



# **Constitutional Modernization Initiative Public Consultation Meeting**

**Held on**

**Thursday, 10 April, 2008**

**Elmslie Memorial Church**

**Grand Cayman  
Cayman Islands**

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**THURSDAY, 10 APRIL 2008**  
**CONSTITUTIONAL REVIEW SECRETARIAT MEETING**  
**ELMSLIE MEMORIAL CHURCH**  
**GRAND CAYMAN**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** All right. Good night, everyone. Again, thank you for coming to the George Town public meeting on constitutional reform. Before we start the program, I would like to invite your church member, Mr. Dermot MacMillan [phonetic] to say the opening prayer, and ask all to turn off your cell phones — would you put them on vibrate? — as we are recording this session and it will be replayed on Radio Cayman?

Thank you.

Okay?

[inaudible comment]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Good.

**PRAYER**

**Mr. Dermot MacMillan:** Good evening. Let's have a word of prayer before we start:

*Almighty God, maker of Heaven and earth, the giver to us of life and the giver to us of the freedom to make choices: Lord, we thank You that it's been possible for us to get here this evening, to look a little bit further at the Constitution and the updates that are possible.*

*We thank You that You have placed this into our hands, and we seek the wisdom and the sense of responsibility as we approach this purpose. Help us oh, Lord, to realize that the power we have is only to the extent that you will allow it. But because You have given us the freedom of choice, please grant us the wisdom to exercise that choice in a responsible way.*

*We pray for those who are leading in this process. Give them wisdom, give them understanding. Help them to be aware of the wider issues that we all have a choice in so that what we may end up with will be a benefit to this country and will be in accordance with Your will, for we ask it in Jesus' name. Amen.*

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Amen.

Mr. MacMillan, thank you for that prayer. It was very inspiring and I think very apt considering at what point we are right now in the constitutional process, in that we are at a time where we need to really focus on the issues so that we can move forward and do what is responsible for our country.

### **Apologies on Behalf of the Leader of Government Business**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I do have to tender the apologies for the Leader of Government Business; apparently he is still undergoing his clinic at their head offices. But we do have the — Minister McLaughlin, who is here, and I would like to perhaps have him say the opening remarks and a few things that would normally be said at the beginning of the meeting before we go into the subject matters.

Thank you.

### **CONSTITUTIONAL REVIEW PROCESS**

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Thank you — thank you, Suzanne. Good evening everyone. It's wonderful to be here. I was a bit surprised it was in the church here. I think this is the first time I've ever known of this type of a meeting in this church, where I grew up.

I just want to echo what Suzanne said.

Thursday evening the Leader and myself do our constituency plenty, and today, for some reason, we had an overwhelming crowd; we must have had 40 people today. I left him dealing with the remainder of the constituents, and so I'm taking this meeting and leaving him to deal with that. He asked me to apologize for his absence.

We've — we've been involved now in this discussion about the Constitution for neigh on a year, really, since we established the Constitutional Review Secretariat. It's about a year.

A significant part of that period, the first part of that period, was taken up in the Government going through what had been done before, consulting with our legal and constitutional advisor in the UK and, to some extent, with the Foreign and Commonwealth Office (FCO), so that we could formulate what we thought were the — the apt — the necessary proposals for constitutional modernization.

We produced the documents, the *Summary of Proposals* and the *Explanatory Notes* on the 12<sup>th</sup> January, and the process since then has involved many, many meetings in all of the districts, attendances on Radio Cayman and the talk show, Constitutional Conversations

Programme, and on the radio and, of course, exchanges in the written media. We have seen — I know it must — we must be into the thousands of people now who we've had the opportunity to — to talk to about the constitutional review process.

It has been an education, not just for — for the electorate, for the people who are interested, but an education for the government as well. This is the first time in the history of these Islands that we have decided to go the referendum route, which will allow the electorate to weigh in on what they think the Constitution ought to look like, what it ought to contain, and we intend to do that in a very meaningful way.

Initially, when the process started and based on the way referendums have been run in most other places, we were advised and we felt that it would be too cumbersome to have more than one question on the referendum paper. But as we've gone around, the people of the country have made it very clear to us that they want an opportunity to do more than simply vote yes or no on a package of proposals put forward by the Government.

Now, what we have proposed to do was to revise the *Summary of Proposals* which we have in circulation now based on the feedback that we got from the various meetings and engagements with the electorate. We still intend to do that.

But what we have also decided to do after consultation last week, or the week before last with Professor Jeffery Jowell, QC, who was here for that week — and who, incidentally, will be here next week again — is that we are going to allow the electorate to do that. Those who feel that the revised proposals when they are published accord with — with their view, or they're satisfied with those, will have the opportunity to simply vote — or to tick "yes" that they are happy with those proposals. But for those who would like to say whether or not they want single-member constituencies, whether they believe that a greater degree of — of autonomy is — is appropriate for the government, for the range of issues that have arisen as we've gone around, they will have the opportunity to say yes or no, whether they think we ought to have a provision for people-initiated referendum or whatever the — whatever the issue is.

We are now looking at perhaps as many as ten questions on what we will call the "optional ballot" for those who want to weigh in and indicate their views in that regard.

I say all of that to you — some of that is new, some of it isn't so new, the Leader made a comprehensive statement to the media at the press briefing today about where we are going with this — but to say to you, or to reiterate what we've said from the start, that the Constitution belongs to the people of this country.

It is true the administrative document, which allows the government to operate and to function and defines a relationship with the United Kingdom and all of those things, but it — it is and it ought to reflect the views and aspirations and concerns of the people of this

country. So, the Government has not come at this exercise with its mind made up.

We have a duty, we felt, to say to you what we thought the Constitution ought to look like. But at the end of the day — and that's why we've gone the referendum route — it is for the people, the electorate of this country, to decide what goes into the Constitution.

There are two things that really are not optional, we talked about one of them today: one is the UK has insisted, and has been insisting, on modernizing the constitutions of the Overseas Territories. The process started in 1999 with the publication of their White Paper. Cayman is among, I think, only three Overseas Territories now that haven't completed the exercise. We really must get on and complete it. This year will be nine years since the UK started this process. It will be seven since we started engaging in the exercise. So we must modernize the Constitution; that is a UK imperative.

The second, which the Leader spoke to at some length today, is that the UK have in a letter to the Leader this week made it quite clear that a Bill of Rights is not an option. It must be included as part of any new Constitution for any of the Overseas Territories, and specifically for Cayman. That really is not news; we have been saying that for some time.

The UK told us, told all of us, including the Leader of the Opposition, in 2002, when we were at Lancaster House negotiating the Draft Constitution which came back in February 2003; that all of the Overseas Territories would be required to have a Bill of Rights appended to their constitutions. And that is because, as Minister Meg Munn has explained in the letter which the Leader read today, the UK is obliged by its international agreements, conventions, treaties as part of — as a Member State of the European Union (EU), they are obliged to ensure that their Overseas Territories comply with all of the UK's international obligations, and Human Rights is principal among them.

### **Bill of Rights**

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** So, the issue — in that regard, the issue for us really, and the matter that we must focus on, is what goes in to our Bill of Rights. How do we “Caymanise” it? How do we ensure that our unique cultural and — culture and value system is protected in the context of a Bill of Rights?

There's been a lot of — there have been a lot of fears, some legitimate, some quite unwarranted, some I think the result of deliberate attempts to mislead people about the issue on some people's part, about what the Bill of Rights will mean for Cayman.

There are some basic principles which I'll just try to outline. I'm not sure where Suzanne wanted the meeting to go, and I'm simply talking to you as I — as it comes to me. Having been around many of these meetings now, I think I have — as does Suzanne, I have quite a good feel for what most people are concerned about, and Human Rights is — the whole Bill of Rights thing is, I know, one of the major, major concerns.

The Bill of Rights that the UK have sent to us as a template — and they sent that way back when, back in 2000/2001 — is, essentially, the European Convention and Human Rights which, in itself, is modelled on the universal declaration of Human Rights. Both of those documents are more than half a century old.

I say that to say to you that there is — there is little new or novel in the fundamental rights chapter that is being proposed. Just about every section of that document has been subject to judicial interpretation, and it's essentially a tried and true document.

Secondly, the Bill of Rights is a document which applies against the government to prevent — its object is to prevent abuses of the citizen by the state so that the government, the police can't break down your door and walk into your house unless they have a warrant or just cause to do it; so that the government can't take your land without compensation; so that the government can't enslave you; the government can't torture you. Those are some of the fundamental rights of the individual which the Bill of Rights seeks to protect.

Where all of this gets a bit scary for many people is — is the growth of, or the evolution of Human Rights legislation that has grown out — out of the concept of — of Human Rights which attempts or is aimed principally at avoiding discrimination against various groups, categories of people. It is in that anti-discrimination legislation that we find — or it's from that that we find many, quite frankly, bizarre decisions being made by Human Rights commissions or tribunals or courts in other jurisdictions, notably in places like Canada and on the continent, in Europe, and in the UK for that matter, because that type of Human Rights legislation does apply generally as between citizens — or as between citizens and churches; or citizens and schools; or citizens and other organizations; or between citizens and other citizens so that you can't discriminate against me because I am homosexual, for instance, or you can't discriminate against me because . . . well, because — because I'm male and — or in most cases, you're female. That's the kind of legislation that has, in some instance, produced absolutely bizarre results.

There is the famous case which Mr. Douglas Calder referred to — I think many of you might have been at the Family Life Centre when he spoke about the case involving the Bishop of Harriford in which the bishop was — or the church was actually required to pay substantial compensation — I think it was something like £47,000 — to a

homosexual — a practicing homosexual who had applied for a job as a youth worker in the church and had been denied the job on the basis that he was a homosexual.

Now, most people — many people would say that that's an absolutely bizarre decision, that of course the church or the bishop should be able to say that — that a practicing homosexual is not a suitable kind of person to have dealings with young people — young impressionable people. And that was cited by Mr. Calder as an example of how crazy, how bizarre these human rights issues — or the results that these human rights issues can lead to.

But that decision, like most of those decisions which have — which are crazy or bizarre was borne not out of a Bill of Rights — or provision in the Bill of Rights or Human Rights chapter, but out of anti-discrimination legislation required by the UK — or required to be passed by the UK as a result of a European Union directive on anti-discrimination against homosexuals.

So, the worrying thing — the really worrying thing for Cayman is not the impact of a Bill of Rights per se, as is being proposed. As I say, those principles are tried and tested; and just about progressive democracy in the world has a Bill of Rights that looks something like the one that is being proposed — or that has been proposed by the UK for Cayman and the other Overseas Territories.

The real concern for Cayman is the continued ability of the United Kingdom to legislate for us or to extend to us legislation or European Union directives which it feels it — which it may feel it is necessary to do to ensure that it — that is, the UK — continues to comply with its international obligations.

