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CONSTITUTIONAL REVIEW COMMISSION  
P O BOX 32348 SMB, SUITE 8 & 10  
GRAND PAVILION COMMERCIAL CENTRE  
GRAND CAYMAN, CAYMAN ISLANDS

March 7, 2002



His Excellency the Governor  
Government Administration Building  
George Town

Your Excellency,

In May 2001, you issued a press release informing the public of the Cayman Islands of our appointment as Commissioners to conduct a modernization review of the Constitution of the Cayman Islands. This was followed by a joint letter of appointment addressed to us on the 15<sup>th</sup> June 2001, setting out, inter alia, our terms of reference (Appendix 1).

Having completed our review we now have the honour to submit our report (Appendix 2) together with a draft Constitution (Appendix 3) which in our view reflects the desires of the people of the Cayman Islands.

We have the honour to be, Sir

Your obedient servants,

BENSON O EBANKS, OBE, JP  
CHAIRMAN

LEONARD N EBANKS, JP  
MEMBER

ARTHUR B HUNTER, OBE  
MEMBER

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## APPENDIX 2

# REPORT OF THE CONSTITUTIONAL MODERNISATION REVIEW COMMISSIONERS 2002

MR BENSON O EBANKS, OBE, JP  
MR LEONARD N EBANKS, JP  
MR ARTHUR B HUNTER, OBE

# CONTENTS

		<b>Page</b>
CHAPTER 1.	The current Constitution	2-3
CHAPTER 2.	The review process	4-5
CHAPTER 3.	General considerations and specific recommendations	6-14
CHAPTER 4.	Implementation	15
CHAPTER 5.	Acknowledgements	16

## CHAPTER 1

### CURRENT CONSTITUTION

The current Constitution of the Cayman Islands is derived from the Cayman Islands Constitution (Order) 1972 which was made by the Queen's Most Excellent Majesty in Council on 26<sup>th</sup> July 1972 and came into operation on 22<sup>nd</sup> August 1972.

There have been four subsequent Orders in Council amending the Order in Council made in 1972 that is:

- The Cayman Islands (Constitution) (Amendment) Order 1984
- The Cayman Islands (Constitution) Amendment Order 1987
- The Cayman Islands (Constitution) (Amendment) Order 1992
- The Cayman Islands (Constitution) (Amendment) Order 1993

Throughout this report we shall refer to the above five Orders in Council collectively as “the current Constitution”.

The current Constitution provides for the office of Governor as well as an Acting Governor and a Governor's Deputy and the circumstances in which the latter two are to be appointed. It defines the powers and authority of the Governor and in particular his reserved powers as well as his power to assign responsibility to members of the Executive Council for any business of the Government. It further provides for an Executive Council of three officials and five elected Ministers presided over by the Governor and for a Legislative Assembly of the same three officials and fifteen elected members. The Legislative Assembly is presided over by a Speaker who may be chosen either from the fifteen elected members or from outside so long as the person chosen is qualified to be an elected member of the Legislative Assembly. The three officials in the Executive Council and Legislative Assembly are named in the current Constitution as the Chief Secretary, the Attorney General and the Financial Secretary all of whom have portfolio responsibilities. The Financial Secretary is also a member and the Chairman of the Finance Committee of the Legislative Assembly. The elected ministers of the Executive Council are elected by the elected members of the Legislative Assembly from among their number and are charged by the Governor in his discretion with the responsibility of government other than a reserved subject. Each Minister must act in accordance with the principles of collective responsibility and support in the Legislative Assembly any measure decided upon in the Executive Council unless the Governor has given his prior permission to act otherwise or not to support such a measure. The Governor is normally bound to act in accordance with the advice of the Executive Council except in relation to the reserved subjects (defence, external affairs, internal security, the police and appointments etc to the public service) or if he should consider it expedient “in the interest of public order, public faith or good government to do so” (when he must either first obtain the approval of the Secretary of State or in a case of urgency report thereafter).

The current Constitution does not identify a political head of government. In recent times the Governor has designated a member of the Executive Council as “Leader of Government Business” but this has led to questions as to the constitutionality of such an office and to confusion as to the powers of the holder. There is also widespread concern over the method provided for in the current Constitution for choosing an elected member of the Executive Council and for the fact that under the current Constitution a “no-

confidence motion” can be used to achieve the removal of individual members of the Executive Council as opposed to the removal of all members collectively.

