



## **Cayman Islands Constitutional Discussion Paper 2008**

*The Cayman Islands..... Where are we going and why? How will we get there? What are the challenges?*

**The United Democratic Party**



## Constitutional Discussion Paper 2008

*The Cayman Islands... Where are we going and why? How will we get there? What are the challenges?*

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*United Democratic Party*

## Constitutional Discussion Paper 2008

*The Cayman Islands... Where are we going and why? How will we get there? What are the challenges?*

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### Message:

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



My Fellow Caymanians,

I welcome yet another opportunity to discuss the current Cayman Islands Constitutional Order.

Almost four years ago after listening to advice we received from the members of the public, the UDP circulated in 2004 **A Policy Paper – Protecting, Enhancing and Promoting the Cayman Islands**, “*A Constitution for the Future*” which represented the views of the public. Over a period of time we found that you wanted no drastic change. Since that time, much has changed in our society.

The extent of Constitutional Modernisation being proposed by the PPM takes a definite leap towards Independence. However, we are not convinced that the community is prepared for such a step at this time.

It is our desire to ensure our Islands have a modernised Constitution to reflect the needs of the people of these Islands, and protect the interest of our children for the future, only after proper consultation with you the people. A modernized Constitution is important. It must be a Constitution that we as a community have agreed. It must be by a majority of the people since we will all have to live with any changes we make.

We listened to your call for more time to fully understand our Constitutional options. We fought for this and the current Government has grudgingly relented. We will continue to work diligently to ensure you are afforded every opportunity to fully understand our options and the proposals before us.

In the end you the public must be in a position to make an informed decision. Any of the current Government proposals that will take us too far, too fast we will fight with vigor as we firmly believe we are not ready for Independence. If we get this process wrong it will be disastrous for our children and grandchildren. Each and every one of us must pray to our Heavenly Father for wisdom, understanding and patience as we continue our discussions.

May the good Lord bless each and every one of you, and protect our Beloved Islands.

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



*United Democratic Party*

## **1. Preamble**

***We have a vision of a Cayman Islands that includes the following:***

- A God-fearing country based on traditional Christian values.
- A caring community based on mutual respect for all individuals.
- A community, which practices honest and open dialogue to ensure mutual understanding and social harmony.
- A safe, secure and law-abiding community free from crime and drug abuse.
- A country with an educational system which identifies and develops on a continuing basis the abilities all persons, allowing them to reach their full potential and productivity.
- A community which encourages and prepares young people to assume leadership roles.
- A country which provides a comprehensive health-care system
- A community protective of traditional Caymanian heritage and the family unit.
- A country with a vibrant, diversified economy which provides full-employment.
- A country which makes optimal use of modern technology.
- A country which manages growth and maintains prosperity, while protecting our social and natural environment.
- A country, which respects, protects and defends our natural resources as the basis of our existence.
- A country that fosters and enhances the continued development and prosperity of these islands.
- A country with an Immigration system, which protects Caymanians and gives security to long term residents.

In order to achieve this vision many factors must be considered not the least of which is our legal relationship with the United Kingdom (“UK”). As we examine that relationship we must be ever mindful of our overall wishes and aspirations as a country. In this section of our document we have outlined some major Constitutional matters. In this outline there is a brief commentary and some thought provoking questions which we hope can guide you the people of these Islands in bringing you to your decision on what you want to see as the Constitutional Order of the Cayman Islands.

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## **2. Bill of Rights**

### Commentary

In the aftermath of World War II world leaders decided that such atrocities should never again be perpetrated against humanity. The holocaust was fresh on everyone's mind. Certain universal human rights were established as minimum standards for human behavior. Over the past six decades such rights have been refined to incorporate the new world view of a majority of people.

The context in which they are developed can be broken down along the lines of individual rights, community rights and economic rights. When we try to transpose these (especially individual rights) from large liberal and secular societies (such as the European Union) to small conservative, Christian societies (such as the Cayman Islands) there is an inevitable clash.

