we shall also work with respected third parties to clarify any existing ambiguity around the existing constitution. The Legislative Assembly is an important body and its Members carry a heavy burden of constituency and legislative work. In order to address this matter we believe there is merit in moving from a unicameral to a bicameral system with the Legislative Assembly remaining the prevailing House. An additional chamber would promote political engagement and improve scrutiny of legislation and proposed agreements.

Our people have expressed a desire to be involved in the decisions that affect our country and the Senate will provide the ideal medium of fostering and encouraging more open dialogue. Most importantly, it will provide the Government with a wider cross section of views when legislation or international treaties are being discussed or contemplated. The creation of a second chamber or senate, offers the following benefits to the people of the Cayman Islands: Improved decision making; a greater variation of views; a more balanced representation of competing interests; increased accountability; a bicameral system is more open to the public and would improve engagement, public debate and citizen engagement, and improved legislative authority. The Senate would be responsible for studying legislation and making recom-

mendations. All legislation except for financial resolutions would be submitted to the Senate for consideration. The Senate would not have the power to block legislation indefinitely though they would be able to delay for a finite period before it is reintroduced to the Legislative Assembly.

I stress to Honourable Members that this Assembly would be the prevailing House and would be supreme in law making matters; the majority in the Legislative Assembly would have the final say on legislation. The Senate would be comprised of nine appointed Members, or it could be comprised of nine appointed Members by the Opposition as well as by the Government. Senators would be appointed after each general election and could serve for that legislative term with party affiliations or without party affiliations.

The Senate, once appointed, would represent or would elect a presiding officer from among its ranks and a leader of the majority would be selected to become the chief government's spokesman. They would be responsible for leading and directing the business of the Senate. There would be no limits on the number of terms that could be served by Senators. Senators could be removed in the event of criminal behaviour or gross misconduct or by their appointing party.

Membership of the Senate would be restricted to citizens of the Cayman Islands only. Senators would have limited contact with civil servants, with the right only to request information and they would not hold cabinet posts. Senators could be appointed to the newly created position of Parliamentary Secretary and could be invited to the Cabinet to discuss a specific issue on a non-voting basis when their expertise would be valuable and they could contribute to decision making in that way.

A senate would provide an opportunity for professions and industry sectors to be engaged further in decision making. The chamber would also allow young Caymanians to become involved in public life without getting involved in electoral politics, if they so choose. The cost of the Senate would be limited. The Senate would be housed in the existing Legislative Assembly facilities and would use the building when the Legislative Assembly is not in session. Furthermore, Senators would not be expected to rely on their legislative role for their primary source of income and only an attendance allowance would be paid. This proposal, we believe, would cost no more than creating two new Legislative Assembly seats and in a best case scenario, could cost less.

I am sure Honourable Members will agree with me that a strong and effective opposition is essential to the successful working of a parliamentary democracy. Oppositions have a responsibility to question and challenge Government on matters of substance. The electorate expects the official opposition to engage the Government in issues of policy. Its primary role has to be to offer an alternative program

to the one offered by Government. As is expected of Government Ministers and Backbench Members, it is incumbent on elected members and Officials of the Opposition Party to commit to widely accepted principles of public life including selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

We recommend that the post of Deputy Leader of the Opposition should be formally established to further create proper constitutional protocols. This will in turn foster greater political maturity and organisation amongst the principal Opposition Party.

## **Elections**

The Constitutional Review Commission examined our electoral system and recommended in a draft constitution that the existing six electoral areas would become seventeen single member constituencies. After much consideration we believe that there needs to be further extensive research and dialogue on the principle of single member constituencies before any decision is taken as there was very little support for this methodology of voting and representation. In fact in some districts there was absolutely no support for this methodology of voting and representation. We recommend that the current electoral system is maintained until there is widespread support for an alternative.

## **The Governor**

I want to turn now to the constitutional role of the Governor.

The position of Governor in the Cayman Islands is long established and represents the connection to the United Kingdom. The Governor in Cabinet is also an important constitutional convention. In a modern democracy however, the role of Governor needs to be clearly defined. The Government believes that the Governor plays an important- ceremonial role, but the Governor's day to day position in some matters of Government is outdated.