The current Constitution defines the qualification not only of those seeking election to membership of the Legislative Assembly but also the qualification of electors. It likewise provides for their tenure in office. Election to membership of the Legislative Assembly is currently regulated by the Elections Law which provides for the division of the Islands into electoral districts and for the number of elected members who will represent each such district. Of the existing six electoral districts two are represented by one member and four by multi-members.

The powers and procedure of the Legislative Assembly are laid down in the current Constitution which provides for Standing Orders regulating its affairs, the appointment of Committees such as the Finance Committee previously mentioned the manner of choosing the Speaker of the Assembly and the power and procedure to make laws for the peace, order and good Government of the Islands. Included in its general power to make laws, are specific powers to legislate for the holding of a referendum on matters of national importance and to legislate for the holding of elections. Specific power is given to the Governor by proclamation to prorogue or dissolve the Assembly thereby determining the duration of its sessions as well as the term of each government. Currently the Assembly must be dissolved at the expiration of four years from the date when it first meets after any general election.

The current Constitution provides for the creation and jurisdiction of the several courts of the Islands and for the appointment and removal of Judges. It makes provision to protect the independence of the judiciary.

The current Constitution provides for a number of other miscellaneous matters such as the power of pardon, the power to grant land, the power to legislate for and to appoint a Complaints Commissioner and the power to appoint, remove and discipline members of the public service. It does not however provide for a Public Service Commission which is the body that normally deals with the appointment, removal and discipline of public officers.

There can be little doubt that while the current Constitution has served the Cayman Islands well over the past three decades the modernization review which we have been commissioned to undertake is timely in that it not only presents the opportunity to correct some needed inadequacies but also to address some of the concerns and omissions alluded to and to ensure that the political development of the Islands keeps pace with their enormous physical, financial and social growth.

## CHAPTER 2

### THE REVIEW PROCESS

Our terms of reference required that we conduct the widest and most comprehensive consultative process in order to make recommendations designed to modernize the current Constitution and to ensure its compatibility with the present aspirations and expectations of the people of the Cayman Islands.

Our first objective was to provide the public with as much information as possible about the events leading up to the Constitutional modernization review process and the impetus for same. We also considered it necessary as a prelude to meeting with members of the public to provide them with as much educational material as possible. To this end we arranged to have the current Constitutional documents, a model fundamental rights chapter and the check list with which we had been furnished prominently displayed in all Post Offices and Public Libraries throughout the three Islands of Grand Cayman, Cayman Brac and Little Cayman. These documents were also made available on our website and at all district public meetings and other meetings which we conducted or addressed during the review process. This proved a wise decision as the questions we were asked from time to time highlighted an overall lack of knowledge of the terms of our current Constitution and how the present system operates. The inclusion of a course in the curriculum of the local high schools on the local Constitution and how it works would in future address this lack of knowledge. We must also point out that the draft Constitution for the Cayman Islands of July 1992 that was prepared and printed following the Constitutional review and the report of the Commissioners Sir Frederick Smith and Mr Walter Wallace in 1991 enjoyed fairly wide circulation in the Islands.

We conducted a series of district public meetings in all of the electoral districts. Notice of all such meetings was given in the local press as well as on Radio Cayman and the local commercial television station (channel 27). A number of our district public meetings were broadcast live on Radio Cayman and the addresses at all of our meetings including those sponsored by local organizations and civic groups and the questions asked and the comments made at such meetings were covered extensively not only in the local press but also on radio and TV. In addition to our district public meetings we addressed the Cayman Islands Chamber of Commerce, the Civil Service Association and the local Lions/Leo Clubs. The Chamber of Commerce which represents more than seven hundred corporate and associate members employing nearly fifteen thousand persons, many of whom are Caymanian, also undertook an awareness initiative within its membership and employees and conducted a survey of its own on the major issues the subject of discussion at the public meetings. Among those responding to the survey were some one hundred and six registered voters. The Civil Service Association also made a written submission. This body is representative of a fairly large percentage of the fourteen hundred and thirty seven civil servants who are currently registered voters. We also met with representatives from the Caymanian Bar Association whose membership consists of sixty-five persons holding Caymanian status and a local group who called themselves "the Concerned Citizens". Both of these bodies likewise made written submissions and in the case of the Caymanian Bar Association same was accompanied by a suggested draft Constitution. A written submission was also made by the Cayman Islands Seafarers' Association made up of three hundred and forty-eight retired seamen. Meetings were held with members of the Legislative Assembly and the elected members of Executive Council on a collective basis in order to solicit their views and we likewise met with the three officials in the Executive Council on an individual basis. A meeting was held with the Chief Justice and other Judges of the Grand Court in relation to the Judiciary and with the Supervisor of Elections and his deputy and a member of the Lands and Survey staff