How we are able to manage such opposing views and ideals is a real challenge.

There are two views that suggest human rights should be embodied within the Constitution and another that suggest it ought to be in domestic legislation.

Church leaders are speaking out and voicing concern over a Bill of Rights and its implication on our Christian heritage and way of life. Below is a summary of the points they have raised:

### Questions

- a) Do you believe we should have a bill of rights?
- b) Do you believe they should be in the Constitution or in separate legislation?
- c) Do you believe that our religious institutions should be allowed to hire staff along the lines of religious affiliation?
- d) Do you believe that civil unions should be allowed and given respect as heterosexual unions?

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## **4. The Governor**

### Commentary

As HMG's representative, the role of the Governor is a crucial one. It is imperative that we have a professional and productive relationship with the Governor. As we consider our relationship with the UK we must at all times attempt to maximize the benefits of our ties.

The Governor has the power to delegate certain of his functions at present. This delegation is reversible if circumstances dictate.

Each governor will be different so we expect the relationship to be a fluid one and there are times when it is less than ideal with our elected government. The management of this relationship is crucial as we do not want to use it to artificially agitate the sentiments of Caymanians toward the Governor and/or the UK government.

During this term the government has publicly criticized the present Governor and made it seem as if he was unprofessional and lacked good judgment. This was because of his decision to call a Commission of Enquiry into past activities of one of their Ministers. The Government predictably reacted by putting forward far reaching proposals as it relates to the governor and the reduced role he would play in a new Cayman Islands.

There are certain areas of responsibility and reserve powers that the governor retains as it relates to administration of a UK dependency as we are in the Cayman Islands.

For example, the Government has taken this dispute with the Governor so far that they have suggested that his actions should be subject to a judicial review. This would mean that a Governor's actions could be taken to court so that judges could review them. This causes many potential concerns not the least of which is that the UK may look at us as being a territory who do not desire to have a Governor make any decisions. This flies in the face of being a dependency. Is there any need to send mixed messages to the UK at a time when the vast majority of residents do not desire Independence?

### Questions

- a) Do you believe that the Governor should retain responsibility for defense and policing?
- b) Do you believe that he should be able to delegate these (all of his responsibilities) as the present Government has suggested?
- c) Do you believe we should attempt to change the Constitutional relationship with the Governor simply because our Elected Government may not get along with a particular Governor?

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## **6. The Cabinet**

### Commentary

The Cabinet sets policy for the country. Currently the Governor sits as chairman and sets the agenda for Cabinet. The Cabinet is currently comprised of five elected ministers, the Governor, the Chief Secretary, Attorney General and the Financial Secretary.

There are proposals by the present Government to add two additional elected ministers in the place of the Chief Secretary and Financial Secretary in Cabinet and the Legislative Assembly. The Chief Secretary and Financial Secretary would remain in these newly created ministries as the equivalent of Chief Officers. They would provide these ministers the same technical advice as other Chief Officers do, but would not be in charge. An elected minister would be in charge of finance and internal and external affairs. They would no longer sit in the Legislative Assembly and the Cabinet.

Cabinet can require any civil servant to attend their meetings and provide information and advice. Therefore the Chief Secretary and Financial Secretary could do the same. There are suggestions that their skills and expertise should be readily available to Cabinet at every meeting.

### Questions

- a) Do you think the elected leader of the country should set the agenda in Cabinet?
- b) Do you think the Governor should be required to attend meetings of Cabinet as chairman?
- c) Do you think the Chief Secretary and Financial Secretary should be replaced by two newly elected Ministers?
- d) If replaced, do you think the Chief Secretary and Financial Secretary should be required to attend Cabinet meetings, as stipulated by the current Constitution?
- e) There have been long concerns regarding the under-representation of the Sister Islands which are geographically separated from Grand Cayman and economically depressed. Should the Constitution provide for a Minister of Cabinet to always be an elected member from the Sister Islands?
- f) Do you think you would get better representation by adding two more members to the House?
- g) Would you support the additional cost to get the extra members?