So, a big part of this modernization process — or a big aim, certainly on the part of this Government, is to be able to negotiate with the UK in an effort to persuade the UK to restrict its ability to do those things. That is not an unprecedented position to take. The UK has significantly restricted its ability to legislate for other Overseas Territories, notably Gibraltar, because . . . when the UK — when there exists a constitutional arrangement between the UK and an Overseas Territory, it gives the UK then the ability to say to whoever it is that is pressuring it that, listen, we have a constitutional provision, or we have an administrative document which limits our ability to tell that territory what to do in this particular instance.

So, this is — this is quite a complex set of issues and it is — it is understandable that for many people what — what strikes them or what impacts them is some of these very bizarre results of — of what appears to be human rights issues or human rights cases in places, as I said, like Canada or on the continent. But it is important for us to — to grasp that those cases — and I haven't heard anybody cite any cases that have produced really bizarre results as a result of the universal declaration on Human Rights or European Convention on Human Rights itself. It is

this other legislation that is grown up, and is going to continue to grow up, as increasingly different groups — or groupings of people continue to lobby for — for rights or for the right not to be discriminated against in various instances.

So, as I said a little earlier, it is possible for us — there are some legitimate concerns which people have about the Bill of Rights' template that we have.

We have and are continuing to take those on board. We've had extended discussions with Professor Jeffery Jowell, QC, about the extent to which we can "Caymanise" those provisions, that we can ensure that things like the possibility of gay marriage isn't something that is protected as a right in the Bill of Rights, and that is — and we've been assured that that is — that is absolutely fine, that is something that we can do.

We've also had the assurance recently from Minister Meg Munn, who is the Minister responsible for the Overseas Territories, that the UK has no desire or intention — and these aren't my words — at this time of extending to us or requiring us to recognize civil unions which are — which are really not gay marriages but are relationships — it's actually in the UK recognition of same-sex relationships by extending to those relationships rights which would normally be only accorded to married — to married people: succession rights, pension rights, health benefits. The civil unions — or the civil union legislation which exists in the UK, again, is not something that is borne out of their — out of the UK Human Rights Act. It is stand-alone legislation which has grown up out of this whole concept of Human Rights and anti-discrimination and so forth.

So, we — we don't have to — to worry about that in the context of the Bill of Rights. But I would be, I think, misleading if I were to say to you that we don't have to worry about it at all.

At the moment the position of the UK government which Mrs. Munn has made clear is that they have no intention or desire to extend that sort of legislation to us, but the government may change — or the attitude of the government may change.

The only way that we can avoid those sorts of possibilities, as I say, is if we can persuade the UK to limit — to restrict its ability or to limit its ability to extend that sort of legislation to us. But that is not something we can do because we want it done. We can only achieve that if the UK are prepared as a result of negotiation to agree to that. But as I said at the — a little earlier, it's not unprecedented because they have done so and, to a large extent actually, in the case of Gibraltar.

So, I think — I think for the moment — oh, I just want to add this bit.

We — we have today confirmed with the Cayman Ministers Association (CMA) where they will meet with us on Monday morning to talk about — to talk in more detail about these issues and their concerns and the content of Minister Munn's letter which we made public today.

And we hope as a result of that meeting to be able develop a position which will go — we hope will allay the concerns and meet the concerns of — well, of the general populace, but in particular, of the church community about the perceived impact of the Bill of Rights on — on our Christian society.

So, I think — before I run the risk of monopolizing the meeting, I think I'll — at the moment I just want to leave it there, to just sort of tell you those things and to perhaps affix some sort of context for the discussion this evening.

But, please, don't believe that — or don't feel that we're limited to talking about the Human Rights point. If there are any issues at all relating to the Government's proposals or if individuals have other views which they want the Government to take on board, that's what this exercise is all about.

I think most of you, if not everyone, will have known that we have taken the decision to defer or postpone the referendum so that we can have some more of these exercises, and particularly because we wanted to make sure that we have done everything we can to address the concerns about the Human Rights issue.

But I assure you, in case anyone has any doubt, that the referendum will be held. The electorate will have the opportunity to weigh in on this, and the Government will abide by the mandate of the people.

I think I'll stop there now, Suzanne, and let you take it.

Thank you.

### **United Kingdom Legislating Directly for Cayman**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you, Minister McLaughlin.

I would just like to perhaps before we go much further to say that today's meeting is really about what you would like to talk about, what you would like to discuss or find out more about. We usually have a slide show, and there's a hardcopy presentation there for your reading at any point in time.

But instead of us at this stage going through hours of presentation, we do hope that persons have read the *Summary of Proposals*, have flagged the things that they would like to talk more about, and we can go on and discuss those tonight.

I would just like to, before we do that however, just piggyback off of what Minister McLaughlin said about the proposal that — the United Kingdom's right to legislate directly for the Islands needs to be looked at, that we need to look at this as a country.

If we have voiced or aired a number of concerns about certain external things that may put Cayman in an undesirable position, then

we need to know, we need to understand how is that we can potentially prevent these things or limit any external forces from influencing how we wish to continue as a country.

And I would like to just refer to the very last provision in our Constitution which is the enabling provision which allows the United Kingdom to legislate for the Cayman Islands. And it says that: **Her Majesty hereby reserves to herself power with the advice of her Privy Council to make laws for the peace, order and good government of the Islands.**

Now, when we began this process last year, one of the first things that was flagged was: what does peace, order and good government mean? It could mean a lot of things. It could mean if — you know, if we have civil strife, if there needs to be an emergency law passed we pass it.

But it is so broad in its meaning that it can actually mean anything, and it gives the empowering body or group the power to interpret it in the broadest terms.

So, what is being proposed is that because the Cayman Islands and the United Kingdom do have competing interests, society-wise we are distinct and different, we are coming from two different perspectives, that whilst we recognize the United Kingdom should continue to legislate on our behalf, it should be able to do so in very well-defined circumstances so that the Cayman people and the United Kingdom government understand very carefully the scope in which they can and cannot legislate on our behalf.

Now, Minister McLaughlin highlighted the potential risk moving forward if we do keep this particular provision in, in the way it's framed. Because if it is that ten years down the line any new government minister who has a particular philosophy decides to impose a certain types of legislation on Cayman, what is our ability to stop them? We do not have — we would not have a constitutional arrangement which says no, if you go back to what we've agreed, you can only legislate in cases of 'X', 'Y' and 'Z'. And because we are now at the stage where we can we discuss this issue with the UK, the Government has proposed that we should seek to limit the circumstances that the United Kingdom can legislate directly for the Cayman Islands and establish procedures for doing so. So, no longer would it be a two-sentence statement that they can — that the UK can legislate for peace, order and good government, but will define exactly what areas we, as a country, feel comfortable allowing them to legislate on our behalf. After all, we do elect a parliament and we do elect them to pass laws constitutionally — that is, the main function of a Legislative Assembly — to pass laws.

The Government has proposed that the overriding powers of the Governor — of Her Majesty and our Constitution to make laws for the Cayman Islands without the assent of parliament should be limited. And these powers should be exercised only in situations of emergency and

only after consultation with Cabinet unless it is — consultation is impracticable.

So, against the background of what has been said in the last, I suppose, ten minutes Minister McLaughlin, you know, I would like you to — to think about this issue, and if you have any thoughts about it that you would like to express tonight, I would encourage you to do so because this is a proposal that has been raised. I think that the reason for it has been explained at length tonight, but at the same time we are going through referendum process, the areas of constitutional reform ought to be — it's being tabled to you and it is for you to decide yes, we agree with these, no, we don't agree with these, or let's modify some of these proposals. So, that is where we are.

So, does anyone have any thoughts about this particular issue? We do have a microphone here and we can . . .

Yes?

Thank you, sir.

**Mr. Truman M. Bodden, OBE, JP (Former Leader of Government Business):** Okay, thank you.

Mr. Alden and Mrs. Bothwell, I'd like to comment on that, if I may, and then go on and make a few statements. I'm sorry, I'm a bit hoarse.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Absolutely, Mr. Bodden.

**Mr. Truman M. Bodden, OBE, JP (Former Leader of Government Business):** Firstly, the Section 58 you referred to . . .

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yes, sir.

**Mr. Truman M. Bodden, OBE, JP (Former Leader of Government Business):** Has been in constitutions. There have been a lot of constitutions for well over 40 years. It has only been used twice that I know about, and we have an Attorney General here tonight that maybe can comment further. But when it was used there was extensive — and I mean very extensive — consultation, not just with us, but throughout the Caribbean. And over the years, I don't think anyone has anything to worry about this.

I've been in the Executive Council and I should know longer than anyone else here, I've worked under this Constitution from back in 1976 to 2000. And this really to me is not an issue. It has really only rarely been used, and I think there are far more important things perhaps that should be focused on.

If I may just — just give me two minutes, please.

Firstly, I think the process for this should be that you should first educate the public. Secondly, you should go back and get their views after educating them. Thirdly, you should prepare a draft constitution, circulate it and it's — and then do a referendum which you could do as a single or as a multiple ballot.

I'd like to commend the PPM for doing a referendum because UDP was not going to do it, and I don't think that something this important —

[applause]

**Mr. Truman M. Boddan, OBE, JP (Former Leader of Government Business):** I don't think that something this important which is dealing with really vastly increasing the powers of politicians is something that can be done at general election; it detracts from it. And this is the first major handover power in a draft constitution that there's been, you know, since this Constitution came in.

Secondly, the — the proposals go substantially to where Bermuda's constitution is which is what UDP did as well. And I'd like to make clear there's no substantial difference, as PPM stated, between what PPM has put up and what UDP put up.

But once you reach that stage, the only other step, only other major step is one referendum and then you'll go independent. So I think there should be steps in between this. I think you're going too far too quickly.

And I accept that you will not push for independence, but the next political party in power after this, or the next government the next time or the next time after have no further major steps to go they will put that referendum, as Bermuda has done twice by the way, and miss by 7 percent in the last referendum. They nearly went independent.

I believe that most of the benefits here are the transfer of power to the politicians and that no major benefits are really accruing to the public.

### **Public Donations to Government Parties**

**Mr. Truman M. Boddan, OBE, JP (Former Leader of Government Business):** I think there are not sufficient checks and balances. I think political parties should publicly state under the transparency and freedom of information and put in the Constitution the right — rather publish or the right for the public to have the names of donors to the party, the amount of public donations, and they should publish their accounts. And there's a song that says *what goes on at the party stays at the party*. I really think if there's one major thing should be in that

Constitution, we should know who are paying mon — what people are paying money to the political parties.

Just two other quick things.