on the matter of the boundaries of electoral constituencies and the number of electors in each. We interviewed many members of the public who are registered electors in the offices that have been provided for our use. Many others have spoken to us on a one to one basis.

In addition to the foregoing we prepared a questionnaire listing the main issues that were discussed at our district public meetings. This was distributed as a “flyer” in the Caymanian Compass a local weekday newspaper that enjoys wide circulation. A number of these questionnaires were completed and returned to us of which one hundred and sixty-one were submitted by local registered electors.

We are satisfied that as a result of the public meetings, the media coverage, the various awareness campaigns as well as the surveys mentioned the entire population of the Cayman Islands have been made fully aware of the Constitutional Modernisation Review Process and the major issues that were being discussed and have been given every opportunity to express their views on all such issues. While we consider the number of registered electors who have attended our meetings or made written submissions or who have answered our questionnaire to be generally disappointing it is symptomatic of the reluctance of most Caymanians to make their views publicly known and to disclose their identities publicly even when there are major public issues at stake. It is difficult to be precise, as many individuals were in attendance at more than one of our public meetings. However we estimate that the total number of registered voters who attended our public meetings and who answered our questionnaire is approximately six hundred. In addition to the written submissions mentioned more than sixty others expressed their views to us in private interviews. We are confident that the general considerations and specific recommendations set forth in chapter three of this report reflect the views of a majority of the registered electors of the Cayman Islands.

## CHAPTER 3

### GENERAL CONSIDERATIONS AND SPECIFIC RECOMMENDATIONS

There can be little doubt that the people of the Cayman Islands wish to continue their status as British Overseas Territories Citizens. The fact that the British Overseas Territories Bill was being debated in the United Kingdom Parliament concurrent with our review process enabled us to highlight and explain the impact of the Bill once enacted into law particularly as it relates to the acquisition of British Citizenship by those who now hold Overseas Territories Citizenship as a result of a close connection to the Cayman Islands. Some of the concerns emanating from the introduction of the Bill have led to a strong desire on the part of many who have made input to us to define in any advanced or modernized Constitution that we may recommend precisely who is a “Caymanian”. To adequately make this definition in keeping with those desires has not been an easy task since many have found it difficult to appreciate that our current Constitution and any modernization thereof does not now and will not in the future permit the grant of Caymanian citizenship as opposed to Caymanian status as defined in the local Immigration Laws.

There were few who did not feel that changes are now necessary to the current Constitution to provide for government that is more responsible and accountable to the people of the Cayman Islands. While there were a few suggestions for an alternative form of government such as a bicameral legislature a republican system such as obtains in the United States of America and the Committee System, the overall consensus was for the retention of the Westminster model with one legislature and with increased local autonomy falling short of full internal self government and ultimately independence.

In making our specific recommendations for change, as reflected in our draft Constitution (Appendix 3) we are guided by the majority view on the major issues that were discussed in our public meetings and the various submissions that have been made. As a result of these changes there will be some necessary consequential changes which we do not propose to deal with in great detail.

