



Constitutional Modernization Initiative Public Consultation Meeting

Held on

Monday, 3 March 2008

Agricultural Pavilion

**Grand Cayman
Cayman Islands**

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MONDAY, 3 MARCH 2008
CONSTITUTIONAL REVIEW SECRETARIAT MEETING
AGRICULTURAL PAVILION

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): All right. Good evening everyone. Thank you for coming out tonight. I just wanted to just say a few housekeeping matters before we start. We have some refreshments at the side, so if you feel like getting anything during the meeting please feel free to do so. I would invite those persons who are sitting at the back, if you wish to please come forward a little more so we can see your lovely faces and hear your lovely voices when it's question time.

And we are going to be, I think, live on Radio Cayman. Is that true, Spike?

[inaudible comment]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Oh, we're recording tonight. Okay, we're recording tonight, so the meeting will be replayed.

And I will ask if you probably put your — turn your cell phones off or put them on vibrate, we'd be really appreciative of that. And I'll do the same, too.

We'd first like to start with the prayer, and I'd like to invite Mr. Christen Suckoo to begin with that.

PRAYER

Mr. Christen Suckoo: Let us pray.

Our gracious and heavenly Father: we thank You for preserving our lives for another meeting, Lord. We thank You, Lord, that You are guiding us through this process. We thank You, Lord, that Your hand is on this process and that You are with Your people. Lord, God, we lay ourselves bare before You. We ask You, Lord, to remove every inequity from us, Father, remove everything in us that blinds us, Lord; that deafens us to the truth that we must hear on these matters. We ask You, Lord, to ensure that the end product of this process that we are going through now is one that brings glory to Your name. Be with us now and forever more, Lord, in Jesus' name. Amen.

WELCOME

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay, first I'd like to welcome everyone here formally again. I thank you for coming out to the second Bodden Town meeting. Unfortunately, I was not able to come to the first.

We do have at the panel: my colleague, Mr. Christen Suckoo; Minister McLaughlin, Minister of Education; Minister Clifford; and the Honourable Minister Eden.

We're going to approach the public meeting tonight a bit different from the first round. What we are going to be doing is really trying to hone in on the particular issues that you, the members of the public, would like to speak on.

And I would perhaps invite Minister McLaughlin to say a few words regarding the first topic which is, I suppose, the independence issue which everybody has been talking about.

Thank you.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Thank you, Suzanne. You always give me the easy ones to do.

Good evening everyone. Good to see you all out, privileged to be here in Lower Valley this evening to talk about these important matters.

As Suzanne said, this is — I think this is meeting number eight or . . . meeting number seven or meeting number eight in the round of meetings we've been to, all of the — nine, nine, nine. We've been to all of the districts, some of them more than once now, and over the course of those meetings Suzanne, in particular, has spent a lot of time going into quite a bit of detail about all of the key issues that are set out in the *Summary of Proposals* and *Explanatory Notes*. So — and I think that most people who came to those meetings and those who had the opportunity to listen to what was said at those meetings over the radio, we got really good feedback about it.

What we've decided to do with the second round of meetings we started in West Bay last week is now to — to sort of zero in on what we consider to be the contentious issues or the issues where people have concern or need more explanation. In large part, that will be led by you in the sense that if there's an issue that you feel needs more explanation or matters which you have — still have some concern about, we can entertain those so that we are responding now to your concerns.

Over the course of these meetings, basically, four issues have come to the fore as being, shall I say, contentious or worrying or concerning to most people. One is this question of the powers of the Governor and the statements I should call them that have been made by — principally by the Leader of the Opposition about reducing the powers of the Governor is tantamount to moving towards independence. We'll spend a little time talking about that.

Just so that — for the sake of completeness, I'll — so what we've identified as the other sort of contentious issues: single-member constituencies and the concept of one person, one vote; the eligibility to stand for election; and as always, I wouldn't necessarily say it's contentious but concerns about the whole question of human rights and the Bill of Rights in our Constitution.

So those are the issues that we believe have been distilled from the process we've gone through thus far. If there are other issues — and we propose to — to spend a little time on these tonight. If there are other issues which you all have, interject them at any time. This is sort of our read, but really, what's important is what — what's important to you. So at any point, if you feel that there is any other issue that you want to talk about or want us to talk about then, by all means, say so.

And I think perhaps I should also spend a little time — I'll try to do that right up front — talking about the whole concept of referendum and our thinking about that up to this point. I'll start with the whole referendum thing.

THE REFERENDUM

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): During the exercise which started back in 2001, this party, which is now the Government, the PPM, took the view that fundamental changes to the Constitution should only be made with a clear mandate from the people, and we felt that that mandate was best expressed through a referendum and we've taken that position consistently. It's set out in our Manifesto; we campaigned on that basis and what's happening now is our fulfillment of that promise to the people that before we actually went and sat down and negotiated the Constitution for these Islands we would want to make sure that what we were negotiating met with the agreement of the majority of people. So that's what that exercise is about.

There have been issues raised almost from the very start about the timeframe in which we propose to have this happen. We released our *Summary of Proposals* I think it was the 11th January — 12th January this year. We have been proposing that the referendum would be held towards the end of May. We've said consistently, and I'm going to reaffirm that this evening, that if the indications we have are that the majority of people are not yet comfortable with the proposals, that — that more time would be beneficial, we are prepared — the government is prepared to consider that matter. What we are not prepared to do is to leave it open ended as it has been — as has been the case in the past because that is a sure way of ensuring that we never get any conclusion on these matters. The Government would — would like to see this

process wrapped up before the country meets another general election in May of 2009. So that is the sort of timeframe that we're in and that is the reasoning behind what we are proposing.

This process actually began, from the UK's perspective, back in 1999 with the release of their White Paper entitled "Partnership for Progress and Prosperity". It actually commenced in Cayman following the 2000 Elections. I think it was March 2001 when the then Governor commissioned our own Commissioners here — Mr. Benson Ebanks, Mr. Leonard Ebanks and Mr. Arthur Hunter — to produce a report.

So it's — the process has been on going in Cayman now for seven years. Most of this ground has been covered before, and we believe it is high time that the country comes to some finality about its Constitution. We don't want to rush the process, we don't want our people to feel uncomfortable, but at the same time we don't want to drag the process out unnecessarily.

So your feedback this evening on the timeframe is important to us. We are going to have to take a decision we reckon in another two or three weeks about whether or not we push back the date for the referendum, and if so, when we push it back to.

So we have been monitoring very carefully the feedback that we've been getting on this and all of the other matters at every one of these meetings and every talk show that we are on. We keep careful note of what people's reactions are, and we are all out and about interacting with people on a daily basis. So we have some feel we think but the process is not yet complete and all feedback will be taken into account in the decision we take about whether we go ahead at the end of May or whether we push it back.

So that's — that's the — that's the story in brief on the referendum. I don't know, Suzanne, whether we want to — to perhaps take — take some time now and hear what people have to say about that before we move on to another subject and people's minds become focused on something else.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Does anybody have any views at this point in time? No?

Maybe what we can do is perhaps after the meeting, or at any point in time you feel to raise it, then, we can speak about the referendum date. Perhaps we can do that then.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): It's always difficult to be the first one to speak at these things, I understand that so . . . I was hoping some brave soul would have got up and got the ball — ball rolling.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, perhaps what I would like to perhaps say, Minister McLaughlin, is for us to look at the referendum itself we have to —

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Mr. Walsham.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Oh, Mr. Walsham Connolly?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Yes, somebody saved the day.

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

We Should Proceed with the Referendum Process

Mr. Walsham Connolly (Member of the public): I beg your pardon for not standing, but I've got a — a slight handicap.

Anyway, my view is that we should proceed with the referendum and whatever else we need to do to get this process going, because I think we're long overdue and it's not as if we didn't expect this. We knew that we would reach the stage where a decision had to be made and action taken. So, therefore, it is my view that we should — we should proceed on schedule with the referendum. Thank you.

[applause]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Thank you, Sir.
One more person. Yes?