### **Removal of Official Members of Cabinet**

**Mr. Truman M. Bodden, OBE, JP (Former Leader of Government Business):** I think the removal of the Official Members when the Ministers who will replace them need have no qualifications, especially things like the Minister of Finance, the Attorney General and the Chief Secretary; that that is not in the public's interest because those three Official Members do not owe any allegiance to a party, they're not political, they do not go out when a new government comes in, and they provide the checks and balances and the strengthening of the — of the country.

### **Governor's Powers and Leaders' Powers**

**Mr. Truman M. Bodden, OBE, JP (Former Leader of Government Business):** Also, a lot of the Governor's powers that you suggest should be removed, I think a strong Governor is vital to this country. It keeps politicians honest, if I may be blunt, and as we have seen recently, a strong Governor can take decisions. We've had weak ones in the past that unfortunately should have done certain things that weren't done.

And, lastly, I think to ask as you do to have the Leader of Government and the Leader of the Opposition to amend the Constitution on issues that they think are non-controversial are . . . I think it was trivial — not trivial, but minor . . . *minor* . . . or non-controversial and without going back to the public is wrong. No politician should have that power.

### **Capable People in Government and a Bill of Rights in the Constitution**

**Mr. Truman M. Bodden, OBE, JP (Former Leader of Government Business):** Lastly, during my many years in government, I found that what makes a country work are the people who are in government. If you have capable people in government, they do not need this excessive power because it has destroyed every other Caribbean country around us.

And the last thing I'll say — and not — and leave others to get into the Bill of Rights, but the production of a Bill of Rights in the

Constitution could well be great, but look at the countries around us: Jamaica, Trinidad and Tobago that have had Bill of Rights in their constitutions for 40-odd years. The one basic main right there is the right to life, and the murder rate in those countries are some of the highest in the world.

So, at the end of the day, it's important that the politicians — and we've been lucky that the vast majority of politicians have been good, but as Mrs. Bothwell said in one of her releases, constitution has to be drafted in such a way that it can deal also with the politicians that are bad. The balance has to be put in there.

And, like I say, I commend — I commend the PPM for doing the referendum. I think it's good and I think you're quite brave to come out. I think you've done a lot of education, which you now have the time, Mr. Minister, to perhaps look carefully at the process. And I think if you take the three stages you will get substantially what the people want.

Thank you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you, sir.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Thank you, Mr. Truman. You've — you raised so many issues I don't know if I can answer all of them tonight without taking up the rest of the meeting, but I'll do my best and quickly as I can. But — then you made some — some very good points.

The — the first point I think that you made which I want to deal with is the one about the — the peace, order and good government provision.

The UK — the landscape has changed significantly since you've been in office. The UK is no longer the maternalistic figure that it was. The UK has demonstrated in recent years an increasing willingness to legislate or to extend to Cayman legislation when it feels that it is necessary and desirable to do so.

We said that we wanted to retain capital punishment, as did all of the other Overseas Territories. The UK said fine, we think it's wrong and in breach of Human Rights. And in one fell swoop, one stroke of the pen, they removed the ability to do that from our legislation.

The other incident — incidents — incident that I recall quickly was when they decided that it was wrong for a penal code to continue to provide that sexual relations between persons of the same sex was a crime, and so they removed that as well.

In the case of — and let's move away from those sorts of issues. The things like the European Union Savings Directive, the UK made it absolutely clear that if the Cayman Islands did not sign up to the European Union's Savings Directive they would impose it because they

were bound to do so as a member of the European Union. So, as I said, the landscape has changed significantly.

And I don't need to go back over what I said about the potential for them to continue to extend to us Human Rights legislation which has been a major concern for many people. What Gibraltar has done and what the UK has agreed to do in the case of Gibraltar is to limit the Governor's power to enact legislation to matters for which he has responsibility only under the Constitution and they have significantly reduced those areas.

It is — the Governor is a human being like all the rest of us here. It is wrong and it is unwise to repose so much power in any one individual. The proposals which we have made, many of which have been implemented, not just in Bermuda which their constitution has been advanced in '68, so let's not talk about them; they are very different. Theirs is what was called a pre-independence constitution, but they just never took the additional step. But the constitution of the Turks and Caicos Islands, the constitution of the British Virgin Islands, and the constitution of Gibraltar in particular, they — they have all gone a ways, Gibraltar further than the other two, to reducing or to rebalancing executive power.

So, what — what we are proposing is not that the elected government has the ability to — or to the exclusion of the Governor has the ability to have control of every aspect of the government of the Cayman Islands. What we have sought to do is to involve the elected government or other agencies such as Judicial and Legal Services Commission or National Security Council in other areas for which the Governor alone has sole responsibility.

I know it harks back to — to the good old days when one could rely on the Governor to — to provide checks and balances on the executive power of elected ministers, but recent history should tell us that we cannot rely on a Governor to ensure that the right things happen.

Over the course of the last few years, from pre-2005 we have had instances where Cabinet chaired by the Governor has granted status to 3,000 people without any consultation. He never stepped in. We have had five instances where the Auditor General has demonstrated and has concluded that there has been . . . let me use euphemisms like maladministration, a failure to properly tender contracts, all of which got — not necessarily this Governor, but a Governor was aware.

The reality is that the UK is unlikely to step in unless — in this day and age unless one of three things is happening:

- 1) its international obligations aren't being met;
- 2) there are good governance issues which impact its reputation; or
- 3) they are concerned about what they called continuant liabilities — that is, that the government is spending or

indebting — causing a country to become indebted in a way that they feel it may have an impact on the British tax payer.

Even in times of dire emergency, we just have to hark back to Hurricane Ivan, we will see how willing the UK is to step in and assist.

So, we should not look — every executive needs checks and balances. One of the problems with our current Constitution is it has few, if any, checks and balances. What we are proposing are significant improvements in the checks and balances on the exercise of executive power both on the part of the Governor and on the part of elected Members and on behalf of the elected Cabinet. So, we are going to improve governance if the model that we are proposing is the one that the country ultimately accepts.

As I say, we cannot and I — it is tempting because that's the way it used to be, to believe that because we have a British Governor that he or she is going to make sure that everything goes well in Cayman. Recent history has indicated otherwise. We just have to look at the *Euro Bank* case, done with the full knowledge of the British government and the British Governor.

So, we must not believe that simply because someone comes from England and sits in the chair as Governor that he or she is an oracle, he or she is blessed with the — with the Wisdom of Solomon, and he or she is going to exercise their authority in the best interest of the Cayman Islands.

[applause]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** One of the provisions that we are proposing in the Constitution is that it says that the Governor in exercise of his authority must do so in the best interest of the Cayman Islands save where it would prejudice Her Majesty's interest. Because under our present Constitution the Governor has no — no fiduciary responsibility or requirement to look after the best interests of the Cayman Islands. He is here as a representative of Her Majesty's government.

To take that a little bit further, even those of us who are elected, when we are sworn in under the Constitution we do not swear allegiance to uphold the laws of the Cayman Islands or to further the interest of the Cayman Islands, we swear allegiance to Her Majesty the Queen. Because the whole system is predicated on the basis that there is rule from the UK, it is the delegated responsibility to the Governor, who then delegates further responsibility to elected Members of the Legislative Assembly and Cabinet.

What we are proposing is — is a new model in which there are responsibilities and roles of the UK and they are critical still. I don't want

anyone to think that I'm suggesting that we should — ought not have them here; we ought to have them, we're ready not to have the UK as the administering power. But the roles of the Governor, the roles of the Members of Cabinet, the roles of Members of the Legislative Assembly are clearly defined and the — the ambit of their various responsibilities and authority is clearly outlined, not the current model that we have.

The other thing I want to say is about amendments to the Constitution.

Mr. Truman, while you were there — I did the count sometime ago, but the Constitution I think was amended 20-something times over the course of the — how many years you were there, 16? Sixteen years?

They were some would say, small amendments, but they were — they were amendments. If you look at the number of constitutional orders that have come down over the years, there are many. I was shocked at how many times the Constitution has actually been amended, in many cases not in very significant ways, in many cases consequential upon various things.

Now, I only make that point to say that not every amendment to the Constitution is necessarily a major matter. And because we are proposing that any further significant constitutional changes also go to referendum, it would mean that any consequential amendment which is necessary because of something that happens in the UK or something that happens locally would have to — we'd have to hold a referendum every time we propose to — to change anything at all in the Constitution. That's why the proposal is that minor amendments could be by opposition and the government at the time.

So I just wanted to make — make that point. And I've now forgotten what your other issues were. [laughter] So I'm sure it will come back to me as we go on, but I've been talking long enough anyhow.

Oh, the Official Members' point. That's an important point. Let me just say this: I understand the concerns that people have about that; it's the way it's always been in Cayman, it's not the way it's always been everywhere else.

But one of the fundamental objections to Official Members sitting in the Legislative Assembly is simply it offends against the principle of democracy.

The people who — who sit in the House we believe ought to be people that you elect, people that are accountable to you.

The Financial Secretary is not accountable to you, the Attorney General is not accountable to you, and the Chief Secretary is not accountable to you. So, you have no way of . . . if I — if I don't do as you think I should do, you know what to do with me when election comes. But whether you like what they do or don't like what they do, you're stuck with them as long as the Governor thinks they ought to stay in office. And that offends against basic democratic principles.

We are not suggesting that they are useless or that the system can work without the Financial Secretary or the Attorney General.

The Attorney General in our proposal would continue to be the chief legal advisor to the government and to Cabinet. He just wouldn't have a vote.

The Financial Secretary would continue to be the chief civil servant in charge of finances, but he would report to the Minister of Finance, nothing unusual about that.

As to qualifications, Mr. Truman, neither you nor I had a teaching — or a qualification in education when we took responsibility for education; it's the same with every — with every portfolio that you hold. You have the qualified people with the technical skills and training who are there to advise and guide whoever is at the helm. The role of the Ministers is policy making, not deciding how much — you know, whether we can afford this or whether we cannot. We have — or we should follow the advice of those who are qualified to do so.

And the role of the Chief Secretary, we are proposing that the Chief Secretary becomes the Deputy Governor, and that he or she would sit in Cabinet when the Governor wasn't there.

So, no one is suggesting that these people will become obsolete, but simply that they should — they ought not because they're not elected people, to sit in the Legislative Assembly except . . . *except* . . . in an advisory role.

So I'll leave that with you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you, Minister McLaughlin.

I just want to reiterate a few items before we move on, the first being the independence issue.

Now, this item — this matter has been discussed quite a while — for quite a while now during this process, and the suggestions have been made that constitutional reform in and of itself will carry us straight to independence.