We shall now highlight the major issues demanding changes or additions to the current Constitution:

#### **FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL (BILL OF RIGHTS)**

From as far back as the report of the Constitutional Commissioners Messers: Smith and Wallace made in 1991 there has been support for the inclusion of a Bill of Rights in the Constitution of the Cayman Islands. The draft model that was circulated by us found general acceptance but concerns were expressed on the section dealing with the protection of the freedom of conscience including freedom of religion. Many considered the terms expressed in this section to be contrary to the Christian beliefs and practices of the majority of the Caymanian people. We went to great lengths to point out that the Bill of Rights to be included in our draft Constitution must be consistent with the international obligations to which Britain is subject such as the European Convention on Human Rights and the U N International Covenant on Civil and Political Rights. A number of minor changes have been made in our draft in keeping with local laws and practices that are not considered inconsistent with those international obligations.

#### **THE GOVERNOR**

The major changes recommended to Part I of the current Constitution deal with the Governor’s role in relation to the public service. We will refer to this further when dealing with our recommendations for

the inclusion of the Public Service Commission in the Constitution and for the expansion of the functions of that body. Save for the foregoing there has been no clamor for nor have we made any recommendations to change the Governor's reserved powers.

While the Governor's power of pardon has not been interfered with the inclusion of an independent advisory committee in relation to the exercise of this power is recommended.

The power to appoint an acting Governor and a Governor's Deputy have not been interfered with but in keeping with the representations made to us provision has been inserted for these offices to be held by a Caymanian. This has always been the case in practise.

### **THE EXECUTIVE COUNCIL**

In conducting our entire review process the issue that has provoked the most debate has been the composition of the Executive Council and the desire to advance to a full Ministerial System of government. While the concept of having a Chief Minister as the political head of government and who in turn chooses the other Ministers in the Executive Council enjoys overwhelming support the manner in which the Chief Minister is to be chosen has perhaps been the most controversial issue we have encountered. There is widespread support for the Chief Minister to be chosen by the entire electorate in a separate ballot from the general election from among those persons who have been elected to the Legislative Assembly. There are practical considerations why we do not recommend this method. The most obvious is that it could well result in the choice of an individual who does not enjoy the support of a majority of the elected members of the Legislative Assembly thereby immediately precipitating a vote of no confidence. The result would be that the wishes of the majority would immediately be frustrated by the actions of a small group of legislators. The end result would be another general election. The era of "party politics" is dawning on the Cayman Islands and while there is some way to go before there are fully organized parties whose memberships extend to a majority of the voting public nevertheless we foresee that future elections are more than likely to be contested by one or more political parties. Having considered the alternatives our recommendation for the method of choosing the Chief Minister is reflected in Section 32 (2) and (3) of Appendix 3. The Chief Minister once chosen will then advise the Governor on the appointment of the other elected Ministers to form the Executive Council.

The matter of whether the official members as specified in the current Constitution should continue to be members of the Legislative Assembly and the Executive Council was another issue that provoked much discussion and input. The clear indication has been for the replacement of the Financial Secretary and for the responsibility for the Portfolio of Finance to be assumed by an elected Minister. Likewise the majority view has been for the replacement of the Chief Secretary and for the latter's portfolio responsibilities to be assumed by an elected Minister. The matter of the Attorney General remaining as a member was more divided. There were those who were of the view that the government's chief legal advisor and the person responsible for legal affairs should remain the Attorney General as an ex-officio member. However, the feeling was equally strong that the Attorney General should in so far as is possible be chosen from the elected members of the Legislative Assembly. Our recommendation is therefore for the retention of the Attorney General as an ex-officio member of the Legislative Assembly and the Executive Council and for his appointment to be in accordance with Section 92 of Appendix 3. In the event that the Attorney General is an elected member then certain of his powers and duties under the Constitution will fall on the Solicitor General.

The size of the Executive Council was also a matter of public concern. The complexities of Government and the fact that the Cayman Islands must meet certain international regulatory standards in order to maintain its status as a leading world financial centre has resulted in increased work and responsibilities for the members of the Executive Council. However it cannot be ignored that even though the Financial Secretary and the Chief Secretary may not continue as ex-officio members the offices will continue as prime advisors and with the day to day responsibility in the areas of their expertise. There have been strong feelings expressed that the ratio of elected members vis-à-vis the size of the population is already high and that to increase the size of both bodies will add to the already burgeoning cost of the public sector of the local economy. The replacement of two ex-officio members with elected members will naturally increase the availability of elected members for portfolio responsibility but the fact that the services of the Financial Secretary and the Chief Secretary will still be available to the Ministers within the areas of their respective expertise cannot, as has already been mentioned, be ignored. It should therefore be possible for greater sharing of portfolio responsibilities.

