



# **Constitutional Modernization Initiative Public Consultation Meeting**

**Held on**

**Thursday, 21 February 2008**

**East End United Church Hall**

**Grand Cayman  
Cayman Islands**

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**THURSDAY 21 FEBRUARY 2008**  
**CONSTITUTIONAL REVIEW SECRETARIAT MEETING**  
**EAST END UNITED CHURCH**  
**GRAND CAYMAN**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I would just again welcome everyone for coming tonight to the constitutional meeting for East End. Before we begin, I would like to invite Mr. Christen Suckoo, who I know is a fellow East Ender, who has roots in East End, to say a Prayer before we begin.

Thank you.

**PRAYER**

**Mr. Christen Suckoo:** Good night. Let us pray.

*Heavenly Father: we come before You again, Lord, to ask you to bless us, Lord, ask you to search us, Father, ask you to destroy every evil intent in us, Lord, so that all is left is what would serve you. We ask You, Lord, to guide this process, to force us if you have to, Lord, to do your will so that the product that we end up with at the end of the day is one that will bring glory to you, Lord, and one that will solidify a future for our children and our children's children.*

*Lord, God, we seek only to do what is best for the Cayman Islands. We ask you in every way to help us to do that in Jesus' name. Amen.*

**WELCOME**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I would now ask the Leader of Government Business to open the meeting and invite Mr. McLean to have a few words — say a few words.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Thank you very much, Suzanne, and a very good evening to all of you and welcome to what I believe is the seventh in our series of meetings. I think this is the first time we're getting to East End and I think we will now have covered all of the districts by the time we finish this meeting this evening.

You will be familiar by now with the constitutional modernization process, and I do believe that most of you will also be familiar with the *Summary of Proposals* and the *Explanatory Notes* that have been produced by the Secretariat which outlines the Government's thoughts, folks, on the various issues regarding constitutional modernization as to what we believe after much thought and discussion and taking advice

from the legal experts. Those opinions are expressed in the *Summary of Proposals*.

I want to make sure because, unfortunately, we have some people who I consider to be very irresponsible who are trying to spread what I would have to term simple untruths about the process. And unfortunately there are those who are saying that what is contained in the *Summary of Proposals* is what we are going to negotiate with the United Kingdom as a new constitution.

The fact of the matter is, and I want to stress this, the *Summary of Proposals* — what is contained in the *Summary of Proposals* is simply the starting point that we wanted to have a document which gave you some ideas of what we thought but which would get your minds thinking and get you with a better understanding of what we are looking at, what the options are. And the *Explanatory Notes* you will also see will give a better explanation, but the important thing with this phase of the process that we're in, which is the second phase, is for us to be able to interact with you so that we will know what you're thinking. And also, we want to ensure that you have a clear understanding of what the options are with regards to modernizing our Constitution and developing a new governance framework which will serve us for many, many years to come.

But it is important in this phase of the process that we hear what your thoughts are with the options that are available because the whole process is not about what we, the elected government, want as a new constitution. We give you our ideas, but the important thing is that the Constitution, when it is completed and we do have a new document it is that it reflects what you, the people, wish to have as a new constitution.

It is not unusual that a lot of people don't pay any attention to this process. They only wait till it's all over and then if something is not right they complain. So I am so happy for those who have come out so that we can get some dialogue going tonight and we can hear what your thoughts are.

The Secretariat, led by Suzanne Bothwell, is here with her team and she will introduce her team. They're here to facilitate the meeting. Suzanne is going to do the presentation on the various options that we have, then we will I'm sure engage in discussion and people can make their comments or people can ask their questions and we will answer them to the best of our ability.

The other thing that I do have to mention and we really would seek your help here. As hard as we try I notice that — and, believe me, I'm not bringing politics into it because this is not a political process this is a people process. But I notice even today the Leader of the Opposition, because of what his attempt is, he's trying to say that what we are trying to put forward is going to lead us into independence. Ladies and gentlemen, nothing could be further from the truth.

We have gone through a process, or rather we are going through a process — we haven't completed the process yet — where we want to make sure that you are fully up to speed with what the options are. You tell us what you want in the document regarding the various issues in the modernization process. And we intend when that process is all over to prepare a new document which reflects all of what we've heard. And that's a document that we're going to ask you to vote on in a referendum.

So understanding that process and understanding that from a political standpoint we know that there is a risk because of the referendum, but it is the only sure way that we will know that you are satisfied with what we need to go to London to negotiate with. And that's what that document will contain.

If it were something that there was any truth to the statements that are being made regarding the process then, certainly, we would not be going through asking you what you think, producing another document and asking you to vote on it. It is obvious that what we are attempting here is to make sure that the process allows for us to be absolutely certain that what we go to London to negotiate with reflects what the people want. And that's what's important for all of us to understand.

I won't spend a lot of time on it, but I thought I'd just explain that to you because it is all well and good for attempts to be made because that's the nature of politics yes, but it is all well and good for attempts to be made for selfish political reasons. But it is certainly irresponsible to try to deny you, the people, the right to be able to go through a process that will allow you right to the very end the decision making to decide what you want.

So I would encourage you not to allow the rhetoric to derail this process, and certainly, I believe as we go through the presentation tonight you will be able to get a clearer understanding of the issues that are at hand and also you will be able to give your own opinions on it.

Again, I'd like to thank you very much for coming out tonight. Minister McLean, your own representative, is here with me. He decided he wasn't going to do the opening because he still wanted to enjoy Miss Marva's conch fritters. Might I tell you they are good! They are excellent. Orrett, they are A1 so you better make sure you get some before they finish.

Okay, folks. Thanks very much again for coming out. And, Suzanne, over to you.

Forgive me. Forgive me [laughter].

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** I ain't gonna be very long. I just want to welcome you all and thank you for coming out. Unfortunately, we don't have more people. I think it's absolutely necessary that people get involved in this process. I — I believe I started the process by delivering these two

booklets to every house in East End, and those of you who don't have them let us know and we will get them to you at your homes. But it's very important that we talk about this in our little communities within this community. This is, I believe, one of the most important things that this country will do for the next 30 years, to modernize its Constitution.

I would just like to echo some of the things that the Leader said and that is we have to be careful who we talk to. People like those who are saying that we are advocating for independence they are — they are really reckless in their behaviour and you have to — we have to try and stop them in some way.

It is very clear in this — these *Explanatory Notes* that we said we are not seeking independence. Just tomorrow's paper again the UDP has a big full page in there about independence, us wanting independence. There couldn't be anything further from the truth.

The problem with the UDP is McKeeva, and the problem with McKeeva is he does not want this to happen because he wanted to do it under his own terms during his tenure.

Ladies and gentlemen, I — if I could compare this country to Turks and Caicos, they just went through the same process and within a very short period of time got their constitution modernized but it was with the support and the involvement of the people in the country and that's all we need to do. Nothing is etched in stone in these *Explanatory Notes* or our proposals. It's about talking to the people, you the people, in order that we can get input from you. And wherever we need to change it we change it, and that's what we will go to England with. We change it. Nothing is etched in stone here. This is our proposals but proposals are proposals without being finalized.

It is very important that we become involved. We're gonna be having a meeting in Gun Bay as well. If tonight you haven't gotten a good grasp on it, then you can talk to me or you'll get the opportunity again when we come to Gun Bay, then you come back and you can explain your position at that time. This is a process, it is ongoing, and the detractors out there will make you believe there is something else in this. And, you know, the position they are taking now was not the position they took before.

We are not trying to take away the Governor's powers. What we are saying is that he should be able to delegate all of his powers if he so chooses. But he wants to make you believe — or they want to make you believe that we are trying to kick the Governor out and that's not true.

This country needs to modernize itself and move forward. We are one of the most, if not the most, sophisticated of the Overseas Territories and our Constitution is 30-odd years old. Why can't we come together as a people and move our country forward? It's not about Arden McLean. It's about my children, your children. It's about the future of this country, that we have more autonomy that we have . . . you know, we

dictate our own destiny and that's what this whole process is about. We need to come together as one.

You know, the worst thing about an adversarial environment is that you have to oppose everything you see and that is what is happening in our country. We need to stop that. We need to come together and get this thing done in the interest of everybody, in the interest of our children, the future, in our own interest as well. And it should not be about any one individual nor two such as the Leader of the PPM, the Leader of the UDP. It's not about them. They're not the only two that is living in this country, we're all here. It's our job to move forward the way we want our country to go and this is a good starting point.

Thank you all very much. I'm now — I'm going to make Suzanne do what she does best, she and Christen, and we'll be here to answer any of the political questions that you may need to ask tonight.

Thank you very much.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay, good night everyone. My name is Suzanne Bothwell, previously Lookloy. I'm the Director the Secretariat. And accompanying me is my colleague, Mr. Christen Suckoo; Miss Yvette Cacho at the back; Mr. Jason Webster; Hilmae Bodden; and usually we have Ms. Doralyn Stewart but I'm not sure she's here tonight.

Yeah?

Miss D, where are you?

Oh, there you are. Okay, you're listening tonight. Okay.

Well, that's the Secretariat team and they're the persons who usually make this happen for you, and I'd just like to thank them and to introduce them to you.

Now, tonight's presentation — tonight's presentation is really the last of the first round. And we've gone to many, many — well, all of the districts save for East End. We've spoken to over 400 people so far, and I know Mr. McLean said that if you are still not sure about some of the issues come back out. And he's spoken about the Gun Bay meeting, but I am going to encourage you to come to any of the other meetings across the Islands because we are going to be holding ten more public meetings until April. And you should have seen in the paper or so forth or here tonight the schedule of meetings. If not we will be publishing them in the newspaper and we'll be notifying the districts of when they're taking place.

Now the format of the first round is really presentation, but we always be well throughout the meeting give you an opportunity to ask questions, make comments. So if you feel that you have to say something or you want to say something, raise your hand up and our staff member will provide the microphone to you.

The meeting is being recorded by Radio Cayman. That's something we do for every single meeting so that those people who unfortunately

cannot make the public meetings are still able to listen to the information, hear the discussion, and you can do that, too. You can listen out for the future meetings and if you want to learn more, get bit by bit you might have to listen to all of the different meetings, but at least hopefully by the end of the day you will have a good understanding of what's happening.

Now, we are in a process of constitutional review, and of course this is not the first time we've been at this point. We were here — it's like *déjà vu*, we were here many years ago. But hopefully this time we can achieve something solid and concrete. And as you will see, if you look at the blue books that you have here . . . does everybody have a blue book, the *Summary of Proposals*, those at the back? If you don't have one, please put up your hand and you will be provided with a package of information.

And if you look at the cover of the blue book we see here a title that says The Cayman Islands Constitution: A Reflection of Who We Are. Now I just want to start at that point because a reflection of who we are is supposed to mean that at the end of this exercise our Constitution should be a reflection of who we are no matter what that is. And the only way that will happen is if each and every one of us take the time to actually know what it is that we have in our Constitution right now, think about or consider the issues that are at hand and determine what is the best way forward. Okay?

Now, perhaps some of us may have forgotten why we are going through this process, and the reason is because in 1999 the Foreign and Commonwealth Office (FCO) in the United Kingdom, who has oversight of the Overseas Territories — that's the part of the UK government that has oversight of the Overseas Territories such as the Cayman Islands — published a paper called The White Paper for Partnership, Progress and Prosperity. Now, that paper spoke about the relationship between the UK and the Overseas Territories, the different developments in the various islands, and there was one chapter in that document which spoke about the constitutional status of the Overseas Territories.

And in that document they expressed — the UK — FCO expressed certain things, one being that they felt that that document, that White Paper, was a good start-off point to encourage all of the Overseas Territories to review their constitutions so that they could re-examine both the UK and the territory but each re-examine the constitutional relationship.

And you may ask, well, why would they want to do that? And it's simply because as of 1999 most of the constitutions may have been from the 1960s, the 1970s, and they may have been triggered for particular reasons and there may not have been the level of input by the local people that may have been desirous, and that because of the development of the different countries there may have needed to have been some adjustments to the constitution.

Now, have other Overseas Territories undergone this process? And I started off by saying that this was a call by the United Kingdom for all of its Overseas Territories to review their constitutions. And the answer to whether or not other overseas have undergone this process is yes. We, of course, started the move to review our Constitution in 2001.

We have now seen eight years after the fact, or seven years after the fact that many of our contemporaries who are colleagues which are Overseas Territories have done that. Gibraltar, which is a British Overseas Territory near the Coast of Spain, they revised, successfully negotiated their constitution in December 2006. Or was it 5? Let me just double check. It was 2005 or 2006. Turks and Caicos also successfully negotiated their constitution in 2006, and the BVI (British Virgin Islands) successfully negotiated their constitution last year, May 2007.