I just want to — I just want to remind those persons who are interested in looking into this issue, if you go back to the April 2<sup>nd</sup> headline in the Cayman Net News which is taking quite a few excerpts from Mrs. Meg Munn, the Parliamentary Under-Secretary of the FCO (Foreign and Commonwealth Office) of these various issues regarding independence, one of the main statements she has made that — is that in order for a country to — to even begin discussing independence with the United Kingdom, it must have a signal from the population, and she has stated that that signal ought to be a referendum.

And I believe Mr. Boddin has indicated that in Bermuda — Bermuda itself has actually gone through two referendums. They have failed, the country said no, we did not want independence, and they have not got it yet. But because the country has said no, the government of

the day would not be able to start that process. That has to be driven from the people themselves.

In relation to checks and balances in the Constitution — when we say “checks and balances”, really, accountability in government — what Minister McLaughlin has said is, to a large extent, correct, that there are very few accountability measures in the Constitution itself, provisions. The one that we all know about is the vote of no confidence whereby the Legislative Members themselves can hold their peers accountable by taking them out of Cabinet. That is the one major provision in the Constitution which deals with accountability. Of course we have other laws which deal with accountability if we are dealing with criminal offences.

But in the — in the proposal on page [6] the Government has made a number of suggestions . . . about seven suggestions as to how we can increase accountability in the Constitution to make sure that those holding executive power, those who hold high public offices act in the best interest of the country.

Now, the first one is that there should be a clear role that Ministers and public officials must exercise their powers in the interest of the country and not for their private interest or benefit.

Now, whilst we all assume that this is a no-brainer, as we call it, everybody knows that, it does have some merit that if you put this in black and white it does, perhaps, increase that level of accountability, cause that person to pause before they may step outside their written role.

**Member of the public:** Excuse me. Sorry.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Hi. Go ahead.

### **Accountability and Checks and Balances**

**Member of the public:** I was thinking that another place as well I'd like to see more accountability, for example, I've noticed that we have a lot of laws in Cayman and there isn't a whole lot of enforcement of those laws. For example —

[applause]

**Member of the public:** Thanks.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Absolutely. Go ahead.

**Member of the public:** For example, there's a law, I don't know which exact law it is, about dogs running around loose.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yes.

**Member of the public:** I think there was a case a long time ago where a little boy was bitten up quite badly, and it was put into law that people should have their dogs inside their yard, et cetera, and chained or fenced in. And you can go about anywhere in Cayman and probably have to jump in the road because of this.

And that's just one small example, but there are hundreds of different ways, even if you look into private companies.

Every private company has to pay stamp duty and, you know, all over I'm sure if you were to step into companies you would see that there's a lot that's going on where the government is losing a lot of money, I mean, all over, all across the Island because there are no checks, there are no inspectors. And I'm not just talking about the Monetary Authority inspecting it, I mean we need to have a body of people that — or a system, preferably an electronic system, you know, where these things are kept track of, you know, to protect the Caymanian people.

Okay, in addition to that there is — in terms of checks again, there are many, many human rights abuses in Cayman. We have a lot of workers that are not from Cayman, and both Caymanians and non-Caymanians are guilty of inferior treatment of workers.

And I would like to see something in the Constitution where people have a much easier access to legal representation because I think it's really a crime and we can — and it hurts me to think about us calling ourselves Christian and religious, et cetera, and then there are so many people who, not just the salary, but they're overworked, they're not paid for the time that they're worked; they are treated shamefully; they live in horrible accommodations; et cetera; et cetera; et cetera. And no one seems to notice somehow, you know?

So, I think that's one thing that I'd like to see in the Constitution, not just for Caymanians, Caymanians and non-Caymanians easy access to legal representation and for it to go through the courts without them having fear of whatever consequences, whether it's at their job, whether it's for a Caymanian, say, being . . . I don't know, discriminated against later on at their job because of seeking legal representation, et cetera.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you very much; that was definitely a full list.

And I'd just like to respond by saying on the issue of enforcement of laws, you are correct. All of us lawyers, and I'm sure many people

know that a law is just law. It's something that's passed in the LA and it's written and it's usually filed away. And when we need it the most, you know, you can't pick up that document and expect a miracle to happen. Oftentimes the systems have to be in place to make sure that that law comes alive, what the objective of that law was meant to do comes alive.

Now, that in itself is accountability. That — the question that you have is — right now you do not see an avenue to ensure that these things are done collectively in government; that goes to the straight — to the heart of administration in government, application of funds, and also how people carry out their jobs.

One of the things that has been suggested — and I'm not saying that this will be a solution to all of those problems, but one of the — the recommendations that has been suggested to increase accountability in government is the Standard and Public Life Commission. And whilst the scope of that commission it would be determined by statute, it does uphold a number of principles for the public officer which includes the Minister, those in government, those holding high public office and those who are carrying out public functions. And the seven principles are: selflessness, integrity, objectivity, accountability, honesty and leadership.

And what that body does is that if — if it sees that there are areas in government that need to be addressed, that it's — it's not in the public interest or it's offending the public interest, that is the organization that will help bring that to the attention of mainstream government and help to encourage change in how government deals with things.

Now, this body will be more or less independent, it will be set up by — or headed by persons of, I suppose . . . I should say well recognized persons in the community who can contribute to that office.

But I'd just like to give an example for — give you an example that I was looking into when I was looking at this commission, and that was voter fraud in Slough in the United Kingdom last year.

They have — just like Cayman they have their electoral system, they have their elections office, they have the law, right? Like our law they have postal voting and we have postal voting. Unfortunately, a candidate last year decided that he was going to be smart and obtain postal — create postal ballots with “ghost” persons and sort of pad the number of votes for himself. Now, luckily that was a situation where he was caught, and it was pretty easy to catch him.

But it identified that there were certain failings in the system itself, the electoral system, certain failings in the law, and that certain changes need to be made. And that individual was — was before a court in the UK, but this Commission had to look into this issue also so that it could make recommendations on the changes that need to be done to improve democracy in that country because — I don't have the article here with me, but it was an affront to democracy, and it couldn't continue.

**Member of the public:** You mentioned just now as well that there would be committees made up of people that were respected in the community, et cetera.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, when I say “respected” I mean —

**Member of the public:** Yeah.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** With good standing.

**Member of the public:** Right. Of good standing.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yeah.

**Member of the public:** I think that’s great. One thing I also would like to see, though, is that a lot more committees be open, at least a certain portion of it, to ordinary people because I found that . . . well, I don’t mean to insult anybody, but I have found there is a lot of inertia because you have people with high — they have a big job already so they’re very busy and then they’re on a whole heap of committees so they really don’t have the time to give to those committees they’re on. I mean they’re a great person, you know, and everyone in the society respects them, but if you don’t have the time you don’t have the time, you know?

And so I’d like to see it open to more people who maybe do have the time to really give the issues the attention that they need.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, thank you for that. And if you are volunteering, you know, please speak to the Minister after the meeting and I’m sure he will find work because anybody who goes on a public committee, it is work.

I’d just like to say, in a way the Freedom of Information Law (FOI) will help to address some of these concerns. The whole system of government has been closed in access to information, and oftentimes this includes not just access to mainstream government information, but to those bodies who perform public functions like the Planning Appeals, the Immigration Tribunals and so forth.

Now, whilst the FOI Law may not allow, let us say, every single bit of information to be accessible to the public, what it may very well do is for the members of the public to scrutinize and say exactly how these boards are functioning.

I do know that the government is — is now preparing for the Freedom of Information Law, it is actually shifting gears tremendously because we are moving from a system of closed information, closed

government to open government. And part of that will include, you know, the matters that these boards are dealing with, how they are dealing with it, minutes. And so you can be able to look and see, okay, I sit on the Health Insurance Commission Board, you can go down and see, okay, the Health Insurance Commission Board sat on this particular day of the month, you could probably read the minutes for each month, you can see exactly what work has been going on.

You'll be able to see whether or not they are, in fact, dealing with the issues that they are charged to deal with as a body. And if they are not, if you are seeing members absent, absent, absent, absent, you can call on the Minister and say you put this person on, that he's not here or she is not performing his function. You ought to be taking him off or her off and putting someone else there.

And that does happen. It has happened in — it really ought to be the board bringing that to the attention of the respective Minister, but if that fails to happen, then, you, as a member of the community, can also bring it to the attention of the Minister because you will be able to have access to this information.

So I — I do believe that with the — the enactment of the Freedom of Information Law Cayman will be developing an attitude of more transparency in terms of what happens in government, and we will be upholding a lot of the principles of — of public life which include that when you as a layperson go there it should improve customer service, you know. It ought to improve customer service. If you have an application that has been denied, you know, don't feel that you're not entitled to know the reasons for the denial. You are. And I will tell you that you are.

And the Freedom of Information Law, whilst it does not deal with that specifically, there are other legal precedents that — principles that deal with that. And one of the principles in this commission is openness. And it says: **holders of public offices should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.**

So if it — if we as a country — and I just want to say, I have taken a lot of this information, looking at the Standards and Public Life Commission in the UK, what its functions are, what principles it upholds and how it operates. But if we as a country feel that we could benefit from this type of organization which would be giving constitutional standing, then it is a decision for us to make. If we feel no, then it is for us to make our objection heard. But definitely it is a measure which the government has identified how we can increase accountability more than what we have now. And I think we've mentioned two things: this commission and freedom of information.

What has also been identified as a proposed measure to hold government accountable is — is people-initiated referendum. Now, that is

something that we do not have in our Constitution whilst we have a provision for — to allow referendums, that is initiated by the legislature itself. However, the recommendation or the proposal has been made that we should bring democracy right down to the people and allow them to participate in government, not only every four years but whenever they feel that there is a matter of national importance that needs to be addressed by the government. And what this provision would do is prevent a mechanism for the people to make that position heard and provide the government with certain directions.

I just wanted to draw your attention to the screen which kind of tells you what some of the issues are: one is that to do so we'll have a petition. And I'd just like to say that the right to petition is something that we have been practicing in the Cayman Islands for quite some time, when we feel that we have issues that we would like to present to the government.

But one of the questions that I was asked by a member of the community was what happens to those petitions. Do we know what — you know, after we obtain all these signatures because we feel it is that important to signal to the government that this number of persons believe this is a serious issue, what happens to that petition after you submit it? Is any action taken? Are you aware of what action is taken? Is it — does it require the government to act?

And if it is you still have questions to those questions, then, you know, you see why there may be a need to put in place proper procedures to help the community cause the government to take your issues seriously when you petition.

Now, the United Kingdom is currently also going through its own constitutional reform process, and one of the first papers was written by the — I think it was Jack Straw at the time and it's a paper called 'The Governance in Britain'. And on the issue of petitions the government stated that it recognized that public petition has always been an historic and fundamental right of the citizen. However, they also recognized that there was a need for up-to-date procedures for government considering such petitions because even in the United Kingdom there is presently no formal mechanism for considering them. So therefore we see this is not an issue unique to Cayman.