Taking all factors into consideration we recommend that the Executive Council consist of

- (i) The Attorney General who may be either an elected or an ex-officio member.
- (ii) The Chief Minister.
- (iii) Not more than six elected ministers.

A matter of equal concern to those from whom we received input both at our public meetings as well as on an individual and collective basis has been the tenure of office of the Chief Minister and other Ministers.

Other than on a change of government following a general election the Chief Minister's appointment will in most Commonwealth Countries be normally revoked on a vote of no-confidence. We propose dealing with the numbers to achieve a vote of no-confidence when dealing with the size of the Legislative Assembly.

The main concern to which we have alluded is the use of a no-confidence motion to remove individual Ministers from the Executive Council. The majority view is that such a motion should be restricted to a lack of confidence in the government thereby resulting in the revocation of not only the Chief Minister's appointment but also the appointment of all other Ministers. In that event the consensus is that the success of such a motion should result in the immediate dissolution of the Legislative Assembly followed by general elections. We have dealt with this issue and the tenure of office of Ministers generally in Section 32 and 33 of Appendix 3.

The ability to choose Parliamentary Secretaries to assist Ministers with their portfolio responsibilities was raised in some of our public meetings as well as in our questionnaire. There was a great deal of support for the concept. However in keeping with the desire to restrict the size of government while retaining the possibility for the success of a no-confidence motion we are of the opinion that the use of Parliamentary Secretaries would seriously inhibit the latter. Having already taken a view that an Executive Council consisting of eight individuals is adequate for the effective discharge of their portfolio responsibilities we do not recommend that the appointment of Parliamentary Secretaries is necessary at this time.

The issue of "term limits" for members of Executive Council and in particular the Chief Minister was raised on a number of occasions. We did not however form the impression that this was a matter that received widespread support. Our concern is that with the number of qualified candidates to the

Legislative Assembly being already limited by virtue of the definition of “Caymanian” and the requirement that only a Caymanian is qualified for election as a member of the Legislative Assembly the imposition of term limits (on Ministers) could seriously deprive the Islands of capable and experienced Ministers. By the same token if term limits are imposed on members of the Legislative Assembly the electors in many constituencies could be deprived of the choice of able and experienced representatives. We therefore do not support term limits of any sort at this time.

In dealing with the Executive Council another matter of concern was the assignment of portfolio responsibility. There was no questioning the fact that in carrying out this function the Governor should act in accordance with the advice of the Chief Minister. There was equally general agreement that responsibility for finance should be assigned to an elected Minister to be styled “Minister of Finance”. The area of concern related to whether in assigning the responsibility to any Minister for the business of any particular portfolio such responsibility should include “responsibility for the administration of any department of government”. Present and former members of government interviewed by us were firm in the view that the workings of government are stymied if Ministers are not vested with administrative control over the Ministries for which they have responsibility. Equally firm in their views were members of the Civil Service who fear that entrusting Ministers with administrative responsibility could lead to victimization. We have carefully reviewed the compelling arguments in support of both points of view and concluded that while it is desirable for Ministers to be entrusted with administrative responsibility this should not extend to the making of appointments to public offices as well as the removal and disciplinary control of persons in such offices. Our recommendations on this matter are reflected in Section 35 of Appendix 3.

Finally in dealing with the subject of the Executive Council, while it has not been the subject of debate or public input we feel that it is desirable for the office of a Secretary to the Executive Council to be incorporated in the Constitution. Our recommendations in this regard are reflected in Section 39 of Appendix 3. The creation of this office should not result in increased public expenditure as many of the functions are now dealt with by the Clerk of the Executive Council, a public office.

## **THE LEGISLATIVE ASSEMBLY**

The size and composition of the Legislative Assembly has already been alluded to in dealing with the composition of the Executive Council. The general feeling is that the size of the legislature should be contained as far as is possible.