The Secretariat during the second of course of meetings and in the beginning of March will be looking at or presenting to you, the members of the public, comparisons so you can see what these other places have negotiated and still maintain their status of Overseas Territory. Because this exercise is not one about independence, it is about revisiting the relationship between us and the UK.

Now, one of the things that you will see in this present *Summary of Proposals* is the whole global issue of examining relationships — and I've spoken about that just now. — and examining relationships between the local government and the UK government (which means the Cayman Islands government and the UK government), the Cayman Islands elected representatives and the Governor and also the citizen and the government.

Now, in looking at the . . . sorry. Looking at the relationship between the UK government and the local government, the first thing that pops out and you may see this is reflected on page [5] of the *Summary of Proposals*. So if we can turn to page [5] of the *Summary of Proposals* and you will see there a heading called The Executive. And it's speaking about full ministerial, government, Premier and Executive Responsibilities. And what is being proposed — let's go to Premier. What is being proposed is that the office of a Premier should have constitutional Responsibilities.

## THE PREMIER

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Now, what is a Premier? A Premier is what you want to call it. He may either be a Leader of Government Business, as we have in Cayman — Cayman's the only jurisdiction that has that name — or Chief Minister in Turks and Caicos and Gibraltar, or a Premier in the British

Virgin Islands, Bermuda and Turks and Caicos. And, really, that post is that of the head of the Assembly.

So, we know in our Constitution that Mr. Tibbetts became the head of the Assembly because he was voted in that position by the majority of the Members of the Assembly. Okay? So that is the Premier; that is what is being recommended here. And what is being recommended is that that office should actually have responsibilities.

Now, we know that Mr. Tibbetts as Leader of Government Business has — he wears two hats, he wears one as a Minister and he has subjects such as Agriculture, Planning, District Administration, just like how Mr. McLean has Telecommunications, Roads, et cetera.

But the other hat that he wears is that of head of the Assembly, Leader of Government Business. And under our Constitution there is nowhere we can find where it says what that person is supposed to do, what their role is, what their responsibilities are, what — how their position of seniority is reflected in the Constitution. And that is one of the things that we have seen other islands look at.

BVI (British Virgin Islands), Turks and Caicos, for example — you have to excuse me, I'm getting over a cold — they have in their review of their constitution made sure that that position of Chief Minister, Leader of Government Business, Premier has attached to it not only the title but also the responsibilities of that office.

And one of the things that you will see that — in the proposals that they are asking for is that the Premier should be able — and we can read it together — that there — that we believe there is general support for having a Premier (another possible title would be Chief Minister) who chooses the Ministers from among the MPs and allocates portfolios rather than, as present, a Leader of Government Business who officially has no special responsibilities.

Now, under our present Constitution it is the Governor who actually assigns the responsibilities to Ministers. So even though Ministers are elected by their peers in the Assembly to be Ministers, the assignment of their subjects come from the Governor.

So the question for you is whether or not you feel that this is something your Leader of Government Business should be able to do, because he is the head of his peers, he's been chosen as the head of his peers. As the head of his peers, he's been asked to go to deal with the executive decisions of the country, the Ex-Co Cabinet, and along with him he's allowed to carry a certain number of elected representatives and they're all assigned subject areas.

So the — what is being proposed here is that it should be the Leader, the Premier, who should be able to say that, for example, Minister McLean should have Roads and Works as opposed to the Governor saying that he should have Roads and Works.

## CABINET

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Another area that they are looking to see some advancement in is that when Cabinet sits that it should be — and it has its agenda, that that agenda should be formulated and prepared by the Leader of Government Business, because the purpose of Cabinet is to sit down and meet and create and establish the policies of government, and these policies are what will drive the projects that government undertake during their tenure.

So right now under the present Constitution the Governor sits as the head of Cabinet and he also sets the agenda for Cabinet. And under the present system there is no room but to allow the Leader to either share in that responsibility to negotiate what could go on the agenda or anybody else. So one of the questions that we have to ask ourselves is that does the present system with whereby the Governor sets the agenda himself hinder the process of government being able to conduct — is it such a big deal that this responsibility should remain with the Governor or should be vested in the Leader of Government Business?

Now, in the British Virgin Islands what we have seen, and this is perhaps what they have asked for, is that in the British Virgin Islands there is — the Governor used to set the agenda. What they have now changed to is that there is a steering committee, a group where which it consists of the Premier, the Cabinet Secretary and the Governor, and that group will determine what the agenda will look like. That has not been recommended here, it has been recommended that they feel that it should be the Leader of Government Business who should be able to set the agenda.

Now, also what is being recommended is that the Leader of Government Business, the Premier, preside over Cabinet. And what that would mean is that instead of him sitting as just a Member he would be able to chair Cabinet, and the Governor would also sit — would also continue to sit in Cabinet but he would no longer chair it. And in the British Virgin Islands what they have done is that they have not — what they have done is that the Governor there still chairs Cabinet, but if he is absent the Premier can chair. Under our present situation I don't know whether or not the Leader of Government Business is actually constitutionally allowed to share.

Mr. Leader, have you ever chaired Cabinet?

Okay.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Suzanne, what obtains now is when His Excellency the Governor, who chairs Cabinet as President, when he is either off Island, on vacation or ill the Chief Secretary, the Honourable Chief Secretary deputizes as the Acting

Governor and the Acting Governor would then chair the Cabinet. If neither one of the two of them are available, then whoever is acting for the Chief Secretary who is next in line would have been the Deputy Chief Secretary, then he would be acting at that point in time and he would chair. So, as of now it is the official arm of government that chairs Cabinet either via the Governor himself or through the delegated authority to whoever acts for him.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** So we see that — and then — we see that here what is being looked at is what should be the relationship between the United Kingdom and the Cayman Islands when you're looking at our Executive. Should they be in charge of everything in terms of should they be in charge of setting the agenda, presiding over Cabinet, assigning Ministers their responsibilities? Or should it be a sharing of responsibilities or even a handing over to a certain extent?

And we've seen in other islands that they have made up their mind what they are comfortable with. And I use them only as a point of reference but not to say that what they have has to be the right thing for Cayman. Because at the end of the day what we have to do is to go through the same exercise they have done; make up our own minds. We know what's out there; we know what the possibilities are; make up our minds; decide what it is in relation to the Cabinet that I would like to see.

### **GOVERNOR'S SPECIAL RESPONSIBILITIES**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** And the last thing in relation to responsibilities and examining the relationship is that it is being proposed that the Governor should communicate to the Premier reasons for actions taken when exercised when the Governor exercises his special responsibilities. Now what that means is that it is not every decision the government make — the Governor makes that he makes along with Cabinet. There are certain decisions that are his alone under the present Constitution, and some of these things relate to what they call special responsibilities.

And if you want to at some point in time figure out what the special responsibilities are all about, you can take a look at our *Companion Guide* to our current Constitution at some point in time. We actually have a question and answer guide at the back of it, the second half of it if you have any questions about any issue in the Constitution.

And you may ask, well, why is that it's being proposed that the Premier should be told what the Governor has done and the reasons he has done it. And it's simply because of accountability and transparency. Because the Premier is elected as the head of his peers in the Legislative

Assembly, he acts on their behalf. And there are certain government areas — governmental areas that he actually has no input in, he has no control over them, he has no input in how they are dealt with, and he may not even be aware of them. And these relate specifically to:

- the Governor's special responsibilities which are the headings of External Affairs, which means any sort of matter that Cayman Islands is involved with anybody outside of the Cayman Islands;
- Defence which would include, for example, you know, if Cayman Islands needs protection or if for some reason there needs to be — the Cayman Islands needs to be used for any defence purposes;
- and Internal Security which includes the affairs of border control in this country;
- immigration;
- prisons;
- Internal Security, for example, if something is happening in the Island that deals with the security of the Islands that that is within to sole remit of the Governor;
- they do include the appointment of civil servants with special responsibility but that is not something that features in this proposal at all, that is left to the Governor and the civil servants.

So we see that in these areas of External Affairs, Defence, Internal Security that if the Governor has to make a decision about these issues and they relate — and they will relate to the Cayman Islands — it is being proposed here that the Governor should tell the Premier what decisions he's made and why he's made them, because it will be — it will have some kind of impact on Cayman.

And someone at the end of the day may inquire of the Premier: well, what about this? What's going on here? And he should be not only in the know about what's happening in Cayman, but if he's not happy with it he should be able to at least — it gives him an opportunity to at least consider it, deal with it and then probably see what he can do to make things better.

Now, when they ask, well, if it is that the Premier is supposed to have, you know . . . require reasons from the Governor and, you know, we're saying now that, you know, these issues of — these special responsibilities, you know, they are supposed to be the Governor's sole remit, why are we — why are we in this discussion about sharing responsibilities, increasing accountability with the Governor and probably handing over some responsibilities to the local government? And that's simply because that in this day and age should there be any issue relating to the Cayman Islands that our elected government either doesn't know about, cannot have dialogue with the Governor or the United Kingdom about so that they can either provide their input or ensure that our interests are protected. That's really what this is about.

## EXTERNAL AFFAIRS

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Now, speaking about External Affairs, I just very quickly wanted to mention what is being proposed here, and you can go to page [7] of the *Proposals* and you actually — what you actually see here External Affairs and Internal Security below. And that is actually right now two of the Governor's special responsibilities which he alone deals with, him and those perhaps civil servants who have responsibilities for these subject areas.

Now, what is being proposed in relation to External Affairs is that **the Governor should in all cases consult the Cabinet in advance of any international agreement, and should require the approval of Cabinet if the agreement would affect the internal policy or require implementation by legislation.**

Now, this presupposes that this does not take place. It may take place informally but it may not be the standard practice. And even if it is the standard practice, then why not put it in the Constitution? Because as far as the document is concerned this is the sole responsibility of the Governor.

And Cayman is signed on to many international agreements through the United Kingdom because it is perhaps their public policy, it is perhaps consistent with their views on certain issues, and they're also extending the — the European Union obligations and it's also extending to the Cayman Islands these obligations.

So what is being requested is that before — in the future but before any international agreement is sent down to Cayman or is extended to Cayman that the government should at least have — the Cabinet should at least have an opportunity to — to discuss the matter, to be informed about the — any — any plans about that and that especially if it would affect our internal policies on Island, or if at the end of the day it will require the Legislative Assembly to pass a law to make sure those obligations are fulfilled in our country here locally.

And it's also saying that Cabinet should also be able to have responsibility over External Affairs which does not affect the interests of the United Kingdom. And what that means is that right now because we are a territory of the UK we are not able to independently sign treaties, we are not able to enter into any relationship, formal written relationship with any country. Even if we wanted to we couldn't just do it. Everything has to go through the United Kingdom. In order for us to even begin talking about the issue the United Kingdom has to give its consent and at the end of the day the United Kingdom has to sign the document. They sign the agreement.

So even like, for example, the Cuban — we all — we all know the Cuban Memorandum of Understanding (MOU) with the refugees, and

even though that is a — an agreement between the Cayman Islands and the Cuba informally, it is really one between Cuba and the United Kingdom on behalf of the Cayman Islands. And I don't think it is the Cayman Islands who signs that agreement but the United Kingdom signs it on our behalf.

And what is being proposed is that in some instances Cayman should have — our elected representatives should be able to directly enter into agreements with other countries if it doesn't affect any position of the UK. It is totally and purely a domestic matter.

And we have seen such a — we have seen a similar issue presented itself and actually agreed upon with the British Virgin Islands, and they have been able to negotiate with the United Kingdom in their constitution to allow them to enter into agreements with CARICOM, with other regional bodies. If, for example, it is an agreement in relation to tourism or finance industries, which is usually the pillar industries of most Overseas Territories, that they're able to do that directly. And what they also have been able to successfully negotiate is that if . . . sorry, I need to actually get a copy of that.

Huh? The BVI Constitution.

They've actually been able to negotiate an arrangement whereby the sole responsibility of the Governor has been handed down to the elected representatives to a limited extent. However, at the end of the day, these documents cannot just be signed away. They can't just be signed and that's it. There is a vetting process in the whole — in the whole thing and that would always be overseen by the Secretary of State in the United Kingdom and that's the person who under the Constitution is the person the Governor has to — has to account — be accountable to, he has to report to that person.

So what they have done — sorry. You have it?