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## **7. Foreign Policy**

### Commentary

Over the years Her Majesty’s Government (“HMG”) has been responsible for foreign policy development and implementation for the Cayman Islands. Over time, through necessity and natural political maturity, the Cayman Islands have become more involved in this sphere of governance. The UK has her own culture and religious beliefs and these do not always coincide with those in the Cayman Islands. The UK as a member of the European Union also has certain obligations which they wish to have honoured in her dependent territories. Ultimately the UK has encouraged the dependent territories to implement domestic laws to give legal backing to these obligations. In the Cayman Islands context when our government has not agreed with these requests HMG has instituted Orders in Council which forces these issues upon us (e.g. ban on corporal punishment and the death penalty).

Over the past several years there has been much work by international bodies that have affected our financial industry. On these issues our government had little opportunity for real meaningful dialogue to protect and enhance the best interests of Cayman.

### Questions

- a) Do you want your elected representatives to take a greater role in foreign affairs?
- b) Do you want your elected representatives to have the right to engage in those international bodies and groupings that affect the Cayman Islands?
- c) Do you think the UK Government should undertake consultation with the Government of the Cayman Islands over both the formation and implementation of International Treaties and Agreements that affect us?

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## **9. Empowering the People**

### **Part One: The Senate**

#### Commentary

A senate in the Westminster System is an upper chamber that typically has a legislative review and research remit. It is usually an appointed body that will review the impact of legislation, international and local agreements and make recommendation for change after it has done its work. As such it is a ‘watchdog’ on the work of elected members.

To avoid delays in implementing necessary legislation the Constitutional provisions which establish such a body could give specific timelines in which their work must be completed. Senates do not have legislative authority as such they will not create legislation and cannot over-ride the wishes of the duly elected House of Assembly. It would not need a new building as it would have its meetings in the Assembly on the days that the Assembly would not be in Session. The same staff that services the Legislative Assembly would service the senate and there may be a need for a few additional staff members such as a Clerk and an administrative staff member but certainly not the vast amount of staff that it would take to create a new ministry.

There are many talented persons in our community who will not get involved in the electoral politics. Such an institution would allow them to participate and allow the country to benefit from their skills and expertise.

A senate would typically be appointed from the opposition, government and governor (with the balance of power typically resting in the hands of the governor’s appointees as they are seen as the independent members with no party loyalty or affiliation).

Bermuda is one overseas territory with such a system.

#### Questions

- a) Do you believe we would benefit from such a body?
- b) Do you believe that we should have a senate rather than electing two members to the House which creates two new Ministries?
- c) Do you think that such a body would enhance the quality of legislation if skilled persons from civil society were to be appointed?
- d) Do you think you would get better representation by adding a Senate?
- e) Would you support the additional cost to get a Senate which could cost less than two new Ministries?

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## **Empowering the People:**

### **Part Two: District Councils**

#### Commentary

Civil society is keen to have a more formalized voice in the running of communities. We envisage local appointed councils being established. These bodies would assist in the direction their district takes by deliberating over how their districts' allocable portion of monies voted by central Government be utilized. They would have as say in things like road development, post offices, play fields etc.

Each council's deliberations would assist Government in forming its annual policy as it relates to that particular district. Such involvement could run wide. For example, if a particular district is having issues with juvenile delinquency this could lead to government allocating more truancy officers, community development officer or police to assist in stemming the negative outcome that flow from such behavior. Another example could be a community in dire need of youth amenities. This could lead to a multi-purpose sports court being built in conjunction with a local church or sports club.

The district councils would be appointed by government, opposition and the governor (with the balance of power typically resting in the hands of the governor's appointees as they are seen as the independent members with no party loyalty or affiliation).

This would empower and involve members of the public.