The United Democratic Party does not want independence. The United Democratic Party, like the vast majority of the people of the Cayman Islands, greatly values our ties with the United Kingdom and the mutual benefits that flow from this relationship. However, it is important that we examine this relationship to ensure that the Cayman Islands are not disadvantaged.

We are content for the Governor to continue to have responsibility, working closely with the Public Service Commission, for appointing the Attorney General, the Auditor General, the Police Commissioner and the Judiciary. In the appointment of the Attorney General the Cabinet must be consulted and consensus sought. The Governor following advice from the Chief Minister and Cabinet on a vote of no confidence in the Legislative Assembly would be able

to dissolve the Legislative Assembly and require a general election. That is as it is right now, however while we are told, it is not discussed amongst us.

We believe that he or she, should continue as an important channel of communication between the Cayman Islands and the United Kingdom, and should maintain a role in monitoring governance and providing advice. However, the Governor's role in Cabinet should be advisory and non-voting. Governors should not be able to override democratically elected leaders or retain total control over any area of domestic policy. In addition, the Chief Minister should preside over the Governing Council in place of the Governor. In most cases however, the Governor should act only after consulting with various governmental bodies which would *de facto* mean receiving the recommendations and obtaining their approval.

Her Majesty the Queen would continue to appoint the Governor on the advice of the Foreign and Commonwealth Office. However, the preferred candidate put forward by the Crown should be selected jointly by the Foreign and Commonwealth Office and elected representatives of the Cayman Islands Government. The Governor currently has the right to refuse to sign Bills passed by the Legislative Assembly. The power to block the wishes of the people's democratic representatives is considerable and must be kept in check. It is essential that measures are put in place to ensure that it is not abused and to protect the democratic rights of the people of the Cayman Islands. We cannot have the Governor decide to stop legislation that is in the best interests of the Cayman Islands.

Personally, I cannot continue to stand by and allow anything to happen which will threaten the long term viability of these Islands. If the Governor twice refuses to sign a significant Bill, one that impacts greatly on the economic well-being, human rights, religious rights and livelihoods of the Cayman Islands passed by the Legislative Assembly, the Bill will be sent back to Parliament for a third time.

If the Legislative Assembly passes the same Bill the third time with two thirds of those Members voting in support of the Bill the Governor would be required to sign the Bill into law or he or she should resign. This will ensure that the Governor will have greater accountability and responsibility to the people of the Cayman Islands while providing the United Kingdom with a level of control.

The issue of telephone tapping is a blatant reminder to the people of these Islands that the current situation cannot continue. The United Kingdom's approach to phone tapping legislation is exactly what the elected officials of these Islands requested. Yet, the United Kingdom has refused to grant us the same rights that they enjoy.

The Eurobank fiasco is a clear example of where the Rule of Law was abused. We must find a mechanism to ensure that this is not repeated and the Rule of Law is protected and individuals' rights are not violated at any time.

Matters of revenue and expenditure in particular, will continue to be the sole responsibility of the peoples elected representatives. The Governor's current power to authorise public expenditure without the consent of the elected Government should no longer exist. The Governor should not be able to decide on public expenditure such as was done in January 2003 during the Eurobank case. In this instance the Governor decided to approve expenditure, which cost the country million of dollars, against the wishes and recommendations of the elected representatives.

### **The Cabinet**

We have decided not to increase the size of the Cabinet. However, the Cabinet in a new constitutional arrangement, where there is a Chief Minister and that Chief Minister is the political head of the Government, together with his or her party would select the elected members of the Cabinet from the Legislative Assembly. The Chief Minister will be the leader of the majority party in the Legislative Assembly and would be formally appointed by the Governor. There would be no term limits restricting the number of times that any Member of the Legislative Assembly could serve as Chief Minister. Through their support of a political party the electorate should have the right to choose the number of times that any one individual may serve as Chief Minister, very much like the situation in Bermuda.

The post of Deputy Chief Minister should also be established in the Constitution to assist the proper functioning of the Cabinet. This position should be formalised and officially appointed by the Governor. Cabinet Ministers would be appointed by the Chief Minister and his party.