Question #1 - Member of the public: Can you say if after you have had all of these meetings so you're going to put forward the — you're going to make a decision based on the response you have received, are you going to come back to the people and say, well, this is what we are now proposing to take to the UK, or we won't see it again?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): The purpose of these meetings is to get feedback on what the issues are. Just so — I

know you were at one of the earlier meetings, but I'll go through some of this again 'cause different people are here.

What the Government is seeking is — is a mandate to negotiate with the United Kingdom for a constitution in — in the broad terms set out in its *Summary of Proposals*. And the reason I say that is, we cannot guarantee that what we put to the UK is what the UK will agree to.

So, essentially, what we are asking you, the people, to say to us is that you have our permission — or that we have your permission to negotiate with the UK within these parameters. What we might wind up with may be less or less advanced than what is being proposed. But what we would not be entitled to do would be to negotiate for more in terms of autonomy than — than the electorate give us to do.

So, what we have to do having gone through this exercise is to — is to weigh what the public feedback has been to us and then amend our proposals accordingly. It is that document, that final document that you, the people, would have to say yes or no we are satisfied that these are the terms that you should negotiate on.

We haven't taken a final decision on whether we should come back with another round of meetings to look at that document, but we would want to be very certain, or as certain as one can be in this uncertain process, that what we are asking you, the people, to say yes to accords with what the majority of people want. Because I need not say, it's obvious what the result would be if we've gotten that seriously wrong.

Now, that — that doesn't mean that we expect that every single item of agreement is going to meet with every single person's agreement, that's impossible. What people have to be satisfied, though, we understand, is that in broad terms what — what we are proposing to go and negotiate with the UK for meets with their approval. Everybody's not going to get every single aspect that they think exactly how they would like it to be. It's — that's an impossible exercise. But I — I hope that that sort of explains how this is being set out.

And one of the examples already I can say to you is this issue about eligibility to stand for election. The feedback we've gotten has been consistently that what — what was — what is in these proposals and what was in the Draft 2003 Constitution was, shall I use a word, was too liberal. In other words, most people who have spoken up on this issue felt that we should continue with the provisions that we have now in the '72 Constitution as amended relating to the qualifications to stand for election. And we've already said publicly, the Government, that that one is clear to us and any document that is now produced to go to the referendum would reflect the current position, not the one that had been proposed.

So that — that is one that has been very clear. I wish some of the others were clearer. But consistently — not that there haven't been some people who said we agreed, but it is clear to us that the majority of people who have spoken were concerned about opening the door too wide

in terms of who could stand for election and were more comfortable with the current position.

[inaudible comment]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Yeah, just a minute, please. We are recording for Radio Cayman, so I am asking that each person who has a comment please use the microphone. Thank you.

Member of the public: Good evening.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Good evening, sir.

Question #2 - Member of the public: Glad to be here. I was just inquiring as to whether there is a stability with the PPM, the whole crew, concerning what you all has put forward so far?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): You mean whether we —

Member of the public: Agree.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Whether . . . yes, sir. That's one of the reasons why this has taken so long to do. We've — we've been discussing this for probably 18 months before we actually got it to — to this point, not just discussing it among ourselves, but doing a lot of research. We brought on board Professor Jowell, QC, who is one of *the* top constitutional experts in the world, to advise us on the process, and we've done a tremendous amount of research ourselves.

We developed the Secretariat, put Suzanne and Christen and others in post so that they could help with the research and — and formulating the ideas and concepts that we had. We looked at the constitutions that have been recently amended in the Overseas — other Overseas Territories — Gibraltar, Turks and Caicos, British Virgin Islands in particular — to see what they had done, to see how the UK reacted to their proposals and what their constitutions actually look like.

So a tremendous amount of work has gone on behind the scenes before we got to this point. But that doesn't mean that we're infallible, that doesn't mean that everything that we're proposing is, as I just gave an example, is necessarily going to meet with what you, the people, want. But we are — we are determined to do everything we can to ensure that we go and negotiate for with the UK is in accordance with the majority view, because at the end of the day, that's what really matters.

If we weren't so committed to that objective we wouldn't have gone down the road of a referendum, because we — we accept there is significant political risk in doing that. But we believe that a document so important really must reflect what the majority of people want.

Question #3 - Member of the public: Well, I'm sure you must have used some guidelines from all these other Territories. How have they — how have they advanced so far as to reaching something that they're satisfied with?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Well, what we've — what we've done is to — is we believe to try to take the best aspects of the constitutions that they have agreed. We've made some changes, but I wouldn't regard it — many or any really of those that are in our proposals as significantly different from — from what obtains in the other Overseas Territories.

Just about every proposal here is — is . . . is — there's a — there's a similar proposal in the Overseas — in the constitutions of another Overseas Territory. Some come from Gibraltar, some from TCI (Turks and Caicos Islands), some from BVI, some from Bermuda, some based on — I mean some of the adjustments based on recommendations we've received from Professor Jowell, QC, some from our own experiences in Cayman, some from feedback that we've gotten.

But there is — there is little — there is nothing radical in any of the proposals that are here, contrary to what — what you might hear. And there is nothing here that will lead to independence as some have been saying.

If you — if you do as we have done and sit down and examine the constitutions of the other Overseas Territories, you will see that virtually every proposal in ours is reflected in one or other of the other Overseas Territories. We've tried to take what we consider the best, most progressive provisions from theirs, and in some cases we've adjusted; amended; refined those proposals.

But we aren't proposing to go to the UK with a set of proposals which will lead them to throw their hands up in the air and say this is either nonsense or this — if you want this you must go independent. I mean they should credit us with a little — a little sense to know that there would be little point in us coming to you as the people with a set of proposals which — which we believed would mean that before we actually sat down to talk in the UK they said, well, there's no point in us discussing this.

We have — we do have some experience with negotiating with the UK because four of the Members of — well, three of the current Members of Cabinet actually sat around the table with the UK and the UDP and — and Mr. Billy Adam in December of 2002 when we negotiated the Draft

2003 Constitution which came back to Cayman in February of 2003. Of course, that never went any further because the then government decided for other reasons that they didn't want to proceed with the exercise.

But we do have some considerable experience of negotiating with the UK on constitutional matters, and so we — we feel that we — we understand what — what — what proposals will be met with — will be met with agreement, some which we will have to push perhaps for but which we think are important, things like the ability to . . . or the requirement — the proposal that we have that they are required to consult with us before they enter into international agreements which will commit the Cayman Islands in one way or the other.

We know that those areas are going to cause some resistance and — and may be difficult, but they are important areas, important issues. We've seen what has happened — what BVI has managed to get them to agree. In some instances we are — we are trying to get a bit more commitment out of them in that regard, but we don't think they're issues which they will say to us, you know, there's no point in talking about that, that's non-negotiable.

Question #4 - Member of the public: Now, someone — some of those must be thinking that we're stupid. This thing been in the making for so long, they claim to be we are so popular in this hemisphere in every respect, shape and form. And different ones come up with these scare tactics, like, definitely headlong for independence and total internal self-government and that would be the end of everything as far as progress and prosperity is concerned for the Cayman Islands.

What can you do about that, Clifford? Some people are swallowing it hook, line and sinker?

Hon. Charles E. Clifford (Minister of Tourism, Environment, Investment and Income): Mr. Eden, thank you very much for those comments.

We recognize that we are going to have individuals in this process whose sole objective is to derail the process. And we know who those individuals are, we've heard from them over and over, and so it is our responsibility to — to continue to respond to them and to — to make sure that we get our message out and that we try our best to educate the population as to what it is we are proposing so that people can understand clearly and also take that message to their neighbours and friends.

But just let me say that — that this *Summary of Proposals* that we've produced — and as you've heard from Minister McLaughlin we've invested quite a bit of time in producing this, but the fundamentals of this document for the most part are actually contained also in our

political Manifesto which we went into the last election and campaigned with.

So, the fundamentals are there. What we've done since that time is to review progress in other Territories. We've had discussions with other individuals and people who are familiar with constitutional law. You've heard that we brought on board Professor Jowell QC.

And so, we have refined some of our positions and we've flushed out the detail in this particular document. But from the very beginning we spoke about many of these issues from the political platform in 2004 and 2005, and I know that — that many of you will remember that.