#### Questions

- a) Do you believe formally appointed district councils should be established?
- b) Do you believe they should work along with Government and its agencies to monitor how well resources are allocated and utilized for the district?
- c) Do you think you would get better representation by adding district councils?

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## **10. Electoral System**

### **Part One: One Man One Vote?**

#### Commentary

Most electoral systems in the Commonwealth have adopted the principal of one person, one vote. In such systems each district/constituency may have multiple candidates however each voter has the right to only vote for one of them.

Cayman has had a long established history of each voter having the option of voting for multiple candidates within each district. This has worked well to date. We have had close to 90% of the electorate voting in our General Elections. The current Government has proposed that this system be changed for the 2013 elections for Grand Cayman and a different system of voting for the Sister Islands.

There is an argument to be made that such a system can be phased in (e.g. split West Bay and George Town into two districts with two members each). This was done in Bermuda who took almost 40 years to get to one person, one vote!

There is an over-riding concern in Cayman that makes us unique. We have been a community in transition for the past three decades. We have had an unparalleled influx of immigrant workers from a percentage standpoint.

People tend to settle along lines of similarity. Nationality is a common bond among people. There are distinct non-national communities within the Grand Cayman. One person, one vote will potentially cause a distinction as to who is successful at being elected along those lines. This has obvious ramifications to a small harmonious society. Our present system of voting will tend to nullify such distinctions.

#### Questions

- a) Do you believe we should keep our present voting system?
- b) Do you believe that one person, one vote should be implemented for the 2013 elections?
- c) Do you believe the Cayman Islands should have two different voting systems (i.e. one for Grand Cayman and another for the Sister Islands)?
- d) Do you believe we would create unity or division within our districts by changing our voting system?

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**Electoral System:  
Part Two: Sister Islands Voting System?**

Commentary

The current government has proposed a separate voting system for the Sister Islands. Under this proposal the Sister Islands would remain a multi-member district (vs. a single member on Grand Cayman). They have proposed a system whereby there would continue to be two elected members and each voter would only have the right to vote for one candidate. It would be unusual to have one country and two different electoral systems to get to the same elected body (i.e. the Legislative Assembly of the Cayman Islands).

This scenario would inevitably give rise to “cannibalistic” politics. We say this because each member of a team would be competing for each voter’s single vote. In other words, when a two member team campaigned to each voter they would ask each person to vote for them (vs. their respective team mate). This would make it impossible for two people to run together as a team.

This proposal could potentially create bizarre results at the polls! For example, if the Sister Islands had 1000 voters you could have the first elected member garnering 650 votes and the second member may only get 150 votes with the remaining votes going to all other candidates who have stood for election. This proposed system would seem to be fundamentally flawed, where ‘special interest groups’ could get their ‘candidate’ elected by a very small amount of votes.

Questions

- a) Do you think the proposal for the Sister Islands should have a different system than Grand Cayman?
- b) Do you support the present government’s proposal for the Sister Islands (where you have two representatives but only can vote for one)?
- c) Do you think the proposal for the Sister Islands is workable?

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## **Electoral System:**

### **Part Three: The Right to Run for Elections**

#### Commentary

The right to stand for election is currently confined to persons who are of Caymanian decentage. There is also a residency requirement as it was thought wise to ensure that candidates were established in the community and would be acutely aware of its issues.

Since 2002 the current Government has suggested persons who gain Caymanian status but are not of Caymanian lineage be allowed to run for public office. Under the Government's proposal a person could spend less than half of their life in Cayman (is not of Caymanian descent) and yet still be allowed to stand for election. Many of the people whom the current Government's proposal would give the right to stand for election would also be deportable from the country under the Immigration Law. Most countries only allow persons with an irrevocable right to citizenship to run for national office.

In many countries there is also a growing debate as to whether a person with dual nationality should be allowed to run for office. People are increasingly suspicious about perceived conflicting loyalties because they feel that there should be no doubt about a person's ultimate loyalty (especially when they can leave for another land if things do not 'work out' in the country in which they hold political office).