So what they have done is that they have given the local government some flexibility to at least discuss arrangements with other countries on either various topics, various industry issues. However, at the end of the day, it is not just carte blanche handing over of the responsibility but it is still — there is still oversight by the United Kingdom.

And one of the . . . this is what I missed before. One of the things that the British Virgin Islands was also able to successfully negotiate was to allow their elected representatives to have dialogue with bodies such as the European Union.

And for the Cayman Islands this is very important simply because some of the decisions that the European Union makes direct Cayman — affects Cayman directly. And it is felt that the Cayman Islands representatives should be in a position to defend our interest if it arises, because if that is not the case what could happen — and I think that our Government has had the past experience of it happen — that our interests are at odds with the United Kingdom at times and the European

Union. And if our interests are at odds with the country that has responsibility over us, then the question is: who advocates on our behalf? And if constitutionally there isn't a provision for it, it just doesn't happen.

So that is something for us to consider. We will be, as I said, providing user friendly information about the proposal itself, going into a bit more detail, providing information about exactly what other Overseas Territories have found to be important to them and have been able to successfully negotiate their constitutions.

And then it will be up to us to determine in this area of External Affairs: am I happy with what is happening now? Am I happy with the current position? And if not, what do I think should be done? Do I agree that what is being proposed — all of what is being proposed should be to go through? Or do I — would I like to see something different? Do I think it should go further? Or do I think it should not go as far?

And that is where you come in. That is where we all start shaping our future together, because at the end of the public consultation period your views are very important.

If you have an opinion on it, it is crucial that you let the government know, you let the Secretariat know so that we can record it and when we are assessing all of the information at the end of the day and people are giving us feedback that your views are there, so that we can at least see whether or not your views are consistent with everybody else's, whether your views are opposing, whether they form the majority. But if you don't put your views in and your views are different than the majority view, then, you know, we don't know what will happen then. Your views wouldn't be considered because it's not there.

Does anybody have any questions about the External Affairs issue or that of the Premier in setting the agenda? Do we have any sort of views on that or questions? No?

You do? Okay.

I just need to get the microphone because we are recording to — for Radio Cayman.

**Question #1 (Member of the public):** I noticed that there is a proposal to change the Governor from making — setting the agenda. All I wanted to know is has there ever been a problem where he has decided to delay the process or . . . has that ever come up? Has there been a problem? There must have been a reason why it's been suggested and I'm wondering why basically?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Well, let me — let me say to you that the reasoning behind the proposed change was not necessarily because of a problem, but it's simply a matter of democracy.

The elected government is responsible for policy decisions, making policy. The official arm of government, including the entire civil service, is responsible for the implementation of those policies. It is the Cabinet who decides and ratifies those policies.

If Minister McLean's — if Minister McLean wants to develop a policy of creating a recreational and parks and cemeteries unit that didn't exist because there is a desire for a holistic approach so that there is regular maintenance on all of these premises, et cetera, et cetera, he prepares a paper to Cabinet which speaks to the budgetary allocations that will be required and the Cabinet decides on that policy. And bearing in mind once the funding is allowed, meaning the funding is able to be had and the Cabinet decides that that is in the interest of serving the people of this country the Cabinet makes that decision.

As it stands now, if Minister McLean after talking to his colleagues in caucus and we have all agreed that that is what we want to do, if he brings that paper to the Cabinet and the Governor doesn't think it's a good idea, the Governor can say, well, I'm not putting it on the agenda, and there is no constitutional requirement for the Governor to do so.

So, it is not a question of who the Governor is. It is simply a matter of clarifying the roles. The Governor is obliged to take the advice of Cabinet, but with regards to accepting the agenda, it is in his sole discretion presently. And the position is simple: he is not deciding the policies of the country; that is not his role. He is head of state because we are a British Overseas Territory at this point in time and we want to continue that relationship. But what we are saying is that we don't want the present arrangement with regards to where his lines of authority lie to remain as is.

And by the way, there have been some occasions when Governors have refused to put certain policy documents on an agenda, but I wanted to make it clear before that it wasn't because of that why we are suggesting.

**Member of the public:** Well, just to follow up before you go any further.

So — and actually, he can control the policies of this country?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I mean, you would have — you would have a real difficulty between the Governor and the Cabinet, whoever the Cabinet was at the time. But the fact is this is going to be a new constitution, it doesn't matter who is in the government after this once the Constitution is in place. That could still happen. And we are saying — and England is — once England agrees to that in the Constitution it means that they are in agreement with what we're saying.

England wants us to modernize the Constitution. There are a lot of gray areas in the Constitution that exist now, which over the past 30 to 35 years convention have changed things but it's not in black and white.

And many of the — many of things that we're speaking to in this Constitution and what we are proposing actually in practice it happens now but it is not in the constitutional arrangement.

Now — now this is not one of them meaning the Governor still has that authority and that authority is very clear. I'm not suggesting Governors abuse that but I'm saying that the Governor as Her Majesty's representative does not dictate policy. So the Governor, in our view, should not be the one who decides and what policy items come on an agenda.

**Member of the public:** You're saying he should not dictate policy because right now — right now that's what he can do if he sets an agenda?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Well, that is exactly the point.

**Member of the public:** Okay, that's what—

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Or not so much — well, you're right, dictate policy because he can say yay or nay by not allowing it to go on agenda. All that means if we don't have the proper constitutional arrangement is that you could have a government that is operating at all times with the Governor, their relationship is strained, and certainly no country can function properly like that.

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** I just want — if I may, I just want to add, if we take it in the context of England, the head of state in England is the Queen but she don't set the agenda for the politician.

You have elected people to develop policies and programs in your best interests. It should be them who decides what those are with your direction on how they get there with — that is with resources as the financial resources if the financial resources are available and it's practical to put those things in place.

And you elect those people based on their platform, the Manifesto they have, yeah we like that or we don't like that and then through the process of consultation or representation from the people in the country the politician do it, like what is in England. The Labour Party, the Conservative Party, whichever one, they drive their policies. The Queen is the Head of State but she don't set the agenda.

**Question #2 (Member of the public):** Can you hear me now?

What is the proposed term limit of this Premier? Does that mean that as long as the Leader of Government Business is in House and he's

the Premier, say, 24 years, 4 years, 8 years, 12 years? What is the proposed term limit?

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** We — we — we are proposing two consecutive terms, that is—

**Member of the public:** Eight years.

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** Yeah, eight years because we're not proposing to go to five years like most people are.

Eight years and — but that's not to say that the person can't run in the next general election, win, but he would have to stay — he or she would have to stay out as the Premier for at least one term before they could be put back there as a Premier. That's what we're proposing. That's not necessarily what the people will eventually say that we go and negotiate but that's what we're proposing.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Having lots of thoughts [inaudible]

**Question #3 (Member of the public):** [laughter] I actually have a lot of thoughts, really, but I am of the old school if something is not broken why fix it?

Now, yes, I do agree that within our Constitution there are numerous gray areas as we've mentioned, and yes, a review of the gray areas, I think, would be more adequate than for us to be changing our Constitution at this point in time. Because I like the idea of having a Leader of Government Business, I like the idea of having the Governor and the Governor function with its capabilities. There are 15 elected Members.

I am still from the old school; that is what I know. This is all new that is being proposed and I guess I haven't read enough about it to give you my full thought on it just now. However, my problem with a Premier is that we're all Caymanians. So, say, for example, I ran and I got in and I became the Premier, but we have a problem in the House and it directly affected my family. How does that — how does the Premier then get involved to say, well, okay, we do this or we do that, without affecting accountability and transparency?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But first of all, I have to ask you what's the difference between the scenario you're saying and what would obtain now?

**Member of the public:** Well, I like the Governor to set the agenda.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Oh, you're talking about setting the agenda.

**Member of the public:** I'm talking about overall, all of his powers that he has right now.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** All of them?

**Member of the public:** Yes. Well, there are some that could change but majority.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** With much — with much love, I think you should read some more.

**Member of the public:** Probably you're right—

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And then — and then —

**Member of the public:** But hey, you know what? We're here tonight, this is freedom of speech.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No, no.

**Member of the public:** My opinion is as good as yours.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** We're not arguing, sweetheart. All I'm saying to you is that — no, no, when you — that obviously came across wrong to you.

**Member of the public:** It sure did.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And that's not what I meant. When I said — you see, you had just said that you perhaps needed to read some more. Sorry. I do apologize. I didn't mean it the way I saw the expression.

What I was trying to say when I said about reading some more, all I — all I meant was, the fact that you had said that it is all new to you, all I was trying to say is that if you check on what the Governor can and cannot do now it is — it is almost like — and I used my son as an example last night at a meeting because he walked into the meeting, and he's 17 now and I could remember when I could change his diapers, or when I used to change his diapers. But he's still my son.

And I'm simply using that as an analogy just to say that where we are now as a country, the powers of the Governor does not allow the

elected representatives clearly to operate in a full democracy. The accountability is by the elected representatives to the people and that is how they either get elected or they get rejected and it is by their actions that they do that.

But the situation with the Governor is, he can have his own isms and schisms in his mind from whence he cometh and he can have his own convictions; and there really is no check and balance whether what his thoughts are in line with the thoughts of the elected representation or for that matter the people of the country, and there is no recourse at this point in time.

And that's really kinda why we're saying while he will retain his reserved powers that — as we're suggesting, we're not questioning the fact that he's head of state, we're not questioning the fact that he will have those reserved powers at any time, that if there is something that he sees that is wrong he speaks to London and says, well, this government that is down here elected they're doing so and so that's wrong and stuff like that. He still will have those powers, but we're just talking about the ordinary, daily routine of operating a government. And we want a framework, a governance model and a framework within that model that clearly outlines what the responsibilities are. That's really what we're saying.

And — and I know that all of us, not excluding any one of us here, by nature we're not so keen on change unless we have a clear understanding and we're happy and comfortable that we can go and wallow in it. And I know that some of the situations are not very clear once you haven't gone through the whole thing and really gotten a clear understanding of it is all I was saying.

If I offended you it is the last thing in the world I intended. Forgive me. I'm sorry.

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

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Okay?

### **GOVERNOR'S RESPONSIBILITIES**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I just perhaps want to bring the subject area into context.

We are not doing this because it's a nice thing to do. We have been asked to at least look at what we have. Obviously, the United Kingdom is not satisfied with the present Constitution, so they are looking to see some areas of change. And it's up to us to decide what degree of change.

And for those persons who are wondering what are the responsibilities of the Governor to the people of the Cayman Islands, I

would ask you to look at the Constitution. I think at the end of the day all of this, this entire exercise, has to be put into that context.

It is not about the elected representatives and what they can grab. It is not about the Governor. It is about accountability to you and how that accountability can be achieved either through your leaders or through the Governor.

And perhaps we can start off by looking at how is the Governor accountable to us. And think about that. Do we — can we identify how the Governor is accountable to us, because — we have to understand exactly what his role is. His role is to administer the government of this country on behalf of Her Majesty the Queen. It is not to administer this country on behalf of the people of the Cayman Islands. Those things are not necessarily 100 percent inclusive of each other.

And I'd just like to perhaps focus a bit on this whole issue of accountability and we're gonna deal with it from both sides because I think it's very important.

The very first part of our Constitution says that the Governor shall for the purpose of administering the government of the Islands have powers conferred on him by Her Majesty. Okay?

And he's supposed to execute all things that belong to his office according to his instructions. Okay?

So when he comes here he receives instructions from Her Majesty.

Now, we in good faith expect that all of these instructions will be carried out, because as good servants of the Crown that is what you do. But what happens if that doesn't happen?

Our present Constitution actually says that if he fails to carry out these responsibilities or these instructions that no court should even be able to inquire into it. So even if a court can't inquire into whether or not the Governor has carried out the responsibilities that the Queen says he must have, that means you can't inquire either and your elected representatives cannot inquire either. So what position does that put us? How do we ensure that there's accountability on all fronts?

And I think this is where we have to really begin to look at the issues, not about the elected government against the Governor. It is about how is it that elected government can carry out its functions because, at the end of the day, the Governor has not been put there by us. He has been put there by Her Majesty's government. The elected representatives have been put there by us to carry out our instructions. So what we need to ensure is that they have sufficient ability within the structure of the Constitution to carry out the overall instructions you would like them to carry out.

So if that will affect them doing their job, doing their job efficiently and properly, then there are certainly areas in the Constitution that we have to look at.

And I just want to take it from the position of who has allegiance to who because everybody has to swear allegiance. Before the Governor

takes office he has to swear allegiance, and under the Constitution his allegiance is to Her Majesty the Queen and Her Majesty the Queen alone.