What has been proposed in the new proposal in the *Summary of Proposals* is that to enable citizens to bring to the attention to government issues that it should be able to drive this through people-initiated referendums which will start with a petition. So that would mean that what they propose is that 20 percent of the electorate would have to sign this petition, and if 20 percent of 13,000 voters that we have now sign this petition, then they can put — place a duty on parliament to deal with that issue at the Legislative Assembly level. And how they will deal with it is that they would then have to debate the issue and table a

question to allow a referendum on the issue to happen. Now — and what that will do is that that will cause the referendum to take place.

Now, why have a trigger? Why have — why should — ought there be a 20 percent or percentage in order for a referendum, in order for the — the Legislative Assembly to debate the issues and pose a question? Well, referendums are expensive. They are just like an election except you're not voting for a person, you're voting on an issue. And if you're asking the country to vote on an issue of national importance, you want to know that at least a reasonable percentage of the voting public think it is important.

If the trigger number is too low that would mean that many, many referendums or many, many issues would be brought to the LA and cause many, many referendums to take place and all of that costs money. And Cayman is — we don't think we have the whole direct taxation so the money must come from somewhere.

So . . . so anyway, so therefore, you know, this will allow people-initiated referendums to take place, and if you are interested in that then, you know, this is something for you to consider.

We have a couple of people who have questions. I would just like to take — I think three people. I'd just like to take Mr. Billy at the back who had his hand up, the lady at the — at the chair at the side, and then I think, Miss Lucille, you had something to say afterwards.

**Member of the public:** Good evening, Mr. McLaughlin —

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Good evening — oh.

**Member of the public:** — and Miss Suzanne.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** And Mr. Truman afterwards. I got a long list, I must writing this thing down.

Go ahead. Sorry.

### **Information on Referendum to Make an Informed Decision**

**Member of the public:** Don't limit me now, Lucille!

On the subject of — some of the things that you were just mentioning about the referendum process, first I would like to commend the PPM for introducing the “R” word and also remind our people that in 1999 there was extensive debate over about two weeks in the Legislative Assembly for a voter-initiated referendum which included some very good debate on this subject. However, like many debates and many motions,

and it was a unanimous decision, it became another one of those “agricultural reports”.

An “agricultural report” is defined as a report that finds its way in the Glass House, laid on the side for dust to accumulate and cassavas can grow. And it has been sitting there until the PPM dusted it off and bringing it back out.

Now, I have asked — Miss Bothwell knows this — I would like to see the research that has been done by the Constitutional Review Secretariat, to see their sources of information and where it might be found. And I would invite the public to go to the I&R Institute which has chapters in many countries around the world — I&R Europe, I&R Asia, I&R in the United States — and you will gain a lot of information on how initiative referendums, and of course recall and term limits — they all go together — operate.

In the European Union, the Treaty of Lisbon which is the closest thing they have to a Constitution, they — in the EU which has 490 million people it only takes an online registration of 1 million people to trigger a referendum. That’s .25 of a percent, will begin to trigger the process.

In some of the limited research that I have done on the subject, in many jurisdictions it only takes 10 percent of the number of people that voted in the previous election to trigger a referendum. In the better laws that I have seen for referendum, the question does not go back to the legislature and the reason is very, very simple. And if we take the — let’s take the Alaska referendum on cruise ship as an example.

Throughout the 90s the people of Alaska realized that they were getting tiddlyquat from the cruise ship industry, and in 2001 finally a bill reached the Legislative Assembly, or the Alaska Assembly, whatever it was called. The cruise ship industry paid \$1.5 million campaigning against the proposals and the legislatures it failed. So, it went to their referendum law.

And their referendum law provides that the proposals of the referendum draft the exact legislation they want introduced in the State of Alaska. After it’s drafted it goes to the Attorney General to confirm if it’s against the constitution about the State of Alaska.

It then goes to the United States central government in Washington to confirm if it goes against the constitution of the United States. It goes to the Financial Secretary, whatever it is in the State of Alaska, to see what the cost is going to be and what the benefit is going to be. And then when the correct number of signatures are accumulated, which is I think in their case 12 percent — 10 or 12 percent of the number of people that voted in the previous election, not the total on the electoral roll — it then went to a referendum in 2006.

And the legislation that was drafted provided for a “head tax” of \$50 a head for all cruise ship passengers going to Alaska; one-third of the gambling take; they have to declare all of the percentages that they

pay to the onshore stores and the tour guides; and then they have to monitor their effluent discharges.

That law came into effect on January 1, 2007, and first year's revenue was in excess of \$50 million.

Now, that's only one procedure. You can look at California, and also you can look within the UK because within the counties of the UK they have provision for cities and counties and what they — I forget what divisions they call them. They have — not at the national level.

So, this is a very important issue for participation, but it should not go back to the Legislative Assembly for debate because, by and large, the process of referendum takes place when the normal legislative process has failed the people and the people wish to take it into their own hands to get the legislation through.

And so, I would ask again if you could put it on the website, all of the information that you have on referendum so that we can make an informed decision for something that would suit the Cayman Islands on this very, very important issue, and even required by the constitution modernization checklist to provide the mechanisms for the people to be able to influence the decisions of government.

Thank you very much, ma'am, and thank you for the opportunity.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you, sir. I would just like to invite you, Mr. Billy, to come and see me with some of your information also, since we are in the public consultation period.

**Member of the public:** That was in the boxes of stuff that I gave you, ma'am. But I'll dig it out again for you. It was in —

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay, thank you.

**Member of the public:** Okay, ma'am.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Too many boxes. [laughter] But thank you so much. Come and see me next week.

I think Miss Wood. Is that you — yeah, Ms. Ailene.

**Question #1 - Member of the public:** Yes, you were saying something about following up on petitions. I'm wondering what happens to some Private Members' Motions that are passed, because I was Deputy Clerk for just over two years at the Legislative Assembly, and I know that during the time I was there —

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yeah, just bring it up to you a little bit.

**Member of the public:** I was there, as far as I can recall, several Private Members' Motions were passed and nothing ever happened to them, and I'm sure it's probably still going on. So, what would you do to ensure that they are acted upon?

That's one. I don't know if you want to answer that before I go on.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** No, you're absolutely right. It's the easiest thing in the world for a government to agree to consider whatever — and most of those Private Members' Motions are framed in a way which calls upon the government to consider a particular matter or not consider a particular matter.

And the Constitution — at least the present Constitution backs all of that up because it says that no Member — no Member can introduce — and the Standing Orders say no Member can introduce a Motion which will cause the . . . I'm trying to remember the precise language, but essentially it means the government treasury to have to — to fund anything unless he or she is a government minister.

So, most of these motions simply call upon the government to consider a particular matter, and most governments will consider it, and if it's something — and often they — speaking frankly, I've been there now seven-plus years. They'll make nice fancy speeches about it and — because it sounds good and it'll get passed and it'll get put in the book and that's that.

The — the only way that you can really force those things is either by referendum or you hold your elected people accountable when the time comes. You say I put you there to pass that — to deal with this particular issue and you didn't do it. That's the only way the system — only one of those two ways that I know that the system can hold Members responsible for those things.

**Question #2 - Member of the public:** When the Freedom of Information Law is passed — or it's already been passed? — enforced or comes into effect, will the public, whenever they take cases to court, particularly one that's a traffic accident if it's a fatality, would we be able to request that the 911 tape be heard during that session, and if it's not, could we write and ask and have it released so that we can listen to it?

Because it's been too many things that are hid in these traffic fatalities. A lot of them are not properly or thoroughly investigated. The person has died. That person — unfortunately, a dead person cannot speak, and I know if a lot of these dead people could speak a lot of these cases would be solved otherwise. But it's too much, what do you call it,

verdicts of death by misadventure that are not are deaths by misadventure, it's because of somebody's guilty fault.

I have two other ones. So, I can just go on to the other two.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Well, I was just debating with Suzanne. I don't pretend to be an expert on all the provisions of the Freedom of Information Law. I don't believe, though, the law applies to, essentially, judicial proceedings and evidence given at judicial proceedings. But I don't see why the actual 911 recordings outside of any judicial proceedings would not be available to — to you under the provisions of the Freedom of Information Law. I mean, as a matter of policy now, I don't know — I don't know why we wouldn't be prepared to make those things public.

I mean — you see, the whole — the whole Westminster system of government was predicated — is — I say "was" because it's changing over there, too — on protecting the government from whoever is not the government. And a big part of that protection was withholding information, because if you don't have the information you can't do bad things to me. And the system was developed to protect those who are in government, and it is breaking — you know, breaking those old sort of traditions and changing the culture that is — that is so hard.

I mean, Mr. Truman raised the question of checks and balances. As I said, there is little in terms of checks and balances in the present Constitution because, again, that's a 1972 Constitution which is borne — was borne at a time when, you know, it was all about secrecy in government. There's been a — there's been a sea change in attitude to these things in Cayman, and without wanting to appear to blow this government's horn, it is something that we campaigned on and something we were elected on and something we've been working on.

Because when you have a system which allows for years to go by where the public doesn't — is unable to scrutinize what the government is doing, that's when you get disasters; that's when you get all sorts of shenanigans being able to happen without the general public knowing.

When you have a system where government Ministers are essentially on trial every week as we — as we are, we go and sit and face the media where you have a Freedom of Information Law which makes the public have access to information so they can ask the right questions, it then becomes much more difficult for people to get away with — with doing wrong things.

When you have, as we are proposing, constitutional backing for the function of the Auditor General, under the current Constitution it does establish the post of the Auditor General but there are no constitutional protections for — for many of the functions of his office.

And there is no — there is no proper accountability for members of government who do wrong things and misspend government — let me use the euphemism misspend government money.

What we are proposing as constitutional provisions are that government Ministers will be held accountable in the case of maladministration, of misspending the government funds, and that's why things like — or agencies like Standards and Public Life Commission are so important as a part of the overall checks and balances on what government does. Because, as I say, if — there's nothing that's going to make you more honest than knowing that people are going to find out what you're doing, you know? That will make you think twice about what you're doing.

And one of the big problems with the system we have now is there isn't any of that. I mean, we talk about the Governor and, you know, the present Constitution treats him as though he is some sort of demigod that no one can question his decisions, no one can even inquire into why he made a particular decision. We believe that's just fundamentally wrong, and not only fundamentally wrong, bad for democracy and bad for this jurisdiction. We have to be able to —

[applause]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** — question . . . it doesn't matter who's in the office and it doesn't matter what the office is in a democracy. If you are making the right decisions, or making decisions based on proper principles, you shouldn't have a problem with the court or anybody else inquiring into the basis on which you made those decisions.