This whole issue of independence is a — is a good example of how some of the detractors, particularly on the opposition side, are attempting to derail the process. I mean, clearly — I shouldn't say clearly, I'm sure they've read our document but they're acting as if they haven't read it. Because if you look at — on page [2] we're very, very clear right in the very beginning of the document where we say that we don't — we're not seeking independence, we don't see any support for independence in the country. We haven't seen that support, we certainly didn't see it during the election campaign, and so it is simply not true to say that we are seeking independence and that this — that these proposals will ultimately take us to independence because that is simply not correct.

Doing What's Best for Our People

Member of the public: Good night, gentlemen.

I speak on this very important matter that's going to be for the future of our children's children. What we're going to decide to do will affect all of us. I've read a lot of things, I've heard a lot of things, and on this very important matter we should really think about one thing: that's our people.

This very important matter is beyond PPM and beyond UDP. What we need to do at this time is come together as one Cayman people for the betterment of all of us and our future. There's good things being said on this side and there's bad things being said on the other side. But what we need is for — at this time for us to set all of this crap aside and do what is the best for our people.

Our people has heard all kind of promises, all kind of things that's going to happen good for us that end up bad for us by many different governments, not just UDP or PPM.

We hear about the Bill of Rights, we hear about people coming in want to run our government that's not Caymanians, and more. We hear about things on the grassroots and the marl roads that you're not

hearing here in politicians and you face people telling you, look, look around, what's going on.

We gotta protect Cayman and Caymanian. If we don't do us right, whether you're PPM or UDP or whoever, then it's gonna come back to bite our children's children and the way that we live.

You want what's best for us from UK? China, Japan or whoever, when it comes to us we need the best for us, nothing that gonna trip us up or have us secretly invaded like's been happening, and find ourselves where we're without our own country. We need what's best for Cayman out of this whole process.

Thank you.

[applause]

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

Hon. Charles E. Clifford (Minister of Tourism, Environment, Investment and Income): Thank you very much for those comments, Mr. Levee.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay, thank you very much for those comments. Do we have — you had something to say? No?

What we're gonna do is perhaps just . . .

Oh, someone at the back. Okay.

Member of the public: Evening.

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

Question #5 - Member of the public: Just one quick question for the referendum. Do you still see that as being a single yes or a no question, or will it be a yes or no question on the major topics?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Just one question.

Member of the public: Can you explain why you've taken that point?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): There are a number of reasons, not least of which is the way the current — the current Constitution sets out how you go about doing a referendum. But aside

from that we would wind up with having to — to decide what were the key issues, and we don't quite know where we would finish because everybody has — I shouldn't say everybody, but most people have one particular issue that is important or a couple of issues that are important to them, and we might wind up with five, six, seven, eight questions.

And we've looked at the way referendums are dealt with in other jurisdictions, we've sought advice on it, and essentially, once you start getting into more than one, maybe two questions the process becomes very complicated. People find it difficult or too much of a burden to answer more than one or two questions. And then you also have to make a judgment as — as the people who are preparing the questions as to what the questions are.

What we are dealing with here is not a precise constitutional document. It's not as though you're being asked to vote on every particular section or clause in the Constitution. What we are seeking is — is a broad mandate to negotiate for a constitution in these broad terms. So the question will be — you'll have a document similar to the one that we have now which will set out what — what the essentially the negotiating terms will be that you are giving the Government permission to go to the UK with and you'll be asked whether or not you support the negotiation of a constitution in these terms yes or no.

As I said before, the constitution we get back may not reflect precisely what is in that document because it is not within the Government's gift to say this is — this is exactly what we're going to get. The UK may have other views. But what the Government clearly would not be able to do is to go beyond the mandate that — that the people have given.

And if there were specific issues of . . . one of the things that we've talked about, for instance, and this would perhaps happen in a Bill of Rights. If, for instance, the UK were to insist on a Bill of Rights which permitted gay marriages — this is an extreme case because the UK don't even — don't even have that in their own arrangements. Then I know this Government would have to say to the UK I'm sorry, we have no — we have no mandate to agree to a Bill of Rights which contains such a provision, because I think everybody in this room what the majority view in these Islands is on such matters.

But you need — I can't say this enough times: what you're giving the Government, assuming that we get the yes vote, is the ability to go and negotiate for a constitution along these lines, in these broad terms. What you're not voting for is a precise constitutional document at this stage.

Member of the public: I am aware that it's next to impossible to put every question in the referendum, but I feel that we need to have definitely more than one question. If we're looking for the modern

constitution, I think they have to give our people credit enough to be able to answer more than one question, and I think they have to be able to say these are the major points that we want. You then have a mandate to say these are things that my people agree with and these are the things they don't. We change what we need to change. I don't see why we can't have major sections in the referendum.

[applause]

Question #6 - Member of the public: Another quick question, Mr. McLaughlin.

With regards to what you said concerning the comparison between the different Overseas Territories and using different points from them, can you say if any other Overseas Territory was successful where they had a situation where they can have a judicial review of the Governor's decision or the Governor's powers, I'm not sure, decision making?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Bermuda is actually going through that exercise now. They're having — they're having a decision of their — or they're seeking to have a decision of their Governor judicially reviewed. But as far as I'm aware there isn't any Overseas Territories that actually have a specific provision in that regard in their constitutions. So in that respect, our proposal goes — goes beyond what is in current Overseas Territories' constitutions.

But that is also in part because the law on judicial review has evolved significantly since, for instance, Bermuda's constitution in 1968, because there was a time when lots of these decisions were — were considered to be sacrosanct that nobody could ever question what the Governor . . . and not just the Governor, many offices, senior offices or officers, decisions that they had taken. But the law is evolving more and more to the point that nobody's decisions are sacrosanct. You can't — if you hold a position of responsibility where you are making decisions, they ought to be capable of — of being judicially reviewed.

Judicial review is something that is — is invoked when you're challenging the rationality or the fairness of a decision as opposed to the decision itself. In other words, if the tribunal whether it's the Governor or somebody has acted irrationally or unreasonably or unfairly, we are saying that the country should be entitled to have that decision questioned in the courts. Why not? Why should anybody be above the law? I mean just ask — just ask yourself that.

And that goes along with our proposal that — that we have a specific provision in the Constitution which requires the Governor to have regard to the interest of the Cayman Islands when he's making decisions.

You might say that that — well, that should be obvious. But the Governor is appointed by Her Majesty's government. He — he essentially represents Her Majesty's government in these Islands. And while yes, he does have — and there's no way around this — he must have regard to the interest of the United Kingdom when taking decisions to ensure that her interests aren't prejudiced. There should also be a corresponding obligation constitutionally we say. Arguably you should have that anyhow which requires him to also have — have the interests of the Cayman Islands in mind when these decisions are taken and to be required in the appropriate circumstances to explain the basis for those decisions.

And I don't want to go into — to any real examples this evening, but we have had instances in these Islands in recent times when I think just about every — every right-thinking person questioned whether or not the decision taken was actually in the best interest of the Cayman Islands or the best interest of the UK.

So it — it is — or these are some of the — of the issues that we are trying to set out squarely in our new constitutional document to protect the interest of these Islands, because as long as we have this constitutional link with the United Kingdom, and long may it continue, there are bound to be these tensions that exist between us and the United Kingdom.

Cayman has evolved — the world has evolved to a point where we cannot rely on the United Kingdom to act maternally, as has been the case in the past in every instance, because in some instances our interests compete with hers. And when that is the case we need to have some basis to call on the Governor to act fairly, proportionately, and we need to have a basis on which we can question this decision making.

This business of — because the Governor decided it, it is law and unquestionable, we don't think belongs in modern day constitutions.

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

[applause]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): And I would just like to add perhaps also that it is not — the Constitution actually sets out which decisions of the Governor are not allowed to be reviewed, judicially reviewed. But there are other decisions of the Governor, whether through local legislation or other statutory schemes, that a person can judicially review them. And I believe that the most recent one was the civil service case that went to the Privy Council. That was a judicial review case against a civil servant and the Governor. So it is not that any decision of the Governor cannot be reviewed, it is specific ones that the Constitution has set out.