In our present Constitution our elected representatives, their allegiance is to Her Majesty the Queen. But in the Constitution that we negotiated in 2003 the Cayman Islands government was able to manage to change the oath that our elected representatives are able to take so that when they swear allegiance and an oath for their office that they will — what they will do, they swear to carry out on behalf of Her Majesty the Queen. But I think for every person here it also adds that he — they swear to carry out on behalf of the people of the Cayman Islands.

So we have to understand or we have to at least in our minds begin to think about this process about how it is we feel the Government will be able to serve us best, and serve us best through our elected government and the Governor's office. So that is the context upon which this exercise is being carried out.

Now, this is something that the UK had been looking at and I — remember we talked about the issue of the Governor's special responsibilities? Really and truly it is almost as if that when he comes here he's assigned like a portfolio. So as I said before that Minister McLean has a portfolio for Roads, Works, et cetera, the Governor has a portfolio for Defence, Internal Security and those other areas. And you can look at that, I think it's either section 5 or section 7 of our Constitution.

And last year the United Kingdom made an observation in their audit office which stated that they're actually doing an exercise of managing risk in the Overseas Territories. And what was stated by the audit office when they audited the Foreign and Commonwealth Office (FCO) is that **there was a recommendation for Governors to consider strategies according to local circumstances** — and this is on the area of Internal Security which the Governor now has sole remit over — **and as such measures to strengthen local ownership and participation in police matters for existence — for instance, sorry, establishment of a police authority chaired by the Governor.**

Now, what they are saying is that even with these special — these portfolio responsibilities the Governor has that he cannot carry them out in isolation, and they've identified here one being Internal Security. They realize that he has to carry that out having in mind the local circumstances of the jurisdiction that he's to act as Governor. And they have recommended that there be a participation with the local government and, for example, they said an establishment of a police authority chaired by the Governor.

And what we have seen in other constitutions of Overseas Territories is that this has actually taken place, for example, in the British Virgin Islands, in Turks and Caicos, in Gibraltar. These islands have somehow been able to allow that the Governor go into partnership when looking at areas of Internal Security in their country to make sure

that things are done taking into consideration the local circumstances and being able to set policies that both the Governor and the elected representative feel are the best interest of this Island or those islands when protecting areas of Internal Security.

And this is not about, as has been suggested, giving politicians power over police, because what does that mean? It's not about them being able to say what sting operations they can carry out and what matters they can take to court. That is — that is the responsibility of the Commissioner of Police.

It is just like how Ministers are not able to micromanage their heads of departments. They set policy, they make broad-sweeping policies. They say, for example, I want a National Parenting Programme because I think we should do more in the country to improve parenting skills in the Island. So he's not going to go there and say, well, I think you should do this in East End and I think you should do this in North Side and I think tomorrow we should do this. That's not the job of a Minister. The job of a Minister is to set the policy, set the framework, set the stage for the theme of work — the scheme of work, and the technocrats carry out the details of that.

And that is the same thing that's being proposed here, that a National Security Council be formed which would include the Governor, the Commissioner of Police in what's being proposed here, some Ministers of government so that when there are issues of Internal Security they are able to be involved in the discussion of what to do. Because at the end of the day when a problem arises who do we go to? Who do we complain to? Who do we go for answers? I know it's not the Commissioner of Police or the Governor because in our minds we elect a particular person to act on our behalf so we expect them to be able to tell us what's going on. Isn't that correct?

So this is what this is all about. And I know last year there was an issue in the papers about this. I think when the refugees were picketing and persons were questioning their representatives. You know, that was an issue as to how much — how much are they involved in this — in the affairs of this country, how is it that they don't know what's going on about this. This is impossible. That's what some of the people were thinking and saying, and I know that some of the Ministers, you know, cracked jokes that when they said they didn't know what was going on that maybe their constituents didn't believe them.

So this is what, for example, when we talk about responsibilities of the Governor we're not saying that he can't manage the affairs of this country and that he can't have — we don't have the checks and balances in place. It is about partnership with the people of the country, with the elected people of the country.

The Queen has put him there to act on her behalf, to manage, to administer this country. Likewise we have put elected Members there on our behalf to help manage the affairs of this country. So shouldn't there

be partnership if not in all areas, at least most areas? And that I think is perhaps the core or central issue that we have to think about.

And the Leader of Government Business spoke about, well, you know, this whole issue about the reserved powers. And I know that perhaps people are not aware of what that is because having a responsibility and having a reserved power is two different things. A responsibility means that you have responsibility over an issue. A reserved power means that if the Governor is not happy with what he is seeing in how the Government is being run that he actually has a separate power that is outside of Cabinet, it's for him alone to change laws and to take specific actions to ensure that good governance remains.

And there is nowhere in the *Summary of Proposals* that says that they are asking for that to be taken away. Absolutely not. I mean, somebody asked about a deal breaker in the meeting in George Town and that would be a deal breaker. But that is not what's being asked here.

And I wanted to — if for those of you who are interested in looking at the distinctions of what special responsibilities and reserved powers mean, special responsibilities is section 7 of our Constitution and reserved powers is way down the back, has nothing to do with the Executive . . . let me see if I can find that for you.

It's way down the back, it's called — yes, it's section 38 of the Constitution. It says **if the Governor considers that it is expedient in the interest of the public order, public faith and good government (which expressions shall without prejudice to their generality include responsibility of the Islands as a Territory within the Commonwealth) and it goes on that he can introduce bills and motions to make sure that we preserve good governance.**

And that is a whole — so we have — we have responsibilities here which are like Minister's subjects and we have powers. And this is the power that is totally unrelated to anything to do with his special responsibilities.

So we see that this — any constitutional change that will take place will preserve the Governor's overriding powers to ensure that good governance prevails in Cayman.

But what is being proposed is that in those subject areas, those ministerial portfolios you may want to call them, that he has responsibility over — that he should at least be able to include the local government in some way in those areas.

So when you're looking at the *Summary of Proposals* you can take a look at that again.

So when you see that someone says, oh, this recommendation is to take away police powers and to tell the police what they can do, the day-to-day business that is not true. It is about, for example, if a national crisis happens in Cayman that the elected government will be able to sit and meet with the Commissioner of Police and the Governor to work out

how to deal with it, what funds to apply to it. If it was a larger policy issues they will be leaving —once they decided that they will be leaving to the Police Commissioner the execution of that. Okay?

Absolutely. I've been talking too long. Go ahead.

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** [laughter] No, I didn't mean it that way but . . .

A perfect example is the Governor has a reserved powers over the police — direct responsibility for police pardon me.

We cannot tell him or the police how to do policing. We have no responsibility to tell them that. But what we have is we can ask for a 24-hour-a-day policing in East End to protect our people. They will say to us that it's going to cost you \$10 more. We have to go and find that money and go to the Legislative Assembly and convince all Members of the Legislative Assembly and get that \$10 more if we want 24-hour policing in East End.

So, in effect, it's only the policy that we're going to have 24-hour policing in East End, but it's going to take \$10 more. They say it will take \$10 more. They're gonna hire all these people and what have you. Okay? Which is what, for instance, I did when I became a Minister, and today we don't have one policeman in East End. I can't tell them about police. But I'm telling you tonight I am going to tell them next Thursday evening what I have to say. So stick close to the ground. At the political mecca next Thursday evening I will be there at eight o'clock. I had enough of this.

We set the policy. We gave them the money and the 24-hour policing is not up here. I can't tell them how to do it, how many cars it's gotta be. They tell us that and we go and find the money.

Now, all we were asking is that the Premier, whoever that is, be a part of the discussion process, not to go and tell them how to do it. We don't need everybody inside there. But at least who do you think knows best about these communities? The Governor? The Chief Secretary? The Attorney General? Or the Commissioner of Police? Them four or the people who you elected? You think either one of them know better about this community than I do? No.

So all we're saying is we want to be able to advise you on what is happening in the communities so they can — and it's a partnership, I think Suzanne said that. It's a partnership so that we can ensure the safety of the people in the country. We don't want to take away his powers or his responsibilities. We just want to give him advice so that he can better serve as the head of state. That's it. Very simple.

Now, we committed — this Government committed when we went in there \$50-odd million to the police force over the four years. I think it's 55. Minister McLaughlin just whispered to me 55.

I came to this district and spent money over and above that to ensure the police station was fixed up and they ain't gonna put — and

then give them the money to do 24 hours of policing too, and still got no money? I can't go tell them how to do it, but I can explain to the people of East End and this country that they didn't do it!

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

Oh, thank you very much, sir.

**Member of the public:** First of all, I'd like to say that — I'd like to commend the Government for bringing this constitutional review forward, and I don't subscribe to the theory that if it works don't go about fixing it, because as far as I'm concerned, it's not working. And I've been — sometimes I feel for the — the Cabinet because I know as a normal citizen when something happens and it's as if your hands are tied, and sometimes I think, well, the Cabinet, their situation is not only the hand is tied but the foot is tied.

And so I think it is time that we really do something about it to review the Constitution and get a proper constitution in place. I know that some are yapping and howling about it, but it seems to me like if some people feel they're not gonna be in at the top that they try to stop the process.

But I think — as I said, I commend the Government for this move and also send some up. I'll say that in commending the Government, I want to also to commend the Government for some decisions that they've taken since they've been in. There were some things that you guys took a stand on and some things that you did that should have been done 30, 40 years ago. So I'm also commending you on that.

Anyway, coming back, then to . . . I agree with your proposal there that the Cabinet should — that the Cabinet meeting that the Premier should set the agenda because you, the Government, you've been elected by the people to serve and you know best what you need to discuss and what policy needs to be put forward. So I'm in total agreement that the agenda should be set by the Premier, I'm sure which will be in consultation with the other Ministers.

I also agree — some don't agree but I do agree with — that the Governor's powers should be limited to his special responsibilities and emergency powers. Again, it comes back. You are the elected — we elected you to work for us and if your hands are tied, at the end of the day, the Governor's not — not to be the one that gets the punch in it, you are.

So I want to — the elected representative needs to have a free — a freer hand, I think, in running of the country. So I feel that the Governor's power should be limited to his special responsibilities and emergency powers and then in all the other matters he works hand in hand with the Cabinet to resolve whatever problems come up.

And as to the National Security Council, I'm also in agreement with that. Although I would like to suggest that in addition to — it says that it will be comprised of the Governor, the Premier, Attorney General, the Commissioner of Police and two other Ministers appointed by the Governor, I would also perhaps like to see added to it that two members of the public, the general public, that the — or maybe at least one member of the general public could be appointed to this general security as well.

I understand from here it says the Premier; Attorney General; Commissioner of Police; two other Ministers. What I'm saying is that perhaps you should add to it one or two members from the public as well.

So that's all I have to say now. Perhaps I'll say a bit more later on. Thank you.

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

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** Really quickly, thank you for your comments.

I'll just comment on one thing about setting the agenda.

I think people are a little scared, concerned or apprehensive, I don't know, about when they hear that the Premier, who will be a Caymanian, is going to set the agenda for Cabinet. Well, I would — I would . . . and then the Governor wouldn't be setting the agenda.

I would draw those — those people who has that — who have that concern attention to the fact that it's us who set the agenda for the highest office in the country, and that's the Legislative Assembly, your house. Not no — not no Governor there. He has no jurisdiction over the Legislative Assembly. None. The only jurisdiction you may say he has is that we can't say anything bad about him on the Floor of the Legislative Assembly because he's the Queen's representative. We set the agenda.

This man, who is now the Leader of Government Business, and the Leader of Opposition, myself, Minister McLaughlin and Captain — Captain Eugene, we set the agenda for the Legislative Assembly. And then Mr. Alfonso is Chairman of the House Committee which says how the House — what kind of maintenance and what kind of policies we gotta put in place at the Legislative Assembly, whether we gonna put cameras in and what have you and what have you. And that's the highest, highest office of the land.

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

Do we have any other questions regarding anything that we've discussed or, in particular, the National Security Council?

No?

Okay, moving right along.

**Member of the public:** I would like to—

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Oh, I'm so sorry. Go ahead, please.

**Member of the public:** In regards to reserved powers—

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yes, ma'am.

**Member of the public:** —I understand from you that that Governor will retain his reserved powers.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yes, if you — if you—

**Member of the public:** I do not see it in this proposal.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, it's not saying that he will lose them.

**Member of the public:** But should we have it there to say yes, the Governor will retain his powers, his reserved powers.