We believe that the Cabinet should consist of the Chief Minister, four elected Ministers, one of whom should be the Deputy Chief Minister, the Attorney-General and the Governor or in his absence the Deputy Governor, the Chief Secretary and the Financial Secretary. The Governor, the Chief Secretary and the Financial Secretary should be non-voting members.

### **Parliamentary Secretaries**

The Constitutional Review Commission recognised the large workload currently managed by Cabinet Ministers. Along with limiting the Legislative Assembly to fifteen members, and the number of Cabinet Ministers to four, excluding the Chief Minister, additional measures or resources will be required to provide assistance. This will be achieved by the appointment of Parliamentary Secretaries. In order to lessen the burden on Cabinet Ministers the Chief Minister together with Cabinet would be able to appoint Parliamentary Secretaries from either the Legislative Assembly or the Senate to lead on a number of policy issues within the Ministers department. The Parlia-

mentary Secretaries would be answerable to their respective Ministers and the Minister would be accountable to the Legislative Assembly and through it, the people.

### **Cabinet Meetings**

It is crucial that Ministers have the ability to bring forward whatever business they see fit, to conduct their role in Government effectively. Therefore, the Governor will not have the right to refuse a question by a Member of the Cabinet as he does now. The Governor will no longer have the power to stop a Minister from adding items to the Cabinet's agenda.

The Cabinet's Secretary and the Cabinet's Office should have responsibility under the authority of the Governor and the Chief Minister for the co-ordination and implementation of government policy. That is as it is presently.

### **Constitutional Relationship with the U.K.**

The Cayman Islands' Government applauds the commitment of the British Government to support overseas territories in respect of self-determination, mutual obligations and responsibilities, freedom of the territories to run their own affairs to the greatest degree possible and assistance in promoting economic development. At the most recent meeting of the Overseas Territories Consultative Council in December 2003, I delivered a joint statement in which the overseas territories all recognised the responsibilities incumbent upon them as a consequence of their relationship with the United Kingdom. This affirmed the objective also held by the United Kingdom Government of delivering high standard of governance on behalf of our citizens.

The priority therefore, is improving accountability in our relationship with the United Kingdom's democratic accountability so that our people can run their own affairs. This Government and the United Democratic Party do not want independence. We, like the vast majority of the people of the Cayman Islands greatly value our ties with the United Kingdom and the mutual benefits that flow from this relationship. However, in line with International Standards and the requirements of the twenty first century it is now time to review the details of this relationship.

### **Foreign Policy**

The Cayman Islands Government, any Government of the Cayman Islands, should take a greater role in foreign affairs. This would become increasingly important in relation to various international organisations whose standards impinge directly on the Cayman Islands.

The Cayman Islands Government represented by a senior member or senior members of the Cabinet should engage in those international bodies and groupings that affect the Cayman Islands. We

have some strong objections to the way in which the British Government approaches the application of International Treaties to its Overseas Territories. We believe that the United Kingdom is still not paying enough attention to the views of the elected representatives of the Overseas Territories and would hope to ensure that in future the United Kingdom's Government will undertake considerably more consultation with ourselves over both the formation and implementation of Treaties.

In order to protect our interests it is imperative that we maintain a strong presence in all organisations and groups that could potentially implement policies which could have a direct impact on our economy. Without our participation we will leave the future of our Islands in the hands of others; this is not acceptable and we will ensure that we maintain our presence in all the international forums to protect the interests and wellbeing of our Islands.

### **The Role of Britain**

It is right that the United Kingdom should continue to play a role to ensure good governance in the Cayman Islands as an overseas territory. However, there must be a constitutional mechanism which would prevent the United Kingdom from imposing legislation on the Cayman Islands without the consent of the people. Britain could therefore maintain powers in the following distinct areas.

Firstly, with external affairs the United Kingdom Government should continue to represent the Cayman Islands before foreign governments through the Foreign and Commonwealth Office and Britain's diplomatic missions abroad. There must, however, be greater consultation and consent between the United Kingdom Government and the Cayman Islands on diplomatic issues.

Furthermore, external affairs must exclude fiscal and tax policies, which must remain within the control of Cayman Islands politicians and officials.