But the present system, the present Constitution is designed to protect those who are in power, and we've got to get away from that. And we've got to get away from this notion, and I come back to this, that just because it's the UK that everything is just beautiful. If you examine the system in the UK, they have more than their share of issues. They are reinventing government, they are looking at their system and trying to get better governance; better accountability; better standards in public life.

So — now, I grew up in this place so I understand our conceptions about the mother country, but as I said to Mr. Truman a little while ago, the landscape has changed. It's changed hugely in the short time that I have — I've been in public office, and it's going to continue to change. And it's changing so quickly that we have to build a system or systems. We can't depend on: you're gonna have this person and he's a good man, you're gonna have her and she's a good woman and we know that they're gonna make sure that everything's okay. We can't depend on that. We

have to create systems which require accountability regardless of who's in the post.

[applause]

**Member of the public:** Nine-one-one tapes are released whenever you have an inquest or whatever else anybody else might — would like picked up, like to have it for.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Miss Ailene, I don't know enough about that to be able to make any — give you any undertaking. What I can undertake to do is to inquire about the system and what — what obtains in other places. I wouldn't go out on a limb because it's not something I've ever thought about myself, so I don't — I don't know.

**Member of the public:** That should be treated just the same as us hearing live on the radio when they have —

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** I think so, too, but —

**Member of the public:** — the Finance Committee meetings.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** I think so, too, but I just don't want —

**Member of the public:** Because for many years that was very secret, they didn't want anybody to hear that and then that came live.

I mean, you're dealing with people's lives here when somebody's life is lost in a fatal accident, and, you know, people fail call to 911 that are involved in these traffic accidents, and you have other people that come along and call 911. It was two people that called 911 for my son's fatal accident, and the very first man that called, the investigating officer did not even take a statement from that man. Even though I went to him, when I found out that he hadn't taken a statement from him, I went to him and I asked him to please go and get a statement, and up till 2½ years later he still had not done it.

Anyway . . .

### **One Man, One Vote**

**Member of the public:** One man, one vote, now, to be honest with you, I cannot agree to that. I think we need to vote for one in each district of

the 15 people because whatever affects one affects all. And as for George Town, poor us, we hardly get anything. You say you don't have a right if you don't vote. I have voted all my life and I have been so disappointed so many times because the Iron Shore, which is our heritage — I'm sure the Lord put it there for a good reason — it is fast disappearing, too fast. It's forever being covered up with cement, black top, buildings are going on it. We are soon not going to be able to see the sea or the sunset in George Town.

And we really need to get a planning law —

[applause]

**Member of the public:** A decent one. We have to stop all of this building on the waterfront. It is ridiculous. I mean, you feel like you're a prisoner driving on the road these days, with all the condominiums and hotels that are along South Church Street when that was such a peaceful place before.

Thank you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you, Miss Ailene.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** I hear you, Miss Ailene. I don't know if I can say anymore than that.

[laughter and inaudible comment]

**Question #3 - Miss Lucille D. Seymour, BEM (Third Elected Member for the District of George Town):** Thank you very much, Mrs. Bothwell and Minister Alden. I have two points: one is just to make a statement or ask you to clarify the whole question of the word "power".

As we go along the — these meetings and even in the newspapers, people allude to the fact that the legislators are asking for power, too much power.

But when I recall the "Partnership for Progress and Prosperity" which was launched by Robin Cook in 1999, he spoke about the empowerment of the Overseas Territories and — enabling them to be self-determined. And the whole question of modernizing the Constitution was to share this responsibility of empowerment with the local legislators. And, in essence, I think that's what it meant.

So I'd like you all, Mr. Minister, to speak on that and also for you to go into the fact of the audit office of managing risks which would tie you to the same point that I've made.

And also to make the — the point about the whole question of — I know this cannot be in the Constitution, but the responsibility of civil

society in terms — I know my good friend, Ms. Porter talked about the dogs and so, but we as individuals in civil society do have the responsibility of enforcement as well, and I believe we need to be more active in that, to be greater members of civil society and to take on responsibility of advocacy.

I hope I'm not putting much in your head, but could you please talk a little bit about power versus empowerment, managing risks and partnership for progress and prosperity?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Thank you, Miss Lucille.

A big part of this whole exercise, as I said at the start, is about rebalancing responsibility, particularly executive responsibility for the management of the country. Someone, or some ones, always have to run any organization, any company, any country. Essentially, this exercise is about a reallocation of responsibility.

What we are proposing is not just about rebalancing executive authority — that is, as between the elected government and the Governor and the UK — but also about creating a more participative democracy in which the electorate has a greater involvement in the business of government, not just by people-initiated referendum which is one aspect, but by the creation of commissions and agencies who have oversight and responsibility for making sure that those in government do as they are supposed to do.

And a big part of that empowerment is — is by giving people information or access to information, and the ability to scrutinize what government does and the ability to weigh in on matters that they regard as important, not just those that the government regards as important, but those that they regard as important, whether by way of referendum or otherwise.

The UK itself has recognized the need for this reallocation. Now, we may — now in May I'm sure we'll disagree during negotiations as to the degree of reallocation or as to how the reallocation takes place to some extent. But I'll give you a couple of instances.

The — last year in December the UK audit office looked at — at the way the Overseas Territories are administered and carried out an audit of the various areas of what they call risk responsibility and came to determination as to what areas should be shared, there should be shared responsibility for. One of those which is interesting, and particularly in the present context, is about responsibility for Internal Security.

And I can just read you quickly, at the moment constitutional responsibility is with the UK Governor, and the audit office made this recommendation: **In practice, the great majority of resource for maintaining Internal Security are usually provided by territory authorities and the consequences of crime and insecurity short of major civic disorder requiring UK intervention would be incurred**

**mainly by and within the territories themselves. Some specialist expertise and support is likely to be best provided externally from the UK.**

And then their implications for allocation of responsibility, they say the risks are shared and they recommend an increase of local participation in law enforcement issues because this is likely to be more effective. And they've done a similar thing in relation to things like national disaster and so forth.

So, don't believe for a minute that it is just the Overseas Territories who are looking carefully at whether or not there is a proper allocation of risk and responsibility for the proper administration of the territories. The UK is doing the same exercise and coming to the conclusion increasingly that there needs to be more local participation in areas which, hitherto, have been the exclusive preserve of the Governor.

So giving rise to that we've wound up with things like a National Security Council in the British Virgin Islands and a police authority in Gibraltar so that the Governor no longer has sole responsibility for Internal Security, although he still has the ability, in cases of emergency or in cases where he thinks the UK's interest has been prejudiced, to essentially make decisions without regard to what the police authority or the National Security Council says.

So, I hope, Miss Lucille, that that sort of answers your question.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you.

**Member of the public:** Would you like to speak, Mrs. Bothwell?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** No, no, I'm just handing it over to you.

**Question #4 - Member of the public:** Okay. On the subject of accountability in government, in 1997 there was a situation in the government that I was involved indirectly with, where there was, you know, abuse of position with a top leader of government. He was demoted; he was taken from Cabinet to Legislative Assembly.

What is there in the Constitution to protect, right, us as citizens, the civil servants because, you know — I hate to say this, but we all know the government Ministers also are civil servants, right?

No?

Well, I think that I have some misconception here because I think the people are who really make a country and all leaders, yes, will respect them. But if they're not pulling their weight and they're doing certain things that can be against, you know, different things in the country that we should have a lot of say in it.

And there was a demotion.

So is there anything in the Constitution to protect us, that if a government Minister, you know, is — you know, whatever the problem is, misappropriation or whatever, and the decisions made in the House at the time that this person is to be demoted and put down, but they are allowed to come back in at a later stage and be one of our leaders again, right? Is there anything in the Constitution that has been proposed that this cannot happen? Because, obviously, it was a vote of no confidence in the House at the time, but years later there comes the same person again, right?

And I know a lot of us in the room know exactly what I'm talking about.

So, that's — I'm putting that forth because that disturbs me greatly to know, you know, the situation, what happened. And there was never, ever, ever anything from the House or any of the other government Ministers at the time saying to the population, well, this is the reason why there was this demotion. It was kept quiet, right?

And up to this day I still don't know — I kind of know, but the population was never told why there was a demotion. And I don't think that's right because this is, you know, infringing on our rights as citizens that we should know what is going on in the government as well, that they should be divulging as things as important as this issue.

[applause]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** If I was unkind I would ask Mr. Truman to answer that, you know.

[laughter]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** He's happy to do so. Give him the mike.

[laughter]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yes, could you bring the mike forward, please?

[laughter]

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** Thank you, Mr. Minister. Politics never change.

[laughter]

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** At the time, what happened, and as quite rightly said, the . . . the bank went under. But our government, and I made that call, did tell Mr. McKeeva that he had to resign and he did resign. The problem was a few years later he came back, and instead of just being Minister, became Leader of Government.

This is where I should turn over the mike, then, [laughter] because my question is: why didn't he ask him to resign by the way the Governor stood behind us on that? And, you know, I'm sorry for what went on then, but we did bring about justice and it's probably the only time that a Minister . . . well, I shouldn't say that, but a Minister was forced to resign for wrongdoing. Now, that's against plain removals.

[inaudible comments]

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** Well, if he had not have resigned he would have been removed, I can tell you. I was Leader of Government at the time and I was in a position — we were in the position to do it.

We acted and we acted quickly and it's — it's the only time that this has ever been done. But if more of that could be done, as Mr. Alden said, you have to have a strong Governor to stand behind the legislators and vice versa.

May I just go on then?

[inaudible comment]

### **Bill of Rights and Enforceability**

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** I'd like to touch on a couple of things quickly.

Minister Alden said about the Governor too much power in one man. Well, what is happening is the Governor's powers are being transferred to one man, the Premier. We've jumped over the Chief Minister stage, and you will have one man with the power to appoint Ministers, to fire Ministers for no reason and in private, okay? That's absolute power over your Cabinet. Why bother having the other Ministers really if one man has the power to remove them?

To touch briefly on the question of being subject to the courts, firstly, the legislature is not subject to the courts, you agree with that, so LA Members are outside of it. But even more than that, the Bill of Rights

that has been suggested — and I didn't want to have to go into this, because I have mixed views on some of this. But the Bill of Rights that the PPM have put forward, basically, if there's a breach of those Bill of Rights, the court can declare that those Bill of Rights, that that section of the Bill of Rights is wrong and that someone has suffered as a result of it, but the court has no jurisdiction to enforce it. What has been suggested is that it goes back to the Legislative Assembly Members who are not subject to the court either.

The way the Constitution has been set up is that neither the Governor nor the LA Members are subject to the court. Quite simply, if you are going to make the Governor subject to the court, then make the LA Members subject to the court. But you'll not see that.