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

**Member of the public:** I think just the same as anything else that's put here that should be put here for the people to know.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay, well, thank you very much and I will definitely take that on board, because I think perhaps it is a point that does need clarification during the public consultation period. But for the benefit of those who are here tonight and those who will be listening on Radio Cayman, the *Summary of Proposals* really only sets out what they would like to see changed. So it really makes no comments about what other — what other things exist in the Constitution, because we do have a lot of other provisions relating to the formation of the Grand Court and Court of Appeal, the other aspects of the Constitution.

But I do thank you, ma'am, for your observation and I will definitely take that on board for future meetings. And perhaps you will provide some explanation and clarification on the distinction between special responsibilities and reserved powers and how sharing of special

responsibilities does not affect, in any way, the overriding powers the Governor has to ensure good governance in this country. And — and those specific powers are separate, they are spelled out very clearly in the Constitution, and they absolutely — there's been no suggestion in the *Summary of Proposals* that he be limited in any way in relation to his reserved powers.

And one of those reserved powers is that he can disallow a bill before the Legislative Assembly, and there has been no recommendation about him being able to exercise that in particular power.

But I do take on board your point and we will note to make note of it and observe it for the future.

**Question #4 (Member of the public):** Another question.

In relation to the agenda set in, why is it that we can't have a model similar to the BVI?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** BVI? Well, if we do go through this process — if we do go through this process and we do make recommendations, some of which we have made are similar to that of the BVI, then our Constitution may very well look kind of like theirs. But their country — their people had to engage in this very same process. They didn't — I don't expect that they just took the BVI — their . . . somebody else's constitution and just took it, carbon copied it and had it approved. Their citizens have to . . .

Well, because the United Kingdom has asked that each country take its own responsibility to look at what it wants, and it has actually placed on the Cayman Islands government an obligation that it must find out from the people of this country what they want.

So I will be — in the other meetings between now and April we will be comparing and contrasting our Constitution to other ones, and that will be for everyone's benefit.

And as I said, yes, there are things like, for example, Turks and Caicos has revised their constitution, but their constitution doesn't go as far as the BVI because perhaps their community felt that they were only comfortable doing certain things. And actually, they did not have the benefit of the BVI — new BVI constitution because they — BVI hadn't actually negotiated theirs yet.

The BVI has now been able to look at their situation, negotiate with the UK about what they want and they have come up with a document that seems to meet the needs of what their government and their people want with the UK's consent.

We in Cayman are at the stages that these communities were at. And perhaps the advantage that we now have is that if we do want to see advancement that we can take on board some of the things that they have done. But in taking on board what they have done we have to

decide whether or not we want to go *whole hog* with it or we want to tweak it to make sure it looks like what is for Cayman.

And as I said, actually, when we were preparing the *Summary of Proposals* and putting them together these proposals did not just happen overnight. They happened with close scrutiny and examination of other jurisdictions and examination of what the Government felt was the direction it believed was a positive direction for the country to move in. And so that perhaps is where we are at and that is why you will see that there are some similarities in what's being recommended in other islands, but in some cases we either have not gone as far or we have asked for something a little bit more.

I don't know if the Ministers would like to speak a bit on that.

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

Carol, thanks — thanks for the question. I don't know whether you have a copy of the red Book which is called *Explanatory Notes* with you. You have that?

Well, if you look at page — pages [8] and [9] you will see some explanation about the — what are called the Governor's special powers in this document which are the reserved powers that you spoke about. And that explains what we are proposing in terms of what we call modernizing the Governor's special powers, recognizing that those powers which are, essentially, to maintain peace, order and good government remain but in a modified form. Essentially, the modifications are: (1) that the Governor, in all cases, act for the benefit of the Cayman Islands and in a way that is justified and proportionate. You might ask why that is necessary.

Well, that is necessary because increasingly the interests of the Cayman Islands and those of the United Kingdom do not necessarily coincide. We've had a number of examples in recent times where the UK has felt it necessary to do certain things in order for her to continue to comply with her — what she calls the international obligations. We've seen that in relation to initiatives that have — and Carol would be very familiar with this — that have affected the financial services sector and so forth.

So what we are proposing is that there is — that his powers be modified so that when he's exercising them he must act in the interest of the Cayman Islands.

Now, it is quite possible that the UK, when we get around the negotiating table, may say they're not going to accept that proposal because they think it might — they may think it would cause conflicts with his duty to Her Majesty, because increasingly the relationship is getting more complex as Cayman becomes, you know, a more mature, more complex place which has its own economy, which has its own

industries, some of which compete with the UK's; the financial services industry is one of them. So there is this tension which is bound to exist.

And what we are proposing is that because the Governor has those dual responsibilities, one to Her Majesty's government and one to the people of the Cayman Islands, that the Constitution actually expressly says that he has that duty to put the Islands . . . well, I wouldn't necessarily first, but that he exercises his special powers bearing in mind his duty to these Islands.

And then if you look at the other — on page [9] you will see something headed Delegation of Special Responsibilities. This is another — these are other modifications that we are proposing to those special responsibilities. You'll see, in particular, the Governor's given special responsibilities in the areas of Defence, External Affairs, Internal Security, police and the public service appointments. But under our current Constitution, unlike the constitutions of some of the other Overseas Territories he doesn't have the ability to delegate any of those responsibilities to elected Ministers.

This is one of the areas of conflict at the moment which Arden referred to, is this situation with managing the police. The Governor takes the view — this Governor takes the view that because the Constitution doesn't allow him to delegate any responsibility for Internal Security that that precludes him from having any discussions or allowing any of the Ministers or even the Leader to be involved in discussions relating to policy for the police.

It is a source of constant tension because you, the electorate, justifiably, understandably look to your representatives when there are issues involving crime or lack of suitable police presence and so forth. Because as our representatives say to us all the time and say to me regularly as we're saying it this evening when I try to explain to them that we don't have responsibility for the police so *why I elected you for then?*

And that is the dilemma — that is the dilemma that your elected government finds itself in, in many instances because we are held responsible and accountable by the electorate for things over which we have no control.

So contrary to what you may hear and see, we are not suggesting for a minute that — that the elected government directs what the police do; that we appoint police officers; that we deal with disciplinary matters; that we interfere with investigations. Nothing like that.

What we're proposing is the creation of what we're calling a National Security Council, which a number of the other Overseas Territories have now gotten to as well, which would comprise the Governor, the Attorney General, the Commissioner of Police and representation from the elected Ministers in discussions about policy matters relating to the police.

So, I hope that sort of helps with both of those questions.

Was there something else that I forgot that was raised?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Why we haven't — why don't we just follow the BVI model.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Oh, the answer why we don't just follow the BVI model. We could. We can. This is — what's in these documents are the proposals of this government based on our own experience or research and the legal advice, the constitutional advice we've gotten. But at the end of the day, what appears in the Constitution should reflect what the majority of this country want.

So these are our proposals and the answer is: of course the Constitution could include a provision like TCI (Turks and Caicos) have — or BVI have. And one thing about going that route, if that's the route we go, is we know that the UK will accept that because they've already accepted it in relation to BVI.

So our suggestion on this side from our experience was that we feel on the agenda point is that the Governor under the current Constitution delegates to each Minister responsibility for various portfolios. I have Education and other things; Minister McLean has Communications, Works and other things; and the Leader has District Administration, Agriculture and other things.

On a day-to-day basis he — the Governor is not involved or concerned with what we do. But when a Cabinet decision is called for, I have to persuade the Governor that I should even be allowed to talk about the particular education — or change the education policy that I am proposing. I can't even get it on the table in Cabinet to be talked about, forget about what the position is, to even talk about it unless he agrees to put it on the agenda. And if he decides today that the paper is late and he doesn't want it there or the agenda is too full, it doesn't get there.

What — what we are saying, this is a question about basic democracy and accountability. I have been charged with responsibility for education. You are not going to blame the Governor if the educational policies are implemented which I have promised you as part of my campaign, of my platform that I'm going to deliver to you if you elect me. You're not going to blame the Governor for that you're going to blame me.

So, essentially, what we are saying, we have that constitutional responsibility. It is for us to decide what goes on the — or it should be for us to decide what goes on the agenda to be discussed by Cabinet.

The Governor will — in our proposal will still sit in Cabinet, he just wouldn't be in the chair and he wouldn't have a vote — well, he doesn't have a vote now, he would be just — he sits in the chair and he decides whether to accept the advice that we give him or not.

But the Constitution says that if he's not going to accept our advice on matters which affect domestic policy, then he has to essentially get the approval of the Foreign and Commonwealth Office to not accept that advice.

So it is — so in practical terms, in the majority of instances there won't be any real difference in result. It's just the difference of who is in charge of the process, of the procedure. And we feel at this stage of Cayman's maturity we are, without a doubt, the most successful of the Overseas Territories — Bermuda might argue otherwise but we think so and I think most people think so.

We ought to be in charge of our own domestic affairs. We should be able to decide whether we talk about my new education law today or next month. And it shouldn't be a matter for the Governor to decide, oh, well I don't think we should talk about this today. Let's put that over to next week or the week following. Or the paper isn't in the correct format, I think you need to change paragraph 3. Those are the kinds of things that occur and can occur in the current format.

We say the elected government should be firmly in charge of the agenda for which we have been elected, which we have campaigned on the basis of I persuaded you to vote for us because that's what we want to implement and that's what we want to do.

So that's — that's the reason for it. But as I say, why we can't have the BVI? Of course we can have the BVI. If people feel that the Governor still ought to be involved in setting the agenda, then we will listen to that because that's what the majority — if that's the majority of the people want.

### **PREMIER/LEADER PRESIDING OVER CABINET**

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

Minister McLaughlin, just since you just touched on the Cabinet, perhaps you can just talk a bit about the whole issue about presiding — the Premier or Leader presiding over Cabinet and the practical implications of that.

Right now the Governor constitutionally presides over Cabinet and we've heard that if he's not available it is the Deputy Governor who would preside; "preside" meaning chair.

Now, if that position changes or based on your recommendation the Premier should preside, in terms of exercise of power or — or control over Cabinet, what changes would be made and what would remain the same in terms of voting or maybe summoning Cabinet?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** I'm going to try to answer what I believe is the question but I—

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

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** But I'm not quite sure I — I'm — I understand exactly what you want.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, if Cabinet — if the — what is being proposed is that the Leader preside over Cabinet instead of the Governor which presently obtains.

If the proposal is accepted what would change and what would remain the same in relation to presiding over Cabinet — the person presiding over Cabinet?

For example, the Chairman, the person who presides over Cabinet, summons Cabinet. Right now the Leader cannot summons Cabinet, can you?

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Oh, I see. I see what you're saying. Yeah.

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

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** This is an extension of — of the earlier discussion about actual control. The Governor has to — to summon a meeting of Cabinet. So if — although I believe if the — if Cabinet — if Cabinet Ministers go to him and give him certain notice that we can require him to — to hold a meeting of Cabinet but, essentially, we are not in control of the Cabinet — the process getting to an actual Cabinet meeting; the Governor is.

Under our proposal it would be the Premier who summoned Cabinet and who chaired Cabinet meetings rather than the Governor. So it's a shift or a rebalancing in the powers. Essentially, that's what this proposal is about.

Under the current Constitution all executive authority is vested in the Governor, and he then delegates bits and pieces of it as he sees fit and in accordance with the Constitution to — to Cabinet Ministers.

What we are proposing is — is a rewrite essentially of the Constitution where the Constitution actually carves out who has what

responsibility and who doesn't as opposed to the current case. So it's about rebalancing the executive power between the elected government and the Governor, resulting in significant reduction in what the Governor has direct responsibility for. But the Governor would retain his — we talked about that a little earlier — special responsibilities and emergency powers in the event that he and the UK felt that things were not going the way that they want to go.

And so, as long — 'cause we recognize that as long as there's that constitutional link between us and the United Kingdom that ultimately the UK has the final decision-making power if she's unhappy with the way things are being run.

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

I think — and even a simpler answer than that would be that if — if it is agreed that the Leader of Government Business should set the Cabinet agenda, then does it follow that he should be able to at least say when Cabinet is called?

I think we have a question.

**Miss Lucille D. Seymour, BEM:** Thank you, madam.

I promised not speak but it just occurred to me while sitting here that we are looking at the Cabinet as a whole, as a whole entity. But Cabinet must have some relationship to the Legislature, which means that it is a decision body; it makes the policy decisions for the Legislature in a Minister's meeting. So I think we have to put — we have to relate Cabinet and the Legislature together.

And I also thought that where we made a mistake very early in life is when we took away the presidency from the Governor of the Legislature. The Governor was once in charge of the Legislature. And they changed the Constitution to remove him so that the Legislature was governed almost entirely by elected people. And there was not a change with the Cabinet because Cabinet is part of the Legislature.