#### Questions

- a) Do you think we should maintain the current principal of allowing only those with Caymanian decentage to run for office?
- b) Do you think that foreign nationals who have gained Caymanian status should be allowed to run for office as proposed by the PPM?
- c) Do you believe that anyone who can be deported under the Immigration Law should be allowed to run for office as proposed by the PPM?
- d) Do you think that only born Caymanians should be allowed to run for office?
- e) Do you think that persons with dual nationality should continue to be allowed to run for office?
- f) If a person has dual nationality, should they have to renounce all others in order to run for office, if they can?

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## **12. The Judiciary**

### Commentary

Separation of powers is internationally accepted principle in democratic societies. The idea is that the legislative arm (i.e. those who create laws), the executive arm (i.e. those who effect laws and implement policy) and the judicial arm (i.e. those who uphold laws) should be independent of each other. In the Cayman Islands these bodies are the Legislative Assembly, the Cabinet and the Judicial Department respectively.

It is for obvious reasons that you do not want any one of these bodies to have undue influence on the other. This would inevitably create dictatorships or at a minimum autocratic rule vs. democratic existence.

The current Government has proposed that there be a body with politically appointed, and otherwise, persons who would appoint judges.

### Questions

- a) Do you believe that politicians or politically selected persons should be involved in appointing judges?

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### **13. National Security**

#### Commentary

It has been long thought that the elected government should have a more formalized way in which to be involved in the security of our islands. Most people do not want the elected government to have any undue influence over the uniformed branches of Government, especially the Police. It would not be wise to have the Cabinet nor the legislature being able to direct the Police. Independence of the Police is critical to good governance. The oversight and accountability of the Police is discussed in the next section.

The legislative branch of Government traditionally has had an oversight role during the Finance Committee process. This is annual in nature and does not give real opportunity for effective oversight.

In order to improve accountability to the public on the work of the uniformed branches of Government the scrutiny of Finance Committee could be enhanced to ensure good governance.

There would inevitably be times when such a committee would meet in camera (i.e. not in public) in order to not undermine national security.

It is customary for regular briefings from the uniformed branches of Government to be provided to the Cabinet. This ensures that governments are aware of security matters that affect the Islands and can ensure that fiscal and other resources are adequately allocated to achieve security goals.

#### Questions

- a) Would you support the elected members of the House creating a National Security Committee that would receive regular briefings from the uniformed branches of Government?
- b) Do you believe the entire Cabinet should continue to be regularly briefed by the uniformed branches of Government on security matters?

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## **15. Referendum**

### Commentary

Referenda are a real science and if it is not executed correctly it can be counterproductive. The public education campaign and the crafting of question(s) is critical to the process.

The present Government has proposed that a referendum be held before any Constitutional negotiations take place with HMG. This would provide elected members with a mandate for Constitutional change. If a mandate is received, negotiations with HMG would take place. After such negotiations HMG will draft a Constitution for consideration by the Cayman Islands.

### Questions

- a) Do you believe a referendum should be held based upon the Government's proposals?
- b) Do you believe a referendum should be held after the UK sends back a draft Constitution document after it has been discussed by the Foreign and Commonwealth Office, the Government, the Opposition and NGO's?
- c) When do you believe the referendum should take place?
- d) What items would you like to see on the referendum?
- e) Do you believe that there should be a people-initiated referendum?
- f) Do you believe there should be a minimum percentage of votes before a referendum can be called? If so, what percentage.
- g) Do you believe the results of the referendum should be binding on the government?
- h) Do you believe there should be a minimum percentage of votes before the results of a referendum should be binding upon the government? If so, what percentage.

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## **16. Political Organization – Party Systems**

### Commentary

Up until 2001 there had been a loose team/coalition system of politics for decades. Such a system lacked cohesion and transparency. Individuals were allowed to roam the political spectrum and chose their allies and opponents at will. The public had no idea as to who would make up a government before a general election.