Apart from the inclusion of a Bill of Rights if there is any other issue that received as much widespread support in our review process it is the introduction of single member constituencies with each elector having one vote only. To achieve this and at the same time adhere to the wishes of the electorate in containing the size of government and consequentially the size of the Legislative Assembly has been no easy task. After a great deal of thought we propose recommending that the Islands be divided into seventeen electoral constituencies with each constituency returning one candidate to the Legislative Assembly. The precise boundaries for all constituencies appear as a Second Schedule to Appendix 3 pending any future changes that may be recommended by a Boundaries Commission.

In arriving at the size of each constituency special attention was devoted to ensuring that the several electoral constituencies contained as near as is possible an equal number of electors. In this regard we were assisted by the Office of the Supervisor of Elections and the Lands and Survey Department, who have provided us with a written report accompanied by an explanatory map as well as the precise details

for the Second Schedule to Appendix 3. A copy of their report and the map is attached as Schedule 1 and Schedule 2.

Apart from economic considerations in containing the size of the Legislative Assembly it is obvious that in order to achieve the concept of “one man one vote” i.e. single member constituencies, it would be somewhat ridiculous for that body to have more than the seventeen members that we have recommended. Any increase in size beyond that number would result, in many instances, in each member representing an exceptionally small number of electors.

We have provided for an independent Boundaries Commission to enable constituency boundaries to be redrawn based on future population changes and the desire that the number of electors in each constituency should, as far as is possible, be equal.

There has been no great clamor to change the qualification for electors. On the other hand there has been a very strong feeling that the qualifications for being an elected member should be far more restrictive. This has resulted from the explosive increase in population which has almost doubled within the past decade and the desire that elected representatives should have strong ties to the Islands. Many were of the view that elected representatives should be restricted to “born Caymanians” only. Because of the strong sentiments expressed on this issue we have thought it necessary to define who is a “Caymanian” in the Interpretation Clause of Appendix 3 as opposed to “Caymanian Status” which confers certain privileges under the Immigration legislation but can be lost in certain circumstances. Accordingly we have recommended that the qualifications for election to the Legislative Assembly be confined to Caymanians as so defined in addition to the usual qualifications for domicile and residence. We do not consider it desirable to differentiate between the qualifications for elected membership and that for electors. Accordingly while ensuring that all persons who were registered or entitled to be registered as electors on the coming into effect of the proposed draft Constitution are not disenfranchised it is recommended that in future the qualification for electors be likewise restricted to Caymanians as so defined in addition to the other existing qualifications.

During the course of our review process there has been very limited support for changing the term of the legislature from its current term of four years. We have therefore made no recommendation for change in this regard other than to provide that the Governor may at any time dissolve the Legislative Assembly after consultation with the Chief Minister.

Mention was made to the vote of no-confidence when dealing with the removal of the Chief Minister resulting in a change in government. The current Constitution provides that in a legislature consisting of fifteen elected members the affirmative vote of not less than nine members is required for the success of a no-confidence motion. Having recommended a legislature of seventeen elected members we propose recommending that the affirmative vote of not less than ten be required for the success of a no-confidence motion. This figure is fairly near to the existing ratio. It is accepted that for a no-confidence motion to succeed with the requirement for not less than ten affirmative votes this will require the defection of those Back-Benchers who supported the formation of the government of the day. However to reduce the number required could in our view lead to the possibility of unstable government particularly if the government of the day enjoys a slim majority, and to increase the number would in our view make the success of such a motion virtually impossible in practise.

The choice of a Speaker to preside over the sittings of the Legislative Assembly was not an issue that provoked a great deal of comment. Under the current Constitution the Speaker can be chosen from

among the elected members of the Legislative Assembly or from outside if the individual chosen is qualified to be so elected. Bearing in mind the strong desire to restrict the size of the legislature but also conscious of the need to maintain a proper balance and to preserve the real possibility for the success of a no-confidence motion we propose recommending that the Speaker and the Deputy Speaker be chosen from outside the membership of the Legislative Assembly but that the qualification for the office be the same as that of elected members. Removal of the Speaker or Deputy Speaker other than on a dissolution of the Legislative Assembly will require the same number of votes as are required for a no-confidence motion.