And I think if we can look at it as Cabinet as not a whole entity but part of something, then we would see why we are moving to empower the decision makers of the Legislature who are the Ministers in a different way — or in a better way.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you. And again, this goes back to the issue of accountability and partnership.

Now, we do have a few minutes — a few topics left and I don't want to keep you very late tonight so I'll move on very quickly.

And we're moving to the issue of the judiciary.

## THE JUDICIARY

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Now, under the present Constitution the Governor's responsible for appointing judges of the Court of Appeal, of course, with consent or the permission of the United Kingdom, and judges of the Grand Court are appointed by the Governor in his sole discretion.

And this of course is a proposal in the *Summary of Proposals* and a further explanation in the *Explanatory Notes* about what the proposal regarding the judiciary should be.

And the statement that was made was that the Cayman Islands' reputation rests greatly on the existence of rule of law, access to prompt justice and a high quality and independent judiciary. The Cabinet should provide — must provide adequate support to the judicial administration and that all public officers must at all times remain — preserve the independence of the judiciary.

Now, the question is: what about judicial tenure, what about the discipline and so forth of appointment, discipline and removal? And the present situation in our Constitution is that the Governor alone appoints the judiciary. When it comes to their discipline, a tribunal has to be set up or the removal — a tribunal has to be set up under the Constitution which investigates the matter, which gives the Governor a report or its findings. And he then doesn't make a decision about the removal or discipline of those judges, but it has to go to a committee in the United Kingdom.

Now, what has been proposed is that the — anything relating to judges in the Cayman Islands should be dealt with through an independent local body, and they proposed a Legal and Judicial Services Commission.

And the creation of this body would be — it would be either appointed by the Governor and the Premier and the Leader of the Opposition would be able to recommend persons, laypersons, to sit on that Commission. And it has been recommended that a member of — members of the legal community should sit on that Commission along with the Chief Justice and the Court of Appeal. And this body would be responsible for making policy decisions about the administration of justice in this country. It would be responsible for appointments of the judiciary, discipline of the judiciary and ultimately removal of the judiciary.

So therefore it is being — this is a constitutional change that is being proposed. Right now we've seen that the appointments rest with the Governor alone in some instances, and that the discipline and removal of the judiciary is dealt with in part here, is dealt with in part in the United Kingdom, and is that the best system for our country when it comes to the judicial administration as a whole?

And the suggestion that's been made — the proposal that's been made, this has also been actually put into effect in other British Overseas Constitutions. And you will see on the screen that you will find judicial and legal service commissions in jurisdictions such as Anguilla, the British Virgin Islands, Turks and Caicos Islands and Gibraltar. So, really, what it is doing is moving — kind of making a cohesive body, an independent body to take care of these matters as opposed to it being addressed in a piecemeal way constitutionally and in practice.

Now I'd just like to move on to the issue of human rights if we don't have any questions about the judiciary, or comments.

Okay?

We have a question or comment?

Please — yeah, the microphone. [laughter] Thank you.

**Member of the public:** My comment was — my comment was that I think it's — that Commission is very much needed. This has always been my — in thinking of what's going on in government, those type of things sometimes really cut across my . . . I don't know what the right word to say [laughter] But I think that a Commission is really needed because I often wonder about appointment of judges and stuff like that, and I think as proposed here should be the way that we should go.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you, sir. And I just want to clarify the point that there have been some suggestions that the present constitutional proposals will give politicians power to appoint judges, and that is actually absolutely incorrect.

What it does is that the formulation of an independent body first and foremost preserves the independence of the judiciary which is very important in a democratic society, because the whole reason for the independence of the judiciary is to — so that the political arm of government does not get involved, does not have undue influence over the judiciary.

What will change is who handles the affairs of the judiciary in terms of appointments, discipline, removal, and that would be not only the Governor as one person but persons appointed by the Governor with the recommendations of other groups such as the Leader of the Government Business and the Opposition. And he would — they would recommend laypersons or persons from the community, members of the legal community will also be in this body, and also the Chief Justice and the President of the Court of Appeal himself.

So, these are the persons who would be in control of hiring judges, looking at disciplinary matters in relation to judges and ultimately the removal of judges. They will also be required to have set policy regarding the administration of justice in the Islands.

For example, it has been suggested that if they saw it fit as a policy decision that because of the industries in Cayman we should have a commercial court, that shouldn't be left to the Chief Justice who runs the court, but that should be left to the oversight body of the judiciary, the whole administration of justice to say look, as a matter of public policy, the policy that we believe is in the best interest of the Islands, how this should take place and in effect they will provide a directive to the arm of the judiciary who would be responsible for implementing that kind of court. And that would — that would be, for example, like a family court. You have heard of all of these things, you know, being discussed.

So the recommendation is to actually preserve the independence of the judiciary and it's not about politicians having power or control over the judiciary as seems to have been suggested in tomorrow's paper, in the Cayman Net News.

## HUMAN RIGHTS

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Now, I'll move on to Human Rights. That is also an issue that has been raised in the *Summary of Proposals*. And I'd just like to take all of us to the section in the *Summary of Proposals* which deals with Human Rights. That may be found on page [3].

And it starts off by saying that both the 1991 and 2001 Constitutional Review Commissions supported a constitutional bill of rights based on international conventions. And it goes on to say that having these rights in our own Constitution has the advantage of Caymanising our rights, adding rights based on our own aspirations such as respect for our heritage and environment, the right to government information, the right to be treated fairly by all public officials and the rights of children not to be exploited.

Now the purpose of human rights is really so that the state, meaning the government, upholds its obligations to its community. And very broadly these obligations fall into three categories:

- Obligations to respect;
- Obligations to protect; and
- Obligations to fulfill

So, for example, obligations to respect would mean respect the views of other people, so they would not be able to impose value systems on the community, for example, regarding freedom of religion or right to education, access to education. They also have to protect one's rights so, again, education. It is a universal right that an individual should receive education, that the state who has control of the resources provides a

means by which a child can be educated. And therefore the human right is that that child should be able to access education in that country.

So that is how a human right protects an individual right because it places an obligation to protect that right on the state. It also places an obligation to fulfill rights of individuals.

Just please hold for a second while I just perhaps find that section here. I want to make sure I get it right.

Right.

And for example, the right to life; the right to vote; the right to health; the right to food. Now, in our community we take many things, for example — for — for granted. We have a social services system whereby those who are impoverished, those who are destitute, those who fall on hard times, those who are indigent are able to rely on the state, on the government to protect them, to fulfill their needs.

And we in the Cayman Islands have existed in a culture of human rights for quite some time because as an Overseas Territory we do have obligations, international obligations to adhere to principles of human rights. We are signed on to approximately seven Human Rights conventions.

So over the course of — over the decades our government departments in carrying out their policies and in carrying out their work, in whatever they do they have to be mindful of the human rights obligations to the community. And that is why you see them operate in a certain way.

So, however, the question that some people are having, and I'll just probably raise it before you ask me, is: well, what about the issue of marriage? And that is something that has been discussed at length in our community over the last year and the answer is, is that this is not an issue.

In 2003 when we had our draft Constitution, when a Bill of Rights was actually put into that draft Constitution, there was a definition of marriage there, "right to a married life" which meant right to a married life of the opposite sex. I suspect the reason it was worded that way is because at the time the negotiators of course must have taken on board the views of the community at the time and made sure that was reflected in the Human Rights portion of the Constitution.

The issue has come up again a couple of the meetings and we have assured people that if this is the majority view of people that a provision similar to the 2003 Draft or a provision similar to what the BVI has done, which has — which puts it back on the local law would actually — that would be the final recommendation that they would be. That would be the negotiating point that when they reached Bill of Rights and they reached discussing Bill of Rights with their community that they would discuss the right to marriage in that way.

But, again, we are — this is what — this is the recommendations we received, feedback we've received so far, so if you still have concerns

or questions about it, please feel free at this time or any time to discuss them with the Secretariat.

And some people have raised concerns about, you know — you know, what about that Human Rights will really make Cayman fall apart. And that is, I think, a very poor starting point when we look at Human Rights. It is not an accurate starting point.

And remember in the beginning of the presentation I said that this whole exercise that we're in is about examining relationships? Well, this part of the Constitution is about examining relationships between the individual, each and every one of you here tonight and your local government, because Human Rights span many, many areas. It spans your right to participate in public life, your right to vote, your right to food and shelter. It goes on.

And if you want to know about all of the Human Rights, you can, you know, look in the public libraries. We will be — we actually had a newsletter out I think it was in November last year which discussed Human Rights issues and you can call the Secretariat but we will be putting a lot more materials. If you want to have a more global understanding about what Human Rights are then, you know, we will do that.

But the reason why it's being raised is that we are operating from a premise that if the Government is going to negotiate a revised Constitution, a Bill of Rights will have to form part of that. So what we are doing here now is that if there are things that you would like to see in a Bill of Rights, for example, rights of vulnerable groups, rights of the aged, rights of the disabled, rights of children, rights of the environment, then those are things that they will look at to see whether or not it can go into a Bill of Rights and they will negotiate that with the United Kingdom.

If there are rights that you know are Human Rights and you've read the sections and you see there is something that you are not comfortable with, then we also want to hear from you as to whether or not what your views are.

And what we'll be doing is we will continue to have perhaps special meetings on Human Rights alone because Human Rights itself cannot be covered here tonight. It has to be dealt with I think in its own — in its own environment so that you can also have an understanding about it.

Now — and if you want to just have a read or get a cursory look at what some of the Human Rights are and what some of our — Human Rights our country negotiated for is the 2003 Draft, this document here, actually has in it a Bill of Rights that was proposed in the 2003 Draft. So if you want to look and see what some of the Human Rights are you can be able to identify them here.

We do have one person who has a question or comment.

**Question #5 (Member of the public):** I don't want to be the only one that say anything but . . .

The Human Rights section there, are we to understand that they will be enshrined in the Constitution?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** That's what's being proposed, yes.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Actually, it goes much further than that.

The UK have made it very clear that there is . . . if there is such a thing as a deal breaker that's a deal breaker, that the Bill of Rights of each Overseas Territory must be — must have constitutional backing so that successive governments just can't change it at will. Essentially, they want to make sure that — that it is afforded the protection of the higher law of the Constitution.

They made that clear to us a long time ago actually that that was a non-negotiable point.

**Member of the public:** Well, I guess as you said, they made it the point that it's non-negotiable. And I suppose this is one reason why I'll play the opposite advocate now and say that somewhere along the road, whether we agree with it or not or thinking about it now we might have to cut ties but anyway that's in the future. But I'm wondering — I'm speaking upfront.

Anyway, what I would say about this Human Rights Bill that it should be worded very carefully because people are concerned about things like the gay marriages and stuff like that. And I think it can be worded in such a way that we could include what we really want to include and include it in the way that it should be done.

But what I wouldn't like to see is that Human Rights become human wrongs. And by that I mean there are some people that believe that their particular idea which might be something that can harm someone but they believe that that's their right. So we want to word it carefully, as I said — and I'll repeat that again — so that Human Rights won't become human wrongs.

This — these are some of the, I think, the jittery points that people are worried about, the gay marriages and the witchcraft, for instance, one will be, I suppose, could practice witchcraft. Again, if it's worded in such a way it could be said something to the effect, you know, that any type of "religious practice" (because witchcraft now is included under religion) that would damage or hurt would not be tolerated or something.

What I'm actually saying is if we're gonna have a Bill of Rights, and it's obvious we have to have a Bill of Rights, time must be taken to formulate it, put it in such a way that smart lawyers will not be able to tear it to pieces and get around it anyway.

Thank you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yes, just to answer some of your concerns.

I didn't mention earlier about that. In the 2003 Draft Constitution the issue of marriage was addressed in the Bill of Rights and it said that — it said that **every man and woman of marriageable age as determined by or under any law has the right to marry a person of the opposite sex and found a family**. So, that was already dealt with and addressed in the 2003 Draft Constitution.

In the BVI Constitution they've also taken a similar position about what they have said. They actually didn't put the opposite sex part in the constitution itself, they absolutely left the definition for their Domestic Law.

So definitely that is where we can discuss the Human Rights. You know, we want to know what is it that you are concerned about and I think that is crucial and key at this point in time, so that the Government — we can — if they're going to negotiate on your behalf they can say look, when they reach the point for Human Rights to say we have ten areas of concern that have been raised by our community and these are they so let us see how we can work this out. And then it's not only about what we're concerned about, it's also perhaps what else we would like to see in the Bill of Rights.