And what the, I think, the Government is saying is that in these particular instances, it is not adequate to say that they are not judicially reviewable because these are powers that the Governor must exercise in the interest of the Cayman Islands. They must be able to be upheld against the thresholds of reasonableness and fairness, and — and if the country feels at some point in time it needs to question or challenge the fairness or the — justiciability of the — of the decision, then they should be able to do so. They must have a legitimate avenue to do so.

Do we have another question?

Question #7 - Member of the public: Yes, I'd like to follow up on the question over here because I think what — what that question is identifying is that unlike this referendum, referenda usually are on one or two issues that the government is bringing to the people for a decision on. Should we raise taxes? Should we abolish the penalty?

In this case, from what is being presented, it looks like we're talking about maybe 9, 10, 12 different issues. The difficulty I see there as a real danger, and I think he's identifying it, is that you're putting people in the position — a lot of people are gonna be in the position to vote no, because one of those items is fundamentally — there are in opposition to, and in 9 or 10 others they may be in agreement with.

But it is a fundamental issue that somebody's — you're gonna trigger a no vote. In other words, you're gonna throw out the baby with the bath water, I think that's what's gonna happen, I think that's what he's identifying. Yes.

Might it not be more reasonable to — and you identified some issues already — to identify three or four key issues upon which people can vote no — yes or no? Because I think if you don't do that, I mean, I see inevitably if you have 9, 10 — how many was the limit, 9 or 10 or 11 issues in the proposals? Several of those may be perfectly acceptable to everybody, but one fundamental issue somebody may be opposed to — election regulation for example, constituencies for example — and to — because that — in other words, they'll be prepared to say I'm going to forget all the other stuff, I don't want that so I'm giving you a no. That's the danger I see.

[applause]

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

Member of the public: I do also agree with that assessment also. I do also agree with that, perhaps the possibility of you getting a no on that through really having so many different issues.

Going back on the Governor's accountability, I do agree with the Governor being reviewed by our Cayman government and the members of

government. I do also believe in all members of government being held accountable to the people of the Cayman Islands. So, as spoken earlier about the powers that will be actually looked at with a judicial review with the Governor and his decisions, I do look at that as a positive thing for the Cayman Islands government.

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

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Sigmund, I just want to clear up one point. The review that we talked about is judicial review, so it's essentially the ability to take the decision to the court and ask the court to decide whether or not the decision that has been taken has been done fairly and reasonably and so forth. It's not about the government itself making that decision about the Governor.

I mean, obviously, if the government sought to have the decision judicially reviewed —

Member of the public: Yes.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): — it would be because the government disagreed.

Member of the public: Yes.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Right. But it wouldn't be the government who made the decision, it would be the courts. I just want to make that clear.

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

Question #8 - Member of the public: Good evening.

At a previous meeting I asked in connection with the whole referendum process, it is great that the discussion document referendum is taking place. But the real important time when a referendum should be held is on the final referendum — document — on the constitution document after the LA (Legislative Assembly) has finished chewing it over, after the UK has finished it that at the end of the day, and that is when — when the exact wording is read because the devil is in the details.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): God is in the details.

Member of the public: [laughter] Let's hope He'll be in this one.

[laughter]

Member of the public: But I've seen him in a lot of others.

And it's that final document at the end of the day, and the precedent was set in the 1967 West Indies Act which is when the final document was finished. That's when the document was to go for a referendum and that's when we know exactly what we're getting, because we might tell you, you know, have a four-wheel car and you might come back from England with a three-wheel bicycle and you might be pressured into accepting it.

And so, the one that I see really important is the final referendum on that final document after LA (Legislative Assembly), you guys, and the government here and the UK's finished with it. Have you considered it? Is there anything further, sir?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Billy, the draft Constitution that came back from the UK is 81 pages of very fine print. Now, you are a constitutional animal. I am sure you have read every line of it. But I would reckon that the vast majority of this country has not read it and will never read it.

So, if you go to the people and say we want — this is what we brought back from the UK, we want you to vote on this, are they going to vote on it line by line, section by section? The same arguments that are being put forward now in relation to this document, which is in much simpler, much briefer terms, is the same argument that would have to be put in relation to this. Do you put the question on each section, on each line or on the whole document? There may be aspects that you've negotiated with the UK which the people veto, others which they disagree to.

So unless you take it section by section they may do the same thing that Justin and whoever — and Dave said, they may throw out the baby with the bath water. The reality is that there is no simple, straightforward or perfect way to deal with these issues.

Once you go down the road which we have of saying the people should have a say — should have *the* say in deciding what the document is you set an imperfect process. We knew that. We know that.

What we are trying to do is to strike the right balance where people understand the issues, get to weigh in on what the issues are and ultimately decide whether the Government should go and negotiate a document in these broad terms. If we follow your rule we're going to have

to have a question on each section of the document when it comes back, or run the risk if we go to a yes or no vote that they throw out the whole thing because they have one problem with the single-member constituencies. The same argument that obtains in relation to this obtains in relation to this, except this one is 83 pages long.

Member of the public: I would like to answer that, sir.

The process that I'm speaking about and other people are speaking about were in the final document. It's the same process that was followed with the EU Constitution. Greenland is following that same process; in November of this year it was followed in Tokelau (which is the Overseas Territory of New Zealand) in November of last year; the Australian Constitution followed that process when it came into force. All the revisions to the Constitution of Australia follow that same procedure; there have been 43 proposed by different governments and only eight were successful. Well, right, because they didn't do what the people wanted. So — Switzerland has gone through that process and Bolivia is going through that same process now and there are other examples. British Columbia in Canada went through the exact wording at the final stages of it.

So the precedences are there, so it's not — this precedences are there, sir. And also, some of those broke out, like Davis suggested and the other gentlemen here suggested, into different suggestions. You know, the human rights thing is a big thing in itself.

So I think our people can take it. Our people can begin to understand issues and break down and make a step. I mean after all they're able to decipher between personalities and elections — you want to get anything more complicated than that? — and discerning what's really in somebody's heart when they go to lead?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): No, Billy, I'm not suggesting that you can't get a yes or no vote on the Constitution. I'm saying if you follow your argument and Justin's point to its logical conclusion, we'd have to put a question on each section of the Constitution when it came back. Because, otherwise, if you just say yes or no some people in the electorate may say I don't like single-member constituencies, and because it's a yes or no vote on the Constitution and that has that in it I'm not going to support it. The same argument that was put in relation to why they may not give us the mandate in the first instance to go negotiate a constitution, because they don't want to vote yes because there is something in the proposals that they disagree with.

So I'm saying that both situations are fraught with the same problems in relation to that. Either you have a very detailed set of questions, and in this case running to many, many pages, or you have a yes or no.

Question # 9 - Member of the public: Good evening.

Maybe you might have to correct me if I'm wrong here, but from the last meeting that we had in church in Savannah, I get a little bit different understanding of the process at this point.

I was under the impression that you were reviewing the *Summary of Proposals* with the *Explanatory Notes*, then giving input from that — a draft document which I took the understanding that it was going to be a draft constitution.

[inaudible interjection]

Member of the public: I'm just going to finish what I was saying. I thought — that was the impression I got. And from that we would then vote on the referendum which would give to the Government the mandate to negotiate that Constitution with the UK, and then when it comes back that we weren't — I wasn't clear what would be the process then.

But now I'm understanding that it's going to be a mandate document which is going to be, I understood, now similar to this which is the *Summary of Proposals* which then goes — which you then go to the UK and negotiate and then come back with whatever they have allowed us to include in that document.

And then following to Mr. Billy's question, the — at that point, then, the people have no further say in what the Constitution looks like at that point?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Mark, the only bit that you didn't get right initially was that there would be a draft constitution — that is, something that looked like this — that would go as a referendum question.

As I think you quite accurately said, what is proposed is after this — we finish these meetings and got all the feedback we've gotten, we would then produce another document which hopefully — which hopefully would reflect what the majority of people felt about these issues. That will form the basis for the referendum question, and the public would — the electorate would vote yes or no in terms of whether to give the government a mandate or not, to go and negotiate for a constitution in these broad terms.

As we've explained before, it is impossible to negotiate on the terms of a draft constitution because the UK ultimately has the decision-making ability. This is their administrative document.