Secondly, defence matters should remain the responsibility of the United Kingdom Government through the Governor. In addition, the Cayman Islands continue to appreciate the security guaranteed provided by the U.K. Government through its armed forces.

Finally, Britain could maintain powers in relation to law enforcement including the maintenance of domestic order and the role of the police, the Governor would have powers of appointment over the police.

The Governor and the Cayman Islands Government; on these three reserved matters an advisory council chaired by the Governor, comprising the Chief Minister, the Finance Minister, the Chief Secretary and the Attorney General should, after consultation with Cabinet, advise the Governor on policy. This Advisory Council must be consulted by the Governor in advance of any matters relevant to the Cayman Is-

lands being discussed or determined by the U.K. Government.

Furthermore, the Governor should be able to delegate certain powers to the Cayman Islands' Government such as matters relating to police. Powers should be retained by the Cayman Islands and in all other respects the Cayman Islands should be self-governing with executive powers vested in the Cabinet. Key aspects of the economy including laws and taxation, rights of property, environmental law, business law, regulation of shipping and civil aviation, the regulation of the tourist industry, social policy, monetary policy, financial sovereignty and insurance industry policy should be the sole preserve of the Cayman Islands Legislative Assembly and would therefore be protected by constitutional provision. Furthermore, the free market heritage of the Cayman Islands should be protected by constitutional provision preferring the current capitalist model over a socialist system. The Cayman Islands should continue to control its own fiscal policy with the Government being entirely responsible for its own budget. Law enforcement should be financed by the Cayman Islands as should the office of the Governor itself. That is, Mr. Speaker, as it is currently.

### **Legislation and the Role of the United Kingdom**

As a free market democratic country the Cayman Islands should have the power to pass legislation as it sees fit for the benefit of the people of the Islands. Therefore, the Constitution should not, as a matter of principle, contain a clause which would allow the United Kingdom to refuse to grant assent to legislation due to an inconsistency with a United Kingdom treaty obligation.

### **Modern rights - A Caymanian Bill of rights**

There are a great many benefits to enshrining the civil liberties enjoyed by the people of the Cayman Islands in a Bill of Rights, which would in turn be part of the Constitution or separate law. These would include entrenching the enviable rights of all Caymanian citizens; enhancing the Cayman Islands' reputation as a jurisdiction, which respects and defends the rights of individuals in line with the Internationally Recognised Standards and consolidating the Cayman Islands' reputation as a business friendly jurisdiction where property rights are respected and protected by the full force of law.

The United Kingdom has expressed its desire that the Overseas Territories including the Cayman Islands sign up to a model charter and fundamental rights. The Government will work with the British Government to ensure that fundamental human rights and civil liberties are enshrined in law following the implementation of the new Constitution.

### **Improving Community Engagement**

We will also consider the most appropriate ways to improve community consultation. The United Democratic Party is keen to ensure that local communities are consulted in advance of any policy change and that the views of people in districts are taken into account by policy makers. We would also wish to establish a series of district councils aligned with one legislative assembly constituency, that is, one in each district, or a collection of constituencies, as the case may be.

Voluntary and unpaid counsellors would be appointed by the Cabinet in consultation with local elected representatives; that includes the Government and the Opposition. Counsellors who would be well connected and respected figures in their communities would meet regularly to discuss issues of interest in the local community. Their deliberations would be channelled into Government decision making by the Members of the Legislative Assembly for that particular district. This is all part of our strategy to ensure that our people at a district level are afforded an opportunity in governance which affects their lives.

In conclusion, Mr. Speaker, we are a proud and historic people. Our Islands still contain to be the fifth largest financial centre in the world and we are the envy of our neighbours. We must now move forward from the Constitution signed in 1972 that is outdated and cannot deal with the many challenges we are facing today. Essentially, we need a constitution more suitable for the twenty-first century. To get that, Mr. Speaker, we need to be innovative.

We believe that the strategy I have outlined to you today will provide such a system. We propose that we will open discussion for feedback and input with all stakeholders, which includes the Chamber of Commerce and other Non-Governmental Organisations (NGOs). After full and frank discussion with all relevant parties and stakeholders in every district we will make this a key aspect of our election manifesto.

Thank you Mr. Speaker, and of course it will be distributed as it usually is.