And I just want to raise an issue of witchcraft; you mentioned that. The reason why we are saying we need to Caymanise our rights and localize them is because part of the advantage of doing that is you can have certain limits on certain rights.

**Member of the public:** Yes.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** And that is actually part and parcel of the expectation that when you become a member to these treaties it is expected that you then take that and put that in your domestic legislation and tailor it to suit your needs. Now, mind you, you can't tailor everything and you can't change everything because you might end up taking away all the rights, but there's certain areas that you can work with.

And I just would like to perhaps draw — read out for — and those persons who are wondering about, well, how can we limit particular rights and why would you want to limit particular rights?

And I have here a Human Rights Handbook for Parliamentarians that was published by the office of United Nations. And they say here that **many obligations to respect Human Rights are subject to so-called limitation clauses. The exercise of political freedoms such as the freedom of expression, assembly and association carries with it duties and responsibilities and may therefore be subject to certain formalities, conditions, restrictions and penalties in the interests of**

**national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of public health or morals or the protection of the reputation of rights and freedoms of others.**

**If people misuse their freedom of speech and of participation in a demonstration for incitement to racial or religious hatred, for war propaganda or for instigating others to commit crimes governments have an obligation to interfere with the exercise of these freedoms.** So, we do see that they can actually limit rights. So the Government has to look to see where are the areas of risk with these rights and where is there need to limit.

And the reality is, is a lot of this is already in our local legislation. In our Penal Code, for example, we can't have riots and incitement here, you know, and we — cultism is one of those things. These things are actually already offences in our Domestic Law.

And that is what the Human Rights is there to do. It's there to explain the beginning and the end of a right. And where it's an end of a right you won't find that end necessarily in the Constitution, that end has to come in the local legislation.

So — so that is why, you know, Human Rights it is something that we need to look at because we actually live in a society of Human Rights. What is lacking is the ability for us that if there is a breach of our right to protect that right, that is where we are running into problems in Cayman. Because we don't have a document in our local legislation that tells us what our rights are. We have laws that tell us what we can't do but it doesn't tell — we don't have any — a law that tells us what we can do or what we are entitled to.

So this is why I say Human Rights — the Human Rights aspect to the Constitution is really looking at the relationship between the government and the individual people of this country, because the overarching purpose of a Human Right is to protect you as the individual. And I think that we are fortunate in Cayman to have had Governors and governments who, for the most part, have been adhering to Human Rights' principles, civil servants who have made sure in implementing policies, government policies, but they at least take into consideration the Human Rights standards and apply them informally, *informally*.

Many times what you see the departments do is that if they are implementing things they will go and look at the UN Charter on adoption and the UN Charter on this and that to see what the international benchmarks are, what the international standards are to make sure that when we implement it locally that we are not operating in a way that may offend an individual's rights.

So we actually culture of Human Rights but what is missing is our ability to Caymanise it and to explain where the rights begin and end and

secondly for us as individuals to seek adequate remedy before our local courts.

So as I said, I don't want to spend too much time on this but I think I've given a hopefully rounded explanation of the relevance of Human Rights in our Constitution.

And we will be holding special meetings either on air, on our radio show on Radio Cayman Mondays and Fridays 12.15 *Constitutional Conversations* or putting out press releases and more written information for you.

And as I said, if you have any questions for us between now and the end of the public consultation period, find us and we'll try and answer them for you. If you have concerns find us, we'll put them down and make sure that those get on that list so when our country is negotiating our new Constitution that our Government knows that this is something they need to look at.

We do have one question or comment at the back.

**Question #6 (Member of the public):** Thank you, good night.

I'd like to ask if we could be informed as to whether or not section 11 of the 2003 Draft Constitution which deals with freedom of expression that says **except with his consent no one should be hindered in the freedom to express themselves**, et cetera, et cetera. I wonder if we could be informed as to whether or not civil servants would enjoy the same level of opinion, freedom of opinion as non-civil servants would.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, I think that the standard set out in the section that deals with protection of freedom of expression is a standard across the board and it starts out with **except with consent**. So that means that irrespective of whether you work in government or in a private sector, if you consent to limit your rights in relation to freedom of expression that your rights are limited based on the consent that you have — you have entered into.

However, I think the question perhaps that you are asking in addition to what you've asked is whether or not any agreement between two parties should be able to limit a human right.

**Member of the public:** That too.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I knew that — I knew that was the second part of your question because I've heard you say it before.

And I think that is something that's definitely up for debate as a community.

**Member of the public:** Not for me though. It's settled for me. It shouldn't be allowed.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** It should not be allowed that that—

**Member of the public:** For me.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** —a person's right could be limited by agreement.

**Member of the public:** Exactly. If one chooses not to exercise that right that's their prerogative, but no one should put in the position of signing it away. Because what is going to happen is that it will be signed away. It will be expected that you sign it away and effectively you will not have that right.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** And you're talking perhaps in the instance of employment purposes.

**Member of the public:** Exactly.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** That if you're seeking a job, you know, it's perhaps an issue as to not that you're freely consenting but you almost feel you have to consent because you want the job.

**Member of the public:** Well, if — if I say that then they'll rebut by saying that, well, that's duress and that's not legal but it's not going to be couched that way. They're smart for that.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I mean that is something that we as a community, I think, when looking at the individual rights would need to look at, whether or not we're happy with the provision of — for freedom of expression and whether we feel it should be full, no limitations save for the ones regarding — in the interest of the State and so forth, but not that two private parties can view the person and another private party can sign away your rights.

**Member of the public:** Well, I think that we should really think very carefully about this because once it's implemented and you start to feel the effects . . . let me give an example.

Let's say you're 23 years old and you go off and you become an architect, come back and you're working for a firm and you feel you

signed away your right, for example, because you — you think it will help you in your career path. But then 10 years later you have a child and you start thinking about civics and how you would like to interact with your community to change it. And then you have to think about, well, what did I sign in that contract?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, I do think that you have a very valid point simply because even when a government can limit your right constitutionally sometimes even those rights can be — those limitations can be challenged and they call it I think a margin of . . . But there is a provision that, you know, you as a human being, if you feel that a law has unduly limited your right and they have acted in breach of your human right that you can't challenge that in a court of law.

Now, what I've noted that you — that you said is that in the Constitution the provision that's there allows a — private parties to limit your right with your consent and especially in cases where it may not even really be consent and that there are no provisions perhaps for you to challenge it with — in a court of law. Maybe that's the answer; that the same rules that apply to the government should probably apply to private parties when it comes to limiting your rights.

**Member of the public:** No, I'm saying—

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** No?

**Member of the public:** I'm saying that we should not have that opportunity. If we choose not to exercise the right, fine, that's our business. We should not ever be put in a position to be asked it in the first place because — for the following reasons:

1) Can I afford to challenge it? And if I can't afford to challenge it, it effectively means I will not enjoy that right.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** But do you — do you agree that perhaps there are some — like, just for example, the limitation of rights you've discussed in relation to the incitement and racial slurs and so forth that there has to be limitations of freedom of speech there? What about in employment situations where you are vested with the knowledge of company information, and potentially through your freedom of speech you can breach — you can disclose material that's otherwise confidential? Do you think that there are areas in which legitimately a private party, in the case your employer can ask — can state that you cannot exercise your right to disclose information through your freedom of speech?

**Member of the public:** For example, proprietary information—

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

**Member of the public:** Right. I don't have a problem with that because that is not limiting one's opinion. If, for example, if the government wanted to build a bridge from Grand Cayman to Cayman Brac, can a civil servant say I think it's a really dumb idea?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** No, they can't because they can't criticise the government.

**Member of the public:** Well, what I'm saying is that freedom of expression should allow them to say I think it's a dumb idea but it does not allow them to release—

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

**Member of the public:** —your salary for example.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Mm-hmm (affirmative).

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Let's examine that example and — and . . .

Okay, I'm building . . . I'm not building anything.

Under my ministry preschools are being built. That is a policy of this Government. If Angela Martin were to go publicly and say, you know, I am the Permanent Secretary in that ministry but I think the minister's policy is a really dumb idea. How do you think you'd be able to get the schools built? How do you think I'd be able to work with a civil servant who has publicly not only criticised but has said that what the Government is proposing is a very dumb idea? How would the system work?

**Member of the public:** Okay. What I infer from that is that if the elected Members do not agree with the opinions of others that somehow we can't work together. And if Human Rights is going to work at all they're going to have to recognize that we have different opinions. But — one second.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** No, but that's — no, no.

**Member of the public:** I'm not finished.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** That's—

**Member of the public:** I'm not finished. I'm not finished.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** No, but that's wrong so I have to stop you there.

It's not that Angela Martins may not have an opinion that it's a dumb idea. She's entitled to that opinion. But when she goes publicly and says that my schools are a dumb idea, she's undermining the government's ability to carry out its policy. In fact, she is charged constitutionally with the responsibility to implement that policy as the senior civil servant.

**Member of the public:** Which is a separate question from what her personal opinion is.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** Yes, but she — if she goes publicly, which is what you're — you're advocating and she has the right to from every public platform, the [Cayman] Net News and everywhere else to say the Minister is — is proposing a very dumb idea. And you know what? I'm in charge of making sure that that dumb idea happens. Do you really think the system could work?

**Member of the public:** I doubt seriously that you—

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** I say no more.

**Member of the public:** I doubt — well I doubt seriously that your extreme example would actually play itself out. And if a Permanent Secretary did get up on public platforms across the country and did just that, if I were you I would ask her to please explain to me why you see it that way.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay, I do think that, you know, these are very interesting discussions and they're well warranted for, I guess, further discussion on Human Rights which we will have as a community. It is now just passed ten o'clock and I would like to wrap in a very, very few minutes.

## **ONE MAN, ONE VOTE/SINGLE-MEMBER CONSTITUENCY**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I'd like to perhaps deal with the issue of single — the one person, one vote — sorry — one person, one vote and perhaps hear your views on this topic. We — I see that tomorrow's paper, The Bracer and Cayman Net News has a slight vox pop going and some of the Cayman Bracers have voiced their opinions and whether they think it's a good idea or a bad idea or different idea.

And what's being proposed here is that we finally implement a new electoral system. We have a single-member constituencies. As, you know, we have put forward in this 2003 Draft that as was put forward by the Constitutional Commissioners. And what they said — what has been proposed is that perhaps some things slightly different be applied to Cayman Brac because of their particular circumstances that they should have — be a constituency but that they still only have one vote, each person has one vote. So instead of two constituencies that I think the Electoral Boundary Commission had recommended there be one constituency, but everybody there and have one vote therefore preserving the whole principle of democracy, equality of vote if the rest of the Island moves to single-member constituency in the Islands.

And I just perhaps wanted to know if anybody had any questions or comments about the proposal to move to a one person, one vote system and single-member constituency, which I know you all already have that in East End but this is — but this is not a district issue, this is an island-wide issue for all three Islands and your — your views would be appreciated in relation to the Islands as a whole.

Okay, we do have one comment and question.

**Question #7 (Member of the public):** Again I'll say I don't want to be the one to say — have the most to say but anyway . . . I'm getting mine in.

Before I say anything else, I mean, the one person, one vote of course we have that now and we don't — we don't have a problem with it. I certainly don't.

Could you just — I'm just curious. Some people want an understanding of how it would — maybe this needs to be heard, how it would work, for instance, in West Bay. I know how but I think it should be voiced because some people don't really understand the concept. Or could you explain the concept a little more for us, but . . .

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Well, the Electoral Boundary Commission, I think some people may remember when they were going around the Islands. The Electoral Boundary Commission went around the Islands to set

boundaries for constituencies, and what that means is that in our current Constitution there is established in there provision for 17 constituencies. So what that means is like you know we have districts now, just districts — East End, North Side, George Town, West Bay. For election purposes you would have — it's like mini districts and they're going to be called constituencies.

So you will — for example, I think in George Town you would have four constituencies — George Town North, South East, I think they had them named different ways.

So in George Town you would have four separate constituencies and then each constituency will have a boundary. So, for example, one constituency which South Sound may fall into may be cut across from South Sound to Windsor Park. And in that one constituency the voters in can only cast one vote. And so you can have as many candidates as you want to run in that constituency, but each person in that one constituency has one vote.

So pretty much it will be like as if they were in East End or North Side and the purpose of that would be to bring equality of votes in all three Islands so that at the end of the day, no matter where you are and who you're voting for that you only have one vote.