So, we may or we may not end up with precisely what we are proposing. I shouldn't use the word "precisely" because what we're proposing are the broad parameters of the decision making.

I don't think you were here when I spoke at the start saying that, essentially, what you are giving us is a mandate to negotiate for a constitution within these parameters. We may come back with less in terms of advancement than is set out or that you've given us mandate — a mandate for, but what we wouldn't be entitled to do would be to negotiate beyond those parameters for more advancement or more autonomy as the case may be.

Member of the public: I guess the question, then, that I'm asking is that there is — or is there a possibility, strong or not, that the document that we finally receive back from the UK is vastly different than what — than the mandate that you've received to go and negotiate on?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): No. I mean, if — if we did that it would be a serious breach of trust. In fact, I don't believe the UK would allow us to do that because, understand, the mandate we have would be very, very public.

[inaudible comment]

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): What is the recourse to what? You mean if the UK were to conspire with us and —

[inaudible interjection]

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): — create some — no, but — no, but let's explore what you're saying. That the UK would conspire with us and we would produce a constitution which was vastly different than the mandate that we had because it would require not just what we wanted but the UK's collaboration with us on that?

Member of the public: I would prefer to use the term “conspire against us” because some of the things that we're asking for they seem to be things that we —

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): I meant conspire with the government.

Member of the public: No, when I mean — when I say “us” I mean conspire against the Cayman Islands and to not include some of the things that we would need a mandate to include. That's what I'm asking.

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

Member of the public: You just got a roaring round of applause when you said about the provision for the judicial review of the Governor. To me that seems like a strong point to go to the UK and ask for. So you come back and you say, well, they said no, we can't get that provision in there. I mean, that's just an example.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): That is a distinct possibility. That's real.

But we've got to understand a few things about this relationship. We are not negotiating for a post-independence constitution. Ultimately, the UK has to agree to what is being proposed by way of negotiation or otherwise. It is their document. They will write it; they will issue it in the terms that they finally agree.

So we have to understand that there is a limit to what any government, any group of people you send there to negotiate can do. We can push, and we will, as hard as we possibly can for what we believe we have a mandate to negotiate for., But ultimately, the decision making on issues such as the ones that you just spoke about are going to be matters for the UK.

There are others that they really don't care about: how many elected Members we want, how many people we want in Cabinet. The UK is not going to give us any pushback on that. So it will be what you, the people, agree to in a mandate on those matters. But on matters which affect their control of this place which affect their international obligations, the UK are going to weigh in pretty heavily on those things.

Member of the public: Just one last point, then. Are you prepared to say that the PPM Government, then, will accept the Constitution in whatever format it's returned to after this whole process because obviously we're on — we're on a schedule to try to complete this advancement process as you said before the next election? So, given the mandate to go to the UK, is the PPM Government then going to accept what — the document in whatever format it's returned to us by the UK?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Absolutely not. It may well be that we have to walk away from the table saying we have no mandate for that.

But the point I'm making to you is we can do that and we can send the strongest possible message to the UK in that regard. But, ultimately, although it's unlikely, it is the UK to decide on these key issues because we don't have the ability to create our own — to issue our own

constitution. We are not an independent — or a nation negotiating a constitution post independence. But that's the only point I'm making.

Member of the public: There's two issues with that.

First off, this is a document that's going to be with us for generations to come, so I don't see the need for a race. So as far as I'm concerned, if we have to have multiple referendums, so be it.

As far as the walking away from the UK saying that you don't have a mandate if they give us something we don't want, I don't see an issue with bringing it back to the people and saying this is what the UK is willing to give you, do you want this or you want what you currently have? There is really no reason, in my mind, why the people can't be continually involved. If it takes two years or if it takes ten, at least we get at the end of the day that we all agree that we can live with. It mightn't be exactly what we want but something that we can live with.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): I don't know if that requires an answer really, but — but your first point about coming back to the people, obviously that's what we'd have to do. If we got there and we've sent impasse on serious matters, we've said there's no way we could agree to a constitution in these terms, we don't have a mandate for that, obviously we'd have to come back to the people.

But your sort of open-ended approach to this, I think . . . in other words, it doesn't matter how long the process lasts. We've been at it for seven years now. There's — I think there's only one Overseas Territory now that is outstanding in terms of its constitution. At some point everybody's going to lose quick patience about this process. I think even locally we're going to — if we haven't already we're going to start suffering from constitutional discussion fatigue, or whatever the condition will be called.

I mean, any process has to have finality. I'm not talking about rushing the process, but — we can hardly be accused of rushing this process; it's been going on for seven years now. We've got to make a decision at some point and move on. If smaller nations than ourselves are able to do that, I really don't see why as people we can't come to that decision in due course.

The world is moving on. Constitutions can be amended. Our current Constitution has seven or eight amendments to it. But we really have to conclude the process at some point. Whether that should be May or June or July is debatable and I accept that. But to say that we should just continue for years and years going through this process I think is — really is being unrealistic.

Member of the public: I was not saying that that is the way: to drag it out. As far as openendedness, I think that we are on a path of

openendedness if we don't have multiple questions, because at the moment we're going to say yes or no. If it comes back no, you start all over again from the beginning. At least if you multiple questions, you have something that the people have agreed to so you have something to continue on from. But if you just get a no, whatcha gonna do? Well, where do we start over?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay, go ahead.

I just wanted to say before Mr. King started is that one of the things that we're looking at as the Secretariat is exactly what our referendum provisions allow in the Constitution. It is quite a restrictive provision and one of the things that we had to do was to get legal advice on exactly what that provision intended, what it meant or what it allowed.

As some of you all may know, we have to pass a referendum law and so in the upcoming weeks there will be some disclosure as to exactly what would be permitted in terms of the referendum law. But in some instances, the restrictions and the number of questions may actually be as a result of the way our present Constitution is worded.

So I wanted to hear from you if it is, let us say, the Constitution only allowed the referendum law to have one question, I mean, would you be willing — based on that constitutional restriction would you be willing to look at the issues as a package and have to weigh in terms of, you know, make a majority decision? You may not agree with everything, but in terms of making a majority decision based on the restrictions of the law?

Member of the public: I think that that goes to the question that Mark was asking earlier, in that you end up with a situation where it's take it or leave it. And I can tell you, me, personally, if you tell me take it or leave I gonna leave it. I want options.

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

Mr. King.

Member of the public: Can I change the topic briefly to the—

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

Member of the public: —previous question—

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Anything you all want to talk about we're here to talk about.

Question #10 - Member of the public: All right, two questions, please.

Trigger for the referendum. I understand that you're referring to having the trigger of 20 percent of the voting public. If it is that low, aren't you playing with fire in terms of just a few people can trigger a referendum anytime they want to, continuously, at great expense to the country?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Some people thought that was too high.

Member of the public: No, but look at the ramifications because then any opposition party can easily find 20 percent of our voting public easily to trigger a referendum at any time. Is there a precedent for this in any of the other Overseas Territories by any chance?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I don't—

Member of the public: Or even in the UK?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Yeah, I don't think that the Overseas Territories actually have a provision for that kind of people-initiated referendum, but it perhaps would be worthwhile for us to look at some different ones in different jurisdictions. I think it's mainly based on what each country feels it is comfortable with.

I think the initial actual recommendation was 10 percent, and it was felt that it should be the 20 percent. When this came out in the proposals, I think some persons' initial reaction was that this is too high, it should be lower. But then at the end of the day the whole issue of people-initiated referendum is not a willy-nilly exercise. It's supposed to be on an exercise of — a referendum on a issue of national importance.

Member of the public: Who decides that?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): The people because if they can meet the trigger, that's the whole purpose of the trigger — the trigger percentage, is that if the trigger percentage is felt to be the right one and it meets — and the petition meets that level, then it will be deemed an issue of national importance and then it would require certain things of the government in

terms of listening to the issue and ensuring that a referendum takes place.

But definitely we could revisit the trigger percentage. What will you say out of a voting population of 13,000 people? What would you say would be the appropriate trigger percentage?

Member of the public: I would say maybe 40 or 50 percent.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Can I have a raise of hands what — 50 or 40? Yeah, about two thirds of the room. Good. Okay. Does anybody think it should be lower than 20 percent?