So, really, the Bill of Rights has no teeth in it as far as enforceability goes.

### **Amendments to the Constitution**

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** I want to just mention a few other things, Mr. Alden, and I'm not taking issue with this, but there have only been five amendments to the Constitution and the main one of those was in 1993 on another government, and that is the only one that has put in the checks, the balances that are there today.

We put — we defined the powers of Attorney General and made him independent; the Auditor General was made independent; we put in — had the power to put in the Speaker; the powers of the courts were defined as well as the Court of Appeal, which had been done earlier in the '84, I think, amendment; the Register of Interest was put in; Complaints Commissioner was put in; and we stabilized pension so they couldn't be reduced in the event that that may have been desired.

There are several steps really that can be gone through before we go this far without the Constitution. If you want to transfer some powers, yeah, move it into some committees, but not into one man, the Chief Minister.

### **Transparency and Freedom of Information**

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** Minister Alden also said, and I found this to be interesting, and also Ms. Bothwell pointed out about transparency and freedom of information. Mr. Alden said words to the effect people find out — if the people can find out what I guess the politicians are doing, it sort of keeps them honest. Well, I have a very

simple question, and I hate to put you on the spot and of you don't want to answer this don't answer it.

But is — is — will the PPM put in the Constitution an interest of freedom of information, transparency that political parties will disclose to the public money that is paid into the parties —

[applause]

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** — as donations, and will they also publish their accounts because there is a difference?

There are two laws there now, they don't go very far, and parties raise a lot of money, people who pay money in the parties normally expect something in return. And worse still, where you have people paying into both parties, you know they definitely want something, okay? And it does happen, okay?

[laughter]

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** So, really, we have a Freedom of Information law, we have a Constitution coming out, but as the calypso goes, *what goes on in the party stays in the party*. That, I think, really has to stop.

### Good Government

**Mr. Truman M. Bodden (Former Member of the Legislative Assembly, Former Leader of Government Business):** The last thing I wanted to say that the Constitution does provide when the Governor exercises his powers, that in many of the areas it has to be in the interest of public or the public faith or good government.

And while I take the point you made earlier, Minister Alden, in relation to the death penalty and — and the consenting males and private EU initiative, these were all done during our time, the first two completed during our time, the EU initiative, the Attorney General, ex-Attorney General here knows. I — we negotiated on that for many, many years. The effects of the EU Savings Initiative are minor because it only relates to persons, not corporations, the savings account. It's had very little effect.

So, those three impositions were during our time. Nothing has changed, it's the same government, it's the same principles, and I cannot believe that the governments overnight are going to start imposing things unless — because what was imposed here there was extensive

consultation. And I can tell you, because I was in government at the time when the death penalty, the sexual offences aspect were completed and, secondly, when the EU initiative began. And I spent maybe about three, four years on it, but you could see the effect was not really gonna be that much.

Having said that, I'd like to commend the PPM again for coming to the public with this, and I hope that they will look at the three stages again of education and then getting the public's view, and lastly, producing a specific document so that when the people vote on that they will know what they're getting. At present you've given a vast amount of power to mainly the PPM, but to a less extent to the UDP, the Opposition as well. I don't think that that is right for such a large amount of power being transferred into politicians' hands which had not happened in the past.

Thank you.

[applause]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Mr. Truman, if I can just — let me deal with your party point first.

I have absolutely no problem with parties being required to disclose the source of their funding, but I think it would be wrong to limit that provision to parties. It must apply to teams as well. It must apply to individual politicians as well, because I know full well that many politicians, including those from your era, received significant funding when they didn't belong to parties but belonged to teams. So, as long as you are saying that teams and individuals should be included, I'm happy about it.

The second point I want to make is it is a misconception, really, to believe that the Premier wields huge amounts of power. The Premier holds office because he or she enjoys the support of the majority people in the Legislative Assembly, the same way the Leader of Government Business now does. The day that he or she loses that support, he or she loses that office. And because that's the way the system works now is not unique. What we're proposing in Cayman is the way it works throughout the Westminster system of Government. Cayman is unique in the case that I think we are now the only Overseas Territory that doesn't have — well, not the only Overseas Territory, the only Caribbean Overseas Territory that doesn't have full ministerial government.

The Premier cannot act capriciously or arbitrarily because if he or she does they will lose support of the other elected Members of the House. And if that is the case, they will lose their office.

So, as I say, I think it's a misconception to believe that this is some all-powerful creature who can just go about doing as he or she wishes. The political realities are very different.

Your question relates to this point?

Okay, I just wanted to deal with the last point that Mister . . . Mr. Bodden, Mr. Truman made which I've now forgotten because I stopped.

There was a — there was a third point.

Oh, yes, about the politicians not being subject to the court.

I — there's no question that the Members of the Legislative Assembly functioning as the Members of the Legislative Assembly and the decisions that they make they are not questionable by the courts. But that's not true of Cabinet because Cabinet — Ministers in Cabinet exercise the executive authority, as does the Governor. And so, decisions which I make as the Minister of Education are challengeable in the courts and have been challenged in the past in the courts.

A decision, for instance, to exclude from school — from attendance at school a Rastafarian boy was challenged successfully in the courts was an executive decision.

So, I think you have to compare Ministers and the Governor. When you then go and seek to compare the Governor and Members of the Legislative Assembly is when I think you're comparing apples and oranges.

So I just wanted to say that.

Okay, let me deal — let me deal with —

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** We do have someone with a microphone over there, and then we'll take your question after.

Yes?

### **One Person, One Vote Proposal**

**Member of the public:** Hi, Minister McLaughlin and Ms. Bothwell, ladies and gentleman.

I just wanted to follow up Miss Ailene's point and comment on the one person, one vote proposal. I'm glad to hear that it's called one person, one vote, first of all.

Secondly, I understand the principle behind the proposal that if we have one vote for somebody that's going to represent us on the local level within our — within our district that we're going to be more selective in that person.

The concern that I have is that as an individual I have no say in the rest of the government that will represent me as an individual and us as a country on a national and international level.

And I just wanted to make that point and that's really — it's not really a question. I don't know what the answer is, but I just wanted to make that point.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** That is — that is a concern that we've heard expressed on a number of occasions and also because we are used to in Cayman, particularly in the bigger districts, to having more than one vote where a few people want to give up that right and that's — that's natural and understandable.

The reason for the proposal is that the basical — one of the basic principles of democracy is that all men and women are equal, and at the moment we have men and women in East End and North Side who only have one vote while those of us who live in George Town and West Bay have four, and there are other variations on that theme. So that is the basic principle behind it.

One of the fundamental problems with a national vote, although they're doing this in Monsterrat because the numbers have fallen so much because of the volcano, where everybody votes for, I think they now have . . . I can't remember whether it's seven. I think it's nine, I think they've got nine, and I think they call them MLAs still, so everybody votes for all nine.

Now, one of the problems that was identified very early in the thinking — and not this time around, from when we started talking and thinking about this in 2000 and 2001 — is that the way that the demographics of Cayman are, with George Town being by far the most populace district, with some — about 5,000 voters, we believe, and East End and Frank — and North Side with 600 and something, I think, is that you run the very real risk — not risk, I think almost possibility, that you could wind up with a legislature which had no representation from the smaller districts simply because they don't have sufficient numbers to get their own people elected unless that individual had national appeal.

Now, you may say, well, that's desirable because we want people with national appeal, but people who live particularly in the outlining districts feel, and they're probably right, that their interests are not likely to be properly represented in a legislature, not just dominated but controlled entirely by people who are from the more populace districts where issues, the local issues might be very, very different.

So, that — that, I think, is probably the fundamental problem with a truly national election for all — all seats, the lack of local representation being guaranteed to each district in the Legislative Assembly.

It's not a easy question and because we recognize that, it's — it's certainly one of the questions that we're going to put on the — on the ballot for people to — to weigh in on because the system that we do have

has the benefit of having been tried and tested for all these years, with all its perhaps fundamental flaws, but I hear your — your concerns and we've heard them articulated before.

[inaudible comment]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** We do have another question.

Okay.

### **Private Members' Motion**

**Member of the public:** Yes, thank you.

Regarding the section of the Constitution that prohibits a Private Members' Motion from causing a charge in the treasury, I assume that that's not something that's written in stone and it can be changed.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** No more in stone than any other provision in the current Constitution.

**Member of the public:** I raise it because it is perhaps one way we can address the motions that — where they end up on the shelf, and perhaps if we revise that section of the Constitution we might be able to deal with that.

I'd like to make a statement regarding something that Mr. Bodden said regarding referendum and the independence. He said that — that if we had advanced the Constitution in the fashion proposed by the Government, we would essentially be one referendum away from independence. And I take a bit of an issue with that because what it's — it's essentially saying is that it's — it prejudices people against the concept of — of referendum that may not fully understand the process yet. And while I understand you understand the process, I'm talking about the people who don't fully grasp it.

And, secondly, if I understand Mrs. Meg Munn properly, they recognize the people of the Cayman Islands right to self-determination. So, the degrees with which the people of the territory choose to move at the time they're free to do, and the UK saying is that they do respect that right. So, the truth of the matter is, is that at any time you're literally only the desire of the people away from independence. It doesn't have to be in one, two or three steps. If the people of the Cayman Islands said today we want to go independent, the UK is — has said they will respect that.

So, it doesn't have to work in that — in that we advance it this way and that somehow that's not good so that's gonna lead us to a — an undesirable position. Any how you structure it we have the right to self-determination. We can go independent right now if we wanted to.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you. We do have a young lady with a question or comment. The microphone will be handed over.

**Question #5 - Member of the public:** Thank you. Thank you for this time in and opportunity.

I just wanted to make clear that my question that I have doesn't dictate that it is something that I think that we shouldn't do, I just want to have more information that as a young person that I can make an educated choice when it comes time to do what is necessary.

You made a point that doing this kind of thing is expensive. Was it ever considered to do this during the time of election which I believe we're supposed to have our election in 2009? Was it ever considered that we could have the referendum during that time?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Yes, we certainly considered that point, but as — and I think Mr. Truman agrees, the problem with holding referendum, or referenda, on issues during election time is that the focus gets lost. It becomes part of the broader election campaign, with all of the attendant controversy, hype and mis [laughter] misleading statements and castigation that is part and parcel of any election campaign anywhere in the world. And something as important as your Constitution, we have tried — I think probably most people would say we have failed but — to depoliticize it as much as we can so that the focus is on — not on whether the PPM is a good government or the UDP is a better one, or Mr. Truman is a better one.

[laughter]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** But about the issue itself.

And to that extent, while I think there has been some to and fro, we are succeeding in getting people — and that's why you all are here — to talk about the issues rather than the government that is proposing them. And if you don't do it that way, it's going to be the campaign rhetoric about which government you want in.