There had been previous attempts to form political parties in the Cayman Islands. They never took root. Since 2001 a renewed attempt has been made to establish parties. Presently there are two parties in the Cayman Islands.

Some people argue that due to the size and nature of the Cayman Islands that political parties can be counterproductive. They say this because they believe that parties can cause divisions within the society. They also argue that the party pressures elected members into supporting measures and proposals they normally would not have.

The campaign financing rules that existed prior to 2001 did not contemplate political parties. They have not been modernized to create adequate transparency in the political process.

In the Channel Islands, (Jersey and Guernsey) UK Overseas Territories, the Governments are run by a committee system of governance. There are committees for each portfolio (as we have Ministries i.e. committee for Finance, committee for Planning, committee for Education and so on). Each committee has a president as its head (rather than a Minister). Each member of the House can be a part of several committees and thereby participate effectively in the running of the country. In this system there is less division and no confrontational politics as come with a party system.

### Questions

- a) Do you support a party system of governance?
- b) Do you believe all party donations should be made public?
- c) Do you believe the campaign financing rules should be changed?
- d) How should political parties be financed?
- e) Would you agree for a more participatory system of Government such as exists in Jersey and Guernsey, and less division and confrontation which our present system brings?

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## **17. Public Accounts Committee**

### Commentary

There is a committee of the House styled the Public Accounts Committee (“PAC”). This Committee is responsible for scrutinizing the reports of the Auditor General. It, as deems necessary, calls witnesses and takes evidence in order to produce their own reports. The Audit Office shall work intimately with the PAC in order to arrive at their final reports.

The PAC is the principal body within the Legislature that is charged with ensuring that the ruling government is held to account. For this reason the Chairman of the PAC shall be the Leader of the Opposition or his designate, as exists in the majority of Commonwealth countries. The makeup of the PAC and its procedure is governed by the Standing Orders of the House.

The PAC is a standing committee which the elected members of the House entrusts with the scrutiny and oversight of government spending.

In the UK the Auditor General reports to Chairman of the PAC.

While the Auditor General is protected by provisions in our Constitutional Order the Public Accounts Committee is not. However, in some Commonwealth countries it is contained in their Constitution.

### Questions

- a) Should the creation of the PAC be mandatory under the Constitution?
- b) Should the Chairman of the PAC be the Leader of the Opposition or his designate under the Constitution as is customary in the Commonwealth?
- c) Should the Auditor General report to the Chairman of the PAC as is the custom in the UK?

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## **18. Commission for Standards in Public Life**

### Commentary

The Government has proposed that the Constitution includes a Commission for Standards in Public Life. The UDP agrees with such a Commission.

The UDP created the Office of Complaints Commissioner which has had tremendous affect in investigating Government's agencies whose work contravenes the principles of fairness by Government. We believe that the Office of Complaints Commissioner were the first steps towards transparency in Government and ensures that decisions made by public servants are made in the public's interest.

We believe the Commission must lay down standards for public life to ensure the prevention of conflict of interest or corruption.

The Commission must immediately assist the drafting of a law to impose sanctions on any Minister or public official who employs his or her power, or seeks to influence any person to use their power, for the purpose of obtaining or conferring any material benefit or advantage for the private gain of any Minister or public official.

The Commission would be responsible for monitoring standards of ethical conduct, particularly by the holders of certain offices such as Members of Parliament, Chief Officers, the Auditor General, etc. The Commission would supervise Registers of Interest, and investigate potentially corrupt or dishonest practices.

### Questions

- a) Would you agree for the creation of the Commission?
- b) Would you agree that membership of the Commission should include a Chair and some four (4) members who would be appointed by the Governor after consultation with both the Premier and Leader of the Opposition?

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**Constitutional Discussion Paper 2008**

*The Cayman Islands... Where are we going and why? How will we get there? What are the challenges?*

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*United Democratic Party*