Okay, Mr. Billy, you had a question

Sorry. Mr. King, go ahead.

Member of the public: No, it's all right. The question that I didn't go ahead. I have another question concerning the Bill of Rights.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Sure. But go ahead. You just . . .

Okay.

Member of the public: Ms. Bothwell?

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

Member of the public: You said that maybe you should look at other jurisdictions, and I would suggest that maybe we do that to see where referendums are used. And it will vary between five and ten percent of the voting electorate role, some of them do it based on a percentage of the people that voted in the previous election.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Um-hmm.

Member of the public: And this is in Florida, California, well 26 States of the US, British Colombia in Canada. It is coming into effect more and more in the United Kingdom and in Europe and many other countries around the world. Matter of fact, the first referendum was actually held and is recorded in the Old Testament in First Samuel 8, when the people of Israel wanted to change from the collective role of judges and to go to kings because all the neighbours had kings so they wanted to follow fashion. Very interesting story. Read it.

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

Member of the public: And I would just suggest, ma'am, that we take a look at that and we will find also it isn't a case of having a referendum every weekend. It is — referendums in all of the jurisdictions that I have seen are tied in with a national ballot unless the government decides to call a special referendum. That is normally reserved for the government to make the decision. But it would — the referendum vote would take place at the next time that there is a referendum — an election taking place and it would be a number that would be listed on the ballot paper—

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, I think that is a—

Member of the public: —to make that decision.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): —slightly different from the proposal that's being raised. I mean, I think one of the proposals that has been raised is that at any point in time a person — a group of people can petition for a referendum. And one of the things that I know one of the journalists had indicated earlier on is if it is the people are allowed to participate in democracy at this level, what kind of provisions that would be put in place to ensure that the government takes on their concerns by allowing a referendum to happen in a timely manner? What would happen if a referendum issue is raised six months after an election? Would persons have to wait for another three and a half years to have the issue dealt with?

If that is the proposal that's going to be made, we would like to hear that, but that certainly is not what has been raised in the *Summary of Proposals*.

Member of the public: I understood, ma'am, if you did — when you do it and then you could bring back to the meeting the results like you have with some other research that's been done.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, that's true. We could do that. We could definitely do that. But I think tonight my — our goal is to hear what people feel about what's here now. If they want us to . . . we'll definitely put forward some more information. But if they feel that this is a system they'd like to see, if they feel that in spite of the triggered numbers in other countries they think it should be higher, I do think that perhaps it is our prerogative as — as Caymanians. This is our document and we can decide what we want to see. So I am looking to hear from the — you know, the Bodden

Town community, which I just heard from, that what you think the trigger number would be. Right here right now I'm hearing 40 to 50 percent. But definitely in the discussions on people-initiated referendums we could look at different systems.

I know that somebody had a question on human rights.
Sorry. Mr. Martin.

A Price to Pay for Independence

Member of the public: First of all, on a lighter note I think in relation to Mr. McLaughlin's comment, I think stretching out the process, the correct term for that is "constitutional constipation" would result.

[laughter]

Member of the public: But on a serious note, I think that one of the things that is probably not being voiced here is — and you touched on it in something you said in relation to your comment — I think Caymanians need to realize that a lot of the examples Billy gave are actually countries, independent countries who are seeking to revise their own constitution. There is no mother; it's master bull, master cow. In this situation we are master cow and there's a master bull over there. And like it or not, at some point you are asking them, you are not telling them. I think that enters into a lot of what we're talking about here. In other words, there's a price to pay.

I am from a country that was independent once — sorry, dependent once and now isn't. And there's a price to pay for saying we want to stay with Britain. And the price is — that is the saying used in the Caribbean: *you goffa do what they say*. That is a plea in all of these discussions, and I think sometimes we tend to think, well, we can tell them what to do but that only goes so far.

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

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Essentially, this process is about — the UK have said to us — to all its Overseas Territories from 1999: we need you to modernize your constitutions. How far you want to go is in large part a matter for you in terms of autonomy, but there are some things that you really must have. You must have a Bill of Rights, you must respect our international obligations, you worry about contingent liability, those things. And we need to make sure that whatever the instrument is that comes out of the end of this process

protects us on that end. What you want to do internally is, by and large, a matter for you, as long as you have the mandate of the people. They didn't say how that mandate had to be obtained.

I mean, arguably, this Government could have gone to the UK without this exercise, because if you read our Manifesto, at the back of it we've set out in broad terms what we propose in terms of a constitution. But part of those proposals was a commitment to a referendum, because we firmly believe that that is the right way to go despite the difficulties in getting consensus.

But what this exercise is about, I mean, from the electorate standpoint, is deciding, essentially, what degree of autonomy you think your elected government should have, striking the right balance between the powers of the Governor (i.e., the UK) and the local government, making sure that you have the right protections against the powers of the state (i.e. of your Bill of Rights). When you — and I suppose the other question is: who should stand for elections and who should be able to vote in your election?

Broadly speaking, those are the three issues. You can get — you get into the detail of how those powers are shared up and whether you should have a National Security Council, whether you should have a Judicial Legal Commission, those sorts of things, those are the detail. But, essentially, that's what this exercise is about.

And that is the judgment that the people of this country have to make, is striking the right balance between the powers of the Governor and how much more autonomy you think the elected government ought to have, how much more involvement in the management of this country and your Bill of Rights and who should stand for election. Those are essentially the broad questions that need to be answered.

Do we have it right in the *Summary of Proposals*, or do you think we go too far or we don't go far enough in some respects? That's essentially what this decision is about. And if you view it that way it doesn't become too complicated. But when you start going through the Constitution section by section, line by line, it then becomes a pretty [laughter] difficult job that not many people besides Billy and Denny are going to want to do.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay. Go ahead, sir.

Member of the public: Okay. A question concerning this is the Bill of Rights which I understand you put freedom of religion in it.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Freedom of conscience.

Question #11 - Member of the public: Freedom of conscience, okay. Can you say — I mean, Cayman is a Christian country. Can you tell me if that will mean that if someone comes and wants to do like devil worship, Obea, Voodoo, that sort of thing, would that — because they are allowed to do that in the United States, would that be able to work here in Cayman?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): No. No, no, no. [laughter] No, those things are already against the law here because they're not viewed as — as a religion. We had an extensive, extensive discussion on the whole human rights issue with the West Bay — this last West Bay meeting. I think it took up probably two hours. And what was discussed, basically, is that the freedom of conscience provision is one of those rights that has to be there, because the whole principle of human rights is respective of individual's dignity and that dignity goes to their belief systems.

So what was said is that we in the Cayman Islands — and it happens right now. There is no restriction on anybody who is worshipping of their — who is participating in their own particular faith, there's no restriction on them. What there is a restriction on are those practices that have the — the effect of undermining the morals and values of the society. They are allowed to have restrictions for that. In the Constitution and in our existing Penal Code right now most of those recognize practices are actually illegal.

What the Secretariat will be doing — which is starting to do I think now and as of next week — what we're doing right now is taking the very sections of the *Summary of Proposals*, doing a little outline in the newspapers, and then pretty much kind of highlighting some of the questions members of the public have raised in relation to each topic. The first would be human rights, and what some of the responses are.

So I would — and if you have any questions or you would like to receive information from the Secretariat, please give Jason your PO Box number or your email or so forth so we can at least during the rest of this process give you critical information about discussing the issues because that has been one.

The issue of gay marriage has been another one which people have raised. I'd just like to state that in the 2003 Draft Constitution that was an issue of concern or raised by — with the Constitutional Commissioners. And we've seen in the definition section in — the human rights section of the 2003 Draft they've actually explained that a marriage is between a man and a woman of the opposite sex, right?

What we will try to do during this process is to try and identify what the community's areas of concern are and see how we can address them when we are at the negotiating table. That is what the mandate is going to be, so that's why it very important for people to at least express their views, express their concerns, but with the understanding that, you

know, it's not going to be, well, if someone of the Muslim faith or another non-Christian faith comes into Cayman that they're prohibited from practicing. We will not get that, we don't have that now, and that's not something. But definitely I think . . .

We do have a gentleman at the back who wants to ask a question.

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

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

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Can I — do you mind if I just say something before?