And, you know, if the country . . . there are many issues that — that usually — or many planks to any particular election campaign. The fact that people vote for the government that proposed this may not necessarily be indicative that they agreed with what is being proposed in

terms of the Constitution. But because of the particular circumstances that prevailed at that time or because they hate the other side, because of all sorts of reasons, there are all sorts of dynamics with the dynamics obtained during an election campaign.

So our advice was, and I believe that be right, is that the best way to treat it is outside an election campaign notwithstanding the significant cost that it involves.

**Question #6 - Member of the public:** My second question is: what, if any, expected timeline have we, the Cayman Islands, been given to have all of this formalized and completed, to give back to the UK, or whatever the case may be?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** The UK have — have never said, I think, to any of the Overseas Territories that this has to be done by this time. But, increasingly they have been making noises which indicate that they are growing somewhat impatient with the length of time the process is taking, because when they started this in 1999 they didn't expect that in 2008 there would still be Overseas Territories who are still out there debating it.

We, this government — and some have criticized and some have criticized it — we — when we campaigned and we put it in our manifesto, we campaigned on the basis that we were going to proceed with the constitutional modernization process, and determined that process within the term of office that we had.

We took office eight months after Ivan, and no one in the country — and in fact I think they would have probably tarred and feathered us if we had suggested immediately having been elected that we should go deal with a constitution. People had roofs on their houses that needed to be fixed. People had lives that needed to be rebuilt; the infrastructure of the country had to be rebuilt.

So, we actually didn't turn our attention to the constitutional review process properly until early last year; and we sat down and we worked out the program and the plan and we developed and established the constitutional review secretariat and we did the research and so forth. So we got to where we are now.

It is our intent to complete the process before the next elections, which are May 2009, which means that we must get through the public consultation process which we're in now, get through the referendum, assuming we have a mandate to go ahead, that we have — give ourselves sufficient time to negotiate properly with the UK for the document that the country says we should have, because if not we would then be at a real disadvantage because, you know, we'd be facing the uncertainty and there's always uncertainty, of another election.

So, it is our hope and desire to complete this process before the end of this year so that we don't get into the "silly season" still dealing with the constitutional issues.

**Member of the public:** Thank you for the information. It's been very informative and helpful. Thank you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you.

I just had a question for — to you, if you just hold on to the microphone for a second. When you said placing referendums and election, did you mean specifically the constitutional referendum or future referendums like people-initiated ones? Because my statement about expense did relate to if you have too many people-initiated referendums that — there's going to be a cost issue. And I know that there are in some countries — referendums are held at the same time as elections, it may not necessarily be a constitutional one but on any people-initiated ones they are held and that has been raised before. There are good arguments for it, definitely cost, however, there are other arguments in relation to whether or not the citizens wish to wait that period of time to have that issue addressed.

But I just wanted to know whether your question as to cost was in relation to this present referendum or future ones.

**Member of the public:** Just in general because having did some research from our church, which is the Seventh Day Adventist church, had a meeting last night at the George Town Church and it was packed to capacity, so we had a chance to ask questions to those that were there.

So it was brought up — that was one of the issues that was brought up, and I just wanted to make sure that — that it was taken into consideration: should we spend more money than we need to, that kind of thing.

I mean, I know at the present time we are — it has been that the government is taking on — has take on quite a few projects and stuff like that which are needed, not to say that they are not, but just that if this was one thing that could have been pushed to — to that time could it have been done so just — like I said, as a formality for more information.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay. I think it's very good — very good for putting that into context for me. I think generally if we were looking at perhaps another issue, it could definitely be considered. But as the Minister pointed out, something as tremendous as our Constitution, we really — I'm not sure whether the community wants it to go that far.

And I have to be quite honest, there were only two persons that I can think of in about the last 12 meetings we've had that have asked to have it pushed back, and they did not ask to have it pushed back to next year, they just wanted a little bit more time. And most people were pretty much silent on the issue of when the con — when the referendum should be.

We are — we have budgeted for it, and it is an expense that is expected and budgeted by the Government. It was approved by the entire Legislative Assembly, as a matter of fact, the constitutional program, so I think that as the Minister indicated, we will be having the referendum; and I think that the issue at hand is not purely cost but, you know, what kind of non-financial cost it will have to the country if we do mix it with our elections.

Okay.

**Member of the public:** I know at this time there is no set date for when the referendum is to take place, correct? When possibly in the future would you have, like, a time that you know when you're going to go forward?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** We hope as — we hope as early as another couple of weeks. We — we have a number of important meetings set up for next week. Professor Jowell, QC, is back as well. We're meeting with the Ministers Association as I said earlier; we're meeting with the Chamber of Commerce. We're hoping to meet with a number of NGOs.

And we want to be certain — well, as certain as one can be in this business — that the major concerns of people have been addressed, and the Human Rights issue we know is still a nagging concern.

And we don't want to rush ahead now and say, well, we're going to move it from May to whenever, and then find out that we still have some major concerns to be addressed and then we have to push it back again. Because if — as you know, we've had to — of it's been decided to interrupt the training actual exercise because we actually don't have the referendum question or questions sorted, and there's a — and a date hasn't been fixed. So we don't want to create anymore uncertainty and stop and start, so we want to be certain when we actually fix the date.

Although May was always tentative, because that's why we never actually announced a date in May because we were listening to see what the people had — or to hear what people have to say about that. But we hope in another couple — maybe two, three weeks we should be able to — assuming that the discussions go well that we should be able to say when we'll go ahead with it.

**Question #7 - Member of the public:** And final question. With regards to the referendum, you had said that you would give a person either one of two choices: that they could say yes to all or they can pick and choose. Is that how it was stated or did I misconcept?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Yeah, you pretty much got it right. This is — this is quite fluid because we're working on this, but I can — I think I can — I can say this because we're pretty much sure about this now.

The plan is there will be essentially two ballot papers: one which says if you agree, do you agree with the Government's revised proposal? Because what will be published will be these amended based on the input that we — the Secretariat has determined that we have, that it seems the majority of people want. If you agree with that, vote for it. If you have — if you want to actually express your view on a range of issues — and a number of them have been thrown up as we've gone around, it's not a precise science. I'm not trying to say that we have it absolutely right, but we think we know now what the key issues are in most people's minds, and give people the opportunity to vote yes or no on a range of issues so that we will be guided after the referendum about what people would like the Constitution to look like; whether it should have single-member constituencies or not; whether it should have people-initiated referendum or not and on and on.

**Member of the public:** Thank you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** You're welcome.

Do we have any other questions or comments? I do note that it is 10 — a little bit after 10 and I do see a few people yawning [laughter], not from boredom, but just being tired. I think it was a very stimulating meeting.

So if we — if we have any few questions, anymore questions the people would like to ask or comments, if you can — if we can do them now and perhaps wrap up in — shortly. If not, we can close the meeting off soon.

We have one more?

Okay, to the back.

**Question #8 - Member of the public:** The statements that I've heard in connection with the Human Rights and to do with the marriages of persons of the same sex, or civil unions, I understand that there's going to be in the Constitution a proposal that will say that there's a definition of marriage as between a man and a woman and that —

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Of the opposite sex.

**Member of the public:** Of the opposite sex, okay. And that in the Constitution it cannot be put that legislation will not be passed that will give any form of legal recognition for registration of a relationship between two people of the same sex. That cannot be put in the Human Rights because Human Rights only deals with rights, not preventative.

So given that being the fact, would the PPM government support or oppose a law which would state that there can be no legal representation — recognition for registration of a relationship between two people of the same sex, and that this law could only be changed by: first, obtaining a 66 percent of the membership of the legislature approving it; and, subsequently, the holding of a referendum in which 66 percent of the total voters approve it and it also occurs in 66 percent — in 66 percent of the voting districts in the Island?

So, in other words, there must be an overwhelming majority in the Legislative Assembly and in the public to approve any legislation that would give this form of legal representation — sorry, recognition to register in any way or form the relationship between two people of the same sex.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Billy, I think what you proposed is a legal impossibility.

**Member of the public:** And could you tell me why?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Because parliament — one parliament can't bind another to start with as a matter of principle. But any law that — that — and that's why you put things in the Constitution. Any piece of domestic legislation that we have can be repealed by another piece of legislation.

So . . . I mean, Mr. Truman is welcome to weigh in on this as well if he wants to, but I think what you're proposing is a legal impossibility.

As far as the registration of civil unions is concerned, there is no legislative basis for that to be done in Cayman at the moment. So, the only how it could happen would be if the UK extended to us which they have said they're not going to do, or if our legislature passes a piece of legislation to give effect or to validate or to, you know, provide for registration of those unions.

But, I mean, I want to think about this a little more and talk to some of my really good lawyers, but I really think that what you are proposing is — is a legal impossibility.

**Member of the public:** The principles for that, sir, would come from the 1967 West Indies Act, where in — to change a constitution in that there was a provision — that was for the Eastern Caribbean associated states, where after it passed through the Legislative Assembly it then had to go to a referendum, to get the approval of the people before it was sent to the Governor for his assent. So, it would just be — instead of being a Constitution, it would be — this particular piece of legislation would then have to go to a referendum prior to being sent to the Governor for his assent.

So that is a precedent upon which — except it's not dealing with a Constitution, it's now dealing with a particular area of legislation.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** But I think that — I think that is a key distinction, because, you see, constitutional provisions are accorded a special status as opposed to domestic legislation.

**Member of the public:** But I think it could be done. If we put a man on the moon, we can write the legislation to make Cayman be the type of Cayman we want.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Well — well, I . . .

**Member of the public:** Check with your lawyers.

[laughter]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Yes, sir.

[laughter]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** We have to — this is a really interesting legal issue, so we'll definitely — Mr. Billy, I've made a note of it and we'll definitely need to see what legal legs it has. All right?

Creative.

## THANK YOU

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** If there is nothing else, I would just take this opportunity to thank everyone for, I would like to say, participating so actively in this

meeting and providing your views and raising issues and asking questions. These are the most enjoyable meetings. We have many that we attend, but you keep us awake, you keep us on our toes when you do that, and we always obtain very good information, food for thought.

We had quite a good turnout tonight, and I would like to encourage you to encourage your other family members to take advantage of the last meeting that we're going to have in George Town which will — which is to be announced, at the Anglican Church Hall I believe in a couple of weeks. So — and we may have a few more after that, but it's the last scheduled one since we had a schedule.

Please have a safe ride home and keep abreast of the issues and make sure to turn out on Referendum Day and to cast the vote that you think will . . . that you can live with, I suppose.

All right, good night. And we do have a few refreshments here in the side hall if those who are — want to participate — partake and speak to — probably commiserate with each other.

Thank you very much. Good night. God bless.

[applause]