**Member of the public:** I'll just go and answer, I'm all for that idea.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** [laughter] All right. Great.

### **ELIGIBILITY TO VOTE AND STAND FOR ELECTION**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay, now there has been issues — we do see in the proposal that there have been recommendations to adopt the 2003 Draft Constitution position on eligibility to vote and stand for election. And what that would mean is that you would change the qualifications for a person to become a voter and a person to be able to stand for elections.

And dealing with the first one, the current Constitution basically sets out the qualifications. You have to be, I think, Caymanian, you have to be of a certain age. Sometimes you have to have certain parentage. If you are not — if you don't have parents from here — if you don't have parents who are Caymanian then you have to have — once you have Cayman status you probably have to be resident on the Island for a certain length of time and that obtains now.

They're not recommending changing the core qualifications such as age and that you have Cayman status or you're Caymanian. But what they're recommending is that, you know, is — the 2003 Draft

Constitution says is your residency requirements will change. So instead of having to be resident for a long period of time, even though you're Caymanian your residency will be two out of the four years.

Right. And also there's a provision in the 2003 Draft Constitution regarding standing for elections and allowing persons who are not second generation Caymanians to stand for elections.

I just want to explain to you the reasons why they had this proposal in there. It is because this was the proposal that was in the 2003 Draft Constitution.

The Government having had I think we're on our seventh public meeting, they have had for the most part resounding — heard resounding opposition to the 2003 Draft position in the Constitution and they have decided that their position would be to therefore keep it as it is also. And I think we do have to understand the context upon which the proposal was being made. This was something that was in the 2003 Draft Constitution.

So if it is that we want something to revert back to the old way which we now have, I think they need to hear your views on this, because perhaps as far as the United Kingdom is concerned the last negotiating point on this issue may have very well been what the 2003 Draft. And it's very clear — it's very important for them to hear your views on this because in every single constitutional proposal that the Government makes at the end of the day, it needs to have the backing of the community.

So if one of those constitutional proposals speak to who can stand for elections or who is eligible to vote, it still needs to have the backing of the community. Because when they go to the negotiating table and the United Kingdom wants to discuss this area and perhaps change what currently obtains in our 1972 Constitution that they have to negotiate on your position, the majority position on that — on that subject.

So I just want to perhaps say that — unless if anybody else has anything else to say, but apparently based on the feedback they've gotten thus far is that they have — they are — thus far feeling the sentiment seems to be that people are objecting to what's in the 2003 Draft and they wish for the current proposal to change — I mean to remain. The current — sorry — the current constitutional provisions to remain.

Okay?

**Member of the public:** I would just say that I am of the same opinion that it should remain as is rather than changing. That's my opinion.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yeah, I think we've gotten — but thank you for that. We have gotten quite a few — many, many opinions on that thus far and we're grateful for all of them.

**Member of the public:** I just want to make it clear that you are proposing. I'm not sure what the proposal is.

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

**Member of the public:** What it is.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yeah, Mr. — Minister McLaughlin will explain a bit further to clarify what the proposal is.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** I'm going to attempt to explain it without the long — going into all the technical stuff.

**Member of the public:** Yeah.

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** But it's — it would take battery of Louisiana lawyers to figure out exactly what it is. It's very, very complicated the current provision.

But the current provision essentially means that only second generation Caymanians are eligible to stand for election. What it means is if you came here and got Caymanian status you wouldn't be able to stand under the current proposals. If your child — if you came here and had a child who was born here and then — but they were born before you got Caymanian status they still wouldn't be able to run either because the current provisions say that you have to have one Caymanian parent or grandparent to be able to stand for elections.

So the proposal which is in the 2003 Draft Suzanne spoke about and which we have in this document would have allowed first generation Caymanians to stand for election if they had lived here for 20 out of 25 years after they got Caymanian status. So, essentially, if somebody came here at age 25 to work and then took 15 years to get status when they were 65 or plus they wouldn't be able to stand for election. But that has met with opposition just about everywhere that we went.

So—

**Member of the public:** [inaudible talkover] proposal [inaudible talkover]

**Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture):** So what Suzanne is simply saying to you is that we took a decision last week having had the benefit of six meetings at consistently having this opposition to that, to simply

revert to what the current Constitution says which is essentially that you have to be a second generation Caymanian to be able to stand.

**Member of the public:** Definitely.

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

**Member of the public:** Because if you look at — it's quite simple. A lot of us here know Miami and if you go to Miami or if you listen to the news about Miami everything caters to the Cubans because they have allowed Cubans to run and essentially make up their government. Everyone in Florida is some Cuban who's been over there. So where a Cuban sets foot in Miami and automatically he is an American, a Haitian comes to Miami, would be there for years illegally and he gets sent back. And that — I'm fearing that that's what would happen here.

What would happen shortly we'd see our culture, the little that we do have left, would become Filipino, Jamaican, Honduran just to name a few of the major ones who are here. And I think to preserve the little bit that we do have we need to keep it that you are a second generation Caymanian.

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** I am not advocating for it but I just want to just explain briefly that some place, some stage we have decided we want — we want to negotiate on what was there. But we also have to recognize that some place soon it's gonna have to change. Because let me explain to you.

We know many kids who were born in this country who are, if you look at them, if you hear them talk they're from George Town or they're from West Bay or they're from North Side or they're from East End. But they didn't get status. They were not Caymanian. They got status after they were born and they were born of people who didn't get status — didn't have status at the time.

Those people — those kids we know now eight, nine, five, six, whatever will grow up in this country and die in this country as Caymanians 50 years from now and will never get that opportunity.

But they are, by all accounts foreigners. But the children that are born to them after they got status will be able to run. We understand that. We understand that. That's how it's gonna work.

All of those who after they became Caymanians, two of them could have come from Russia, Honduras, Jamaica, it doesn't matter, came here, got status — remember the status grant the other day — any person after and any child born after those status grants to those people — by those people will be able to run. We gotta remember that but by and large we know how it goes, but theoretically, constitutionally those people are Caymanians. They got the grants.

At some stage we're gonna have to change it or eventually we keep going and going and going and the culture will evolve. It will all evolve and those people will — their kids will be what yours and mine and your children or our grandchildren.

So it — it's gonna come, it's just that we'll — we'll now leave it the way it is and 15 years down the road you wouldn't know any difference.

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

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** The last thing, Suzanne.

I know what. The scenario that Minister McLaughlin gave at 65 would elderly people wanna get into this?

[laughter]

**Hon. V. Arden McLean (Minister of Communications, Works and Infrastructure):** Because I'm 50 and I know what it takes. It could never be and — and — I mean, that's my opinion. If I was starting at 65 in politics there's no way I would have done it. No way.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay, thank you very much for that, Minister McLean.

#### **RECOMMENDATIONS IN RELATION TO THE ATTORNEY GENERAL**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I'm going to perhaps move to the last major topic for the night because it is getting late and I really do not want to keep you here too long. We will have other meetings in East End, so any topics that you feel that you want to know more about we'll be happy to cover those. And that is the recommendations in relation to the Attorney General.

Now, right now in our present Constitution the Attorney General is identified as the principal legal adviser to the Government, and he sits as a Member of the Cabinet, and he also sits as a voting Member of the Legislative Assembly.

And the proposals that have been made is that the Constitution, instead of saying that the Attorney General should be the chief legal adviser to the government, it should say that he's the chief legal adviser to the Cabinet because there is potential for a conflict in his roles if there is not a clarification of what government means.

Right now the government can mean anything from the Governor in his capacity as the Governor, the Cabinet meaning the Governor and the Members who sit in Executive, and also the Legislative Assembly.

And the Government believes that to ensure that there's not a conflict when the Attorney General has to give advice that it should be made very clear to whom he's to provide advice. And their belief is, is that the executive body of government that drives the policies of government should never be in a position where it is not without legal advice; that at the very outset it should be clear in the Constitution that that body is entitled — or to be assured that the Attorney General must provide advice to them and to them alone. Or, even if it doesn't — if a different definition is given as to who he's to provide advice to that there's no circumstance whereby the Cabinet is left without advice.

It's also been suggested that the present constitutional arrangement should change so that the Attorney General is no longer a Member of Cabinet or the Legislative Assembly. However, as a legal adviser he will still be required to give legal advice to both Cabinet and the Legislative Assembly. And the premise of this position — part of the premise of this position is that if the Attorney General is basically the principal lawyer for the government should he be participating as a lawyer and a civil servant in the political arm of government or should he be restricted only to providing legal advice to the government?

And thirdly it is being recommended that if an Attorney General is to be the principal legal adviser to the Cabinet then the Premier should be able to have a say as to who his legal adviser should be.

At present, the Governor in his sole discretion appoints the — he chooses and selects the Attorney General. And what is being recommended is that the Governor continue to appoint the Attorney General, however that he should do so on the advice of the Premier or Leader of Government Business.

It is also said or thought that there should be some scrutiny over the suitability of the candidate who will hold the office of the Attorney General. At present it is the Governor alone who determines who the Attorney General should be. And it's being proposed that the Attorney General's qualifications, independence and suitability should at the very least be acknowledged by the Independent, Judicial and Legal Services Commission before he's appointed by the Governor.

And lastly it is suggested that with respect to the preservation of separation of powers that if the Attorney General is the legal adviser for the political arm of government and the administrative arm of government should he therefore also be in charge of prosecutions of private individuals? At present he does have this responsibility, but it's being recommended or proposed that the Attorney General's role as the — over criminal prosecutions should be transferred to another office which would be the Director of Public Prosecutions.

And this has been — this actually exists in most places in the world, at least in democracy that an Attorney — that these roles are separated from the — a legal adviser to the government and the person who prosecutes or is in charge of criminal prosecutions. You see that in many independent countries and also other territories in the Caribbean and British Overseas Territories.

So, that is really the proposals for the — for the Attorney General.

And finally it is being proposed that we in Cayman should be able to have what they call people-initiated referendums.

So basically what is being asked of you in this case for the Constitution is that you should be able at the end of the day based on a document that's put forward at the end of this period to vote whether you agree it should go ahead that our government can negotiate these issues or that they cannot.

Well, they say — they're proposing that in the future there should be a constitutional provision that if Caymanians feel, voters feel that there's an issue of national importance and they want to require their government to take this issue on board that they would allow the citizen an avenue to do so through a referendum, through a vote.

So what would happen is that if there's — if there's a particular issue of national importance that a petition would have to be sent around and there would have to be a certain minimum number of signatures supporting the petition. If that is met then it will be brought before the Legislative Assembly which will then require the government to hold a referendum on the issue so that the voter population can vote whether they feel the national issue should be addressed in a certain way or not.

So, really and truly this is perhaps increasing us as individuals our democratic ability to drive policies or decisions in our government. So instead of saying, for example, that as East Enders you just go to Minster McLean and you harass him, he's not doing what he's supposed to do and you harass him and you're not getting anywhere, and the whole country feels the same way, they're quite frustrated. Instead of just voting them out at the end of the four-year period which is the constitutional remedy that we have now, what you'll be able to do is that if you feel they're not dealing with it in a particular way then you are able to require them at legislative level to deal with it if you meet certain triggers in the legislation.

So I've come to the close of my presentation. I hope that at least some of the information has been informative to you.

I would encourage you that — we are still very early in the public consultation process that I would encourage you to read in the full the *Summary of Proposals*. If you are not satisfied with the information that's in there, you think you need more understanding of a particular issue that's discussed in there the *Explanatory Notes* are here for you to read.

And I would encourage everyone you know to — to really what I call be a “constitutional champion”.

I said at the beginning of the presentation that this whole exercise is for us. This whole exercise is for Caymanian voters to look at the highest document of our land that actually dictates how the government that we elect can govern or operate. And if we are not satisfied with certain things it is our obligation to use this opportunity as a — use this time as an opportunity to get that out so that we can discuss it as a population; we can arrive at a consensus, an agreement; and we can give our government a mandate that tells them okay now, we are satisfied as Caymanians that this is where we wanna go and it's either we say I'll vote towards it and give you the mandate to go ahead.

I started off by saying that the theme chosen by the Secretariat was a Reflection of Who We Are. All the comments that you heard today about various issues will no doubt be what will help shape and form the final document, referendum document, which will set out the final positions of our country on our Constitution, which will give our government the mandate to go ahead to England.

So, thank you very much. I encourage you to encourage others to get involved. If you wish to have community groups I encourage that. Family groups. If you want additional information from the Secretariat, we will be happy to provide it but we will be putting out material for you readily available in the public domain, in the newspapers and so forth so that you can have a solid understanding of the issues.

Thank you very much and good night.