There is a widely held belief in Cayman that because we don't have a Bill of Rights which sets out in one document what the fundamental rights of the individual are that there is no protection for human rights in this jurisdiction and that this would be — to have one in our Constitution would be imposing on us something that doesn't already exist.

Most of the human rights have already been — the internationally recognized human rights, fundamental rights of the individual and freedoms of individual have already been extended to us by the United Kingdom by virtue of one convention or the other over the years.

And if you cast your mind back, you will remember the case with the little Rasta boy from West Bay who had been excluded from the high school — no, well, the primary school (he's in high school now) from the primary school on the basis that he had locks and his parents wouldn't let him cut his locks. Ultimately, even though initially the Grand Court ruled one way, the Highest Court decided that that was an expression of his religion and that his parents were the people to make the decision about what his religion was at that point and the child had to be accepted in the government school system. That — we still don't have a Bill of Rights anywhere.

So, having a Bill of Rights will give it constitutional — will give those rights constitutional backing and will articulate them in one single document that we can see. But it really is not going to do a great deal to change what the situation is in Cayman already.

Just to pick on Suzanne's point.

Most of the fundamental rights of the individual are subject to some limitation or some exceptions, because — and I said this somewhere else — essentially if you want one broad rule, your rights cease where mine begin so that yes, you have freedom of expression, but you are not entitled to slander me. So your right of freedom of expression stops when you start to infringe on my right to my good name, as an

example. And the same is true with most of them. There are some like torture in which there is no exception. You can't torture people for any reason.

But most of them, including freedom of conscience — that is the right to practice whatever faith and religion you have — are subject to exceptions.

I was just looking at the — at the proposal which is contained in the 2003 Draft and it says that . . . it basically says: **Except with his consent, no person shall be hindered in enjoyment of his freedom of conscience, and for the purposes of this section to say freedom includes freedom of thought and of religion, freedom to change the religion or belief and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief and worship, teaching, practice and observance.**

But then at the end of that section it says **nothing contained in or done under authority of any law shall be held inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required in the interest of public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion or belief without the unsolicited interference of persons professing any other religion or belief except so far as that provision, or as the case may be the thing done under its authority, is shown not to be reasonably justifiable in a democratic society.**

So — and Suzanne referred to this. You know, people come in and establish cults under the guise that it is a religion, you can't stop people from congregating or assembling to discuss whatever they wanted to talk about, as long as it's lawful. Once you start getting into that netherworld and it becomes unlawful activity, it's not protected under these provisions and will be — if it's a criminal offence under — for instance, Obea is a criminal offence in these Islands so that would not be protected under — under these — these provisions.

The final point I made which I made in West Bay is — and this is Eddy's point. This is a Christian society mostly. We now have, I think the last count I saw was 110 different nationalities here. People have come from all over the world and a number of them don't practice the Christian faith.

The day may well come (perish the thought you may say but the day may well come) in 20, 25 years when the Christian belief or the Christian faith is not the predominant faith in these Islands. That is very, very possible, if you look at the examples all over the world because of the shift in population. But that is not the case.

That is why it is so critically important that you have a provision which protects freedom of conscience, because the day may well come when the majority of people sitting in the Legislative Assembly are not

Christians; they may be of some other faith. But you would want and we would want our children, grandchildren to be able to practice and proclaim their faith as Christians if that is what their faith is.

So, the whole purpose of having a Bill of Rights and having these protections is to protect the minority. If you're in the majority life is good most of the time, you know, whether you're in government or whether your numbers are so in the community. It is when what you are doing or who you are is not what is being done by the majority or that you are not in the majority that you start feeling a bit marginalized that your views aren't being allowed to be properly expressed, you can't have your way. And that is why you need protections such as these to ensure that the rights of minorities are protected regardless of who is the government, regardless of what the predominant faith is. That's why it's so important.

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

Member of the public: Good evening.

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

Question #12 - Member of the public: I'd like to, first of all say, that I concur with what Mr. — Minister McLaughlin just said, and that's why I would fight to protect the right for Honourable McKeeva Bush to say whatever he feels like saying, because if he can't have that right then neither can I. And I think there has to be a culture in which we appreciate how fundamental those rights are. It's not just a document, because there will come the time in which people will want to challenge those fundamental rights, and if there isn't an appreciation it will change fundamentally.

But I'd like to ask a question and it's — I had a conversation with someone today and I was asking the person: what do you think about the constitutional — the talks and do you have any concerns or suggestions? And one of the things — among the things that he discussed he said he doesn't think that Cayman is ready for independence. And I said I agree with you but do you know what it means to stay with the UK and what that will mean in ten years? And he wasn't quite sure.

So, my question is, given that the EU wants to formalize a constitution at January 2009 and the degree of autonomy that the UK once enjoyed is no longer true, us being a colony of the UK will obviously be subjected to more — more of the opinions of the other States within the future composition of the EU.

And when we think about same-sex marriages and perhaps even immigration law and the EU's desire to have harmonization, how do you see those things affecting our existing laws? And even if we were to

entrench some of these items into our Constitution, how will it stand up against what would be considered an extension of the UK in the decision-making process?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Well, Denny, we don't have to — to get to a EU Constitution in 2009 to understand that — I mean, what's happened in the UK over the past ten years or so as — she has moved — some will say got sucked further and further into the vortex of Europe is obvious. I mean they've had to concede some degree of autonomy. They've had to accede to conventions and agreements which perhaps they otherwise would not have done. It's just that's a reality of the process.

I mean, Cayman will have to take decisions as and when things are hoisted upon or attempts are taken to hoist things upon us that we are not prepared to accept, and you may well at that point have to re-examine the relationship. Part of what we are doing here, or proposing that we do here, is to get the UK to agree to at least consultation with us before any agreements or conventions or whatever are extended to us so that they understand better the implications of what is being done.

I mean, Meg Munn when she was here recently, basically said to us, you know often decisions are taken by — the way she put it was this way, I don't want to put words in her mouth that she didn't quite say. She said: one of my big jobs is to educate my colleague ministers about the fact that when they make decisions — because she is the Minister with responsibility for Overseas Territories.

But there are ministers who make decisions in relation to international transport, for instance, which have implications to the Cayman Islands, as an example, that when they take decisions that we need to look carefully at the implications for the Overseas Territories because they may well be. Because you sort of get the feeling when you've been around this business for a while that — it's not that the UK is out to do us harm or wants to do bad things to us. It's often we are a casualty, if you want to call it that, of decisions that they take often without having — them having had regard to the implications of those possible decisions.

I don't think that we can — we can sit here today and say, well, what will we do if that happens? Whoever is sitting in the seats at that point when something — and we know — we know when decisions are being taken or are being proposed to be taken which are going to have serious effect on us. We'll have to — we'll have to do whatever we think is right at that point. But I can't say to you sitting here that because the UK does this that we should go independent, if that's what you're trying to get me to say. We'll have to examine very carefully the impact of decisions and see what the trends are and Cayman will have to make its decisions.

As Dave or whoever it was said just now, there is a price and then there is a great deal of benefit, that's why we continue the relationship. But there is a price for being tied to some other — other country, who is essentially in charge of what happens ultimately.

Member of the public: What I'm trying to get at is that January 2009 is right around the corner and what I'm trying to understand is what would be the likely consequences once the Constitution in the EU is adopted. Because if you—

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): I don't think it's going to make a great deal of difference to the relationship which — which exists now.

Member of the public: So none of our laws that we currently have — for example, our Immigration Law and the whole perception towards homosexuality and stuff — that will — that will not be changed?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Not as far as I'm aware.

Member of the public: The UK—

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): The UK would have to — to take a conscious step to — to extend things to us.

Member of the public: Did the UK—

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): It's not going to be — it's not going to be automatic.

Member of the public: Did they give us that assurance that that would not be the case?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): We haven't had — we — not since I've been in government have we had any — any discussions with them about that.

Hon. Charles E. Clifford (Minister of Tourism, Environment, Investment and Income): Denny, just — just so that I can give one example of the current thinking, and it speaks to the whole issue of when there's an agreement between the European Union and in other

countries, an example the US. And let's bear in mind now that the UK is very much a part of the European Union.