Consistent with the desire for a full ministerial system of government and the appointment of a Chief Minister has been the desire for the appointment of a Leader of the Opposition. He will be the person who is best able to command the support of the majority of those members of the Legislative Assembly in opposition to the government. He will be consulted as provided for in the Constitution such as in the making of appointments to the Boundaries Commission, the Public Service Commission, the Advisory Committee on the Prerogative of Mercy and the Complaints Commissioner.

Under the current Constitution proceedings in the Legislative Assembly are regulated by Standing Orders. In Section 52 of Appendix 3 we have retained the provisions for Standing Orders preserving those in force at the coming into effect of the recommended revised Constitution and providing for the Standing Orders in force in the United Kingdom's House of Commons to apply in any instances not covered in local Standing Orders.

Section 31 of the current Constitution provides for the establishment of a Finance Committee consisting of all elected members of the Legislative Assembly and chaired by the Financial Secretary. In light of our earlier recommendation for the replacement of the Financial Secretary in the Executive Council and for the responsibility for the portfolio of finance to be assumed by an elected Minister of Finance we have in Section 52 of Appendix 3 provided for the establishment of a Finance Committee to be chaired by the Minister of Finance. The Standing Orders provided for in Section 52 also permits the establishment of other Standing Committees of the Legislative Assembly.

## **THE JUDICATURE**

In the course of our public and private meetings concern has been expressed of the need to protect as far as is possible the independence of the Judiciary.

In considering this part of the Constitution our recommendation for the appointment of the Chief Justice is by the Governor after consultation with a Secretary of State (see Section 75 (3) of Appendix 3). To further separate the judiciary from the executive we recommend and have provided for a Judicial Service Commission which will recommend the appointment of other Judges of the Grand Court (see Section 75 (4) of Appendix 3) as well as Magistrates and the Registrar and other officers of the Grand Court who are required to possess legal qualifications. The composition and powers of the Judicial Service Commission are set out in Sections 85 and 86 of Appendix 3. Save for the foregoing we consider the current Constitution to contain adequate safeguards for protecting the independence of the Judiciary and therefore Part V of Appendix 3 is in large part a reiteration of the provisions of the current Constitution.

## **THE PUBLIC SERVICE**

Earlier in this report reference was made to the Public Service and to a Public Service Commission. Many of those interviewed by us and from whom we received input particularly representatives from the public sector feel strongly that the Public Service Commission should be entrenched in the Constitution and that its functions should be more than merely advisory. We have been persuaded of the need for a strong and independent Public Service Commission and this is reflected in Part VI Section 87 of Appendix 3.

Recognising that in an Overseas Territory such as the Cayman Islands the public service properly falls under the control of the Governor our recommended draft Constitution takes this into account. However in keeping with the representations we have received we have recommended that the Governor should instead of merely consulting act in accordance with the recommendations of the Public Service Commission, save in regard to the offices of the Attorney General, Auditor General, Commissioner of Police and the Judiciary.

The importance of fostering good relations between the political arm of government and the civil service cannot be over emphasized. With this in mind we have recommended that before the Public Service Commission recommends to the Governor the appointment of a person to the office of permanent secretary or head of a department of government it should consult the Chief Minister. Other additional functions of the Public Service Commission are detailed in Part VI of Appendix 3.

## **FINANCE**

Earlier in this report when dealing with the Executive Council the recommendation was made that responsibility for the Portfolio of Finance should vest in an elected Minister of Finance. The matter of the finances of the Islands is currently a topical one and one that has provoked much comment during our review process.

To provide for proper responsibility and accountability for the Island's finances as well as consistency with the recently enacted Public Management and Finance Law we have devoted in our draft Appendix 3 an entire part (Part VII) to the heading of finance. This part incorporates sections dealing with the public debt and with the annual audit by the Auditor General. The office of Auditor General is dealt with in Section 94 of Appendix 3. This section mirrors the corresponding provisions of the current Constitution and provides for the independence of that office.

## **MISCELLANEOUS**

During the course of our public and private discussions a number of other issues were raised and reflected the public's general lack of awareness with the terms of the current Constitution. By way of example some of these items are listed hereunder:

1. Referenda: Provision to enable a Referendum Law to be enacted now exists in the current Constitution but no such Law has been enacted. The provision for the enactment of a Law enabling the holding of a referendum on matters resolved by the

Legislative Assembly to be of national importance has been reiterated in Section 50(2) of Appendix 3 with the proviso that the question of whether the Islands should seek any amendment to its Constitution that may lead to their independence shall be deemed to be a matter of national importance. We recommend that the enabling legislation be enacted at the earliest opportunity.

In the course of our review process some representations were made for the inclusion in the Constitution of provisions to enable a referendum to be initiated by the public. We are of the view that as there was no clear-cut consensus on this point the circumstances, terms and conditions under which a referendum should be considered are matters that should be dealt with in the enabling legislation.

2. Ombudsman: Provision for this office likewise exists in the current Constitution under the heading of “Complaints Commissioner”. The relevant provisions now appear in Section 105 of Appendix 3.

We are advised by the Clerk of the Legislative Assembly that the law envisaged by Part V B of the current Constitution has not yet been enacted. We recommend that this be dealt with at the earliest opportunity and that the appointment of a Complaints Commissioner be made immediately thereafter.

3. Register of Interests: Provision for this which also now exists in the current Constitution now appears in Section 106 of Appendix 3.

4. Oath for due execution of office: It was expressed to us that the obligations to the people of the Cayman Islands are ignored in the oath for due execution of office required to be made by members of the Legislative Assembly.

We explained that it is proper for the Oath of Allegiance to be to the Head of State. However we are of the opinion that an addition to the oath for due execution of office in the manner we have proposed at page 83 of Appendix 3 is permissible and would go a long way in satisfying the wishes of electors. It should be noted that the oath for due execution of judicial office as it now exists in the current Constitution and which remains unchanged in Appendix 3 is in similar terms.

In the course of conducting our Constitutional Modernisation Review a checklist was supplied to us by the Governor's Office. In so far as the items addressed in the checklist relate to Constitutional matters these have we believe been adequately addressed in our Appendix 3. The other matters of a non-Constitutional nature have all, to the best of our knowledge, been effectively dealt with by local legislation.

## **CHAPTER 4**

### **IMPLEMENTATION**

In a press release following our appointment as Commissioners it was indicated that our report would become a public document and that any changes to the current Constitution would be the subject of debate in the Legislative Assembly before being submitted to the appropriate authorities to seek implementation.

Throughout the course of our review process it has been made abundantly clear to us that the public has a strong desire to see our report and any recommended changes to the current Constitution. In so far as we have been able to, we have made assurances that this will be done as we anticipate that our Report will be tabled in the Legislative Assembly for debate by members before being referred to Her Majesty's Government.

We have indicated in our meetings that it was our intention to submit as an Appendix to our Report a draft Constitution incorporating in one document the terms of the current Constitution and our recommendations for change. The matter of the implementation of any new or amended Constitution was a matter of concern, the general feeling being that it should be brought into effect immediately preceding the next general election in the Islands in 2004. The draft Order bringing the proposed draft Constitution into effect seeks to achieve this objective. It is envisaged that the Order will be brought into force by proclamation and immediately thereafter the existing Legislative Assembly will be dissolved. It follows therefore that the next general election should be conducted under the proposed new draft Constitution and that any necessary amendments to the Elections Law be effected prior to such proclamation and dissolution.

## **CHAPTER 5**

### **ACKNOWLEDGEMENTS**

In conclusion we wish to express our appreciation to His Excellency the Governor for conferring on us the Honour of being able to undertake this important task on behalf of the people of the Cayman Islands and for providing us with the necessary staff and support facilities. In particular we must mention and thank our Secretary, Ms Paula Quinland whose efficiency and organizational ability made our task much easier. We must also thank those in the public and private sectors who assisted with the convening and organization of our meetings as well as the Supervisor of Elections, his deputy and officers as well as the officers of the Lands and Survey Department who provided the detailed descriptions for the electoral constituencies set forth in the schedule referred to in Section 67 of Appendix 3.

Finally we extend our thanks to all persons and representatives of organizations who attended our meetings or who made submissions to us personally or in writing. We are also grateful to the professional and civic bodies for their input and submissions and for the kind and ready assistance of Mr Warren Connolly, OBE, JP experienced former legislator and Executive Council member whose knowledge of local constitutional matters is renowned. All of their contributions proved to be invaluable in helping us to complete our assignment.