It does not necessarily mean that that agreement is automatically be extended to the Overseas Territories, and I'll use as an example the recently concluded the Air Service Open Skies Agreement between the United States and the European Union. That didn't automatically extend to the Overseas Territories, and the UK in particular recognized that there were unique circumstances in the Overseas Territories that required specific attention. And so, from — from that point of view they are facilitating meetings and discussions about, essentially, agreements with respect to air services that would be unique to the Caribbean.

So I just use that as an example that while the Constitution — or the new Constitution, the EU Constitution that you're referring to — is not yet in effect, if you consider the current spirit within which they're operating, it would appear as if they are more than willing to identify and respect those unique circumstances.

Now, notwithstanding that, we understand very clearly that there are going to be challenges with respect to what happens with the European Union's Constitution. But we certainly can't sit here and do nothing waiting for that to happen because we know from experience that these discussions that they're involved in, whether it's in relation to the Constitution or air services or some other international treaty, that there's often a lot of slippage with the timelines. And so, I don't know that I can sit here and confidently say that — that they will have a new constitution or a constitution in place for the European Union in January 2009. Perhaps they will, but we have to do what we have to do here as well.

And if that Constitution comes into effect in January 2009 and it presents issues, then we deal with them at that time. But you have recognized the point that we also recognize, that, you know, we can't — we can't simply sit back and wait for them.

Member of the public: I'm not suggesting that we sit back and wait. I'm actually suggesting that we emphatically say to the UK that we are different and that our uniqueness should be considered. And I feel a bit stronger about the statement of consulting, so I — I hope that they do more than just simply consult but take it very seriously.

Hon. Charles E. Clifford (Minister of Tourism, Environment, Investment and Income): All right. Well, we — we appreciate your point and that is precisely why we put in our proposals that they should — or not should, but they shall consult us whenever they're dealing with any treaties, as an example, that would have a direct impact on the Cayman Islands.

External Affairs

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

I just wanted to just draw to everybody's attention to the screen because the screen is actually on the section on External Affairs, and the proposal is that the UK and the Governor should consult Cabinet on international treaties and that treaties should be approved by Cabinet if it will affect internal policy or local legislation.

Now, what I find interesting is that the United Kingdom is actually — they've actually formally put out their own document in the UK July 2007, looking to achieve certain constitutional reforms in their own country. And if you look on the — of your left-hand side of your screen you'll see I've referenced a document called Governance of Britain which was produced the Secretary of State for Parliament last year. And they are actually looking at that themselves, because they recognize that as a member of the EU they have to sign on to certain treaties and so forth. But what they are proposing to their own people is that Parliament should be able to scrutinize the treaty-making process and that procedures for allowing Parliament to scrutinize treaties should be formalized. So they're recognizing the fact in their own country that their governments as a whole must have a say and must be able to scrutinize these treaties that they are usually signed on to. There should be transparency within their own system and consistency.

So, you know, each country has to take its own protective measures. We see that Mr. Warren has raised a very important point about the fact that, you know, we are a territory of the United Kingdom, but the United Kingdom is a member of a much larger body and sometimes its policies will have to dictate to the majority view of the EU and they may have to concede. What protective measures are there for us, could there be for us? And we see that they are also looking at the same time in their own jurisdiction of some of the protective measures that they can put in place for themselves.

Single-Member Constituencies

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, we had discussed some of the major issues upfront, and one of the items that Minister McLaughlin raised was that of single-member constituencies. I think perhaps I would like to perhaps hear from the Bodden Town community about how you feel about a move towards a single-member constituency electoral system as opposed to what we have right now? Does anybody have any thoughts about — on

that? Does anybody want an explanation or everybody has an understanding of the concept?

Member of the public: No, we would like to have more explanation on that, please.

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

Well, I think the proposal was in . . . no, it was in 2003, I think, or 2002 I think, there was a constitutional amendment establishing 17 electoral districts in Cayman, and it's actually in our present Constitution, and it had a provision for the creation of an Electoral Boundary Commission.

And I don't know how many of you remember when the Commissioners came across to the different districts about 2003, and the purpose of that — the function of that Commission was to set the boundaries. So what that would mean is that we will have — now we have 15 elected Members. Instead of 15 there would be an increase to 17, but it wouldn't be under the current system that we have, it would be under a system where you would divide the Island up for elections purposes into 17 separate constituencies.

So, I can't remember for Bodden Town but I'm sure the boundaries would have been three separate constituencies. You will have to set the boundaries within the Bodden Town district, and then what would happen is that depending on where you live you will fall into a particular constituency and you would have one vote.

Now, I don't know if anybody would like to speak about the whole reason behind moving towards this type of system, but I know that one of the reasons was to bring equality of vote, because there had been a complaint for some time by the smaller districts that, you know, at the end of the day our vote doesn't count as much. At the end of the day my representation is not equal. And what this would bring would be equality of representation, equality of vote.

So, right now Bodden Town's vote counts less than George Town and West Bay; and East End and North Side's vote counts less than Bodden Town.

What would happen is that for the purposes of elections only, the Island would be divided up into very clear constituencies, and the individuals living within those areas will be able to vote for one person. So you may have, let's say, two or three candidates running within your constituency but you can vote for one person and the same thing with the person who's in the constituency next to you. They can choose — their candidates will run but they can only vote for one person within that. And all of those seats would be filled and when the persons go to the Legislative Assembly they will be the representative for George Town North and Bodden Town East perhaps. You know?

So — and what that will perhaps do is to give an individual potentially greater access to their — that's right, their candidate particular with access to their constituency they may be able to represent them more because they have a smaller base. They may be in more in touch with the needs of their couple of hundred people as opposed to a couple thousand. I think in George Town you have four candidates, four members, but you have probably 20,000 people you gotta look after. I don't know how [laughter] realistic that is. But that was part and parcel, I think, of the philosophy behind single-member constituency.

So, did anybody have any particular views?

I know that some people have been saying, well, isn't it in yet? Is it coming in for next election? And then some people are saying, well, what is it? So I'm not sure — right now I don't think the Secretariat is sure exactly how much people know about it, what their views are.

And I think we had a question right here. Okay.

Question #13 - Member of the public: Good night everybody. I just had a question — just what I looked at under one man, one vote proposal.

I wanna state it makes a whole lot of sense to have a one, man vote. I'm not too much keen with the one man, one vote but I understand that Bodden Town — East End, North Side is similar, the same, correct?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): It will create equality in our three Islands that you'll be divided up pretty much in similar numbers and in terms of, you know, each person will have one vote. So you wouldn't have the apparent inequalities that we have right now.

Member of the public: Okay, so with that — I'm saying then, this will give each member that running for election to stand on his own merit and people could judge from what they hear — for example, me for example, I'm gonna say running for George Town and to stand on my own merits what am I proposing for the country and without having the backing of the party — or a party you stand in your merit; is that correct? Pretty much you'll be standing on your own merit than having a support?

For example, let's say George Town you have Minister Kurt or whatever, and he choose four people to run with him because of his popularity — just add six speaking, he brings in the full four seats, right? But now if I'm running under the PPM or whatever and I stand up and say, okay, guys, this is what I — or this is my proposal to you, this is what I would be recommending, what I would do when I get in, people could judge better and say, you know what, he's a strong man.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, what it will do is that if you're — let's say you're in — you are the candidate for Constituency 'A' and let's say John Doe is a candidate for Constituency 'B'. You wouldn't prevent a party system taking place, but what it will do is that no matter how much I, as a constituent, may like that person in the next constituency and I may love him, I can't vote for him. I can only vote for who's here. And the decision that I would have to make is am I going to vote in the person that he's endorsed just because he's endorsed them, or am I going to vote in the person who has presented himself to me and has told me what he plans — what he feels he can do for my constituency?

So I think it is supposed to perhaps reduce the whole tailcoat effect. But one of the things I think it could perhaps do is encourage more persons who want to run to actually do so because if you are — I mean . . . okay, let me say Bodden Town. If somebody grew up in Breakers and they knew the Breakers community very well that they did not necessarily know the main Bodden Town community and the Savannah community very well, I mean what chances of success would that person have? But if the constituency is divided up into zones and your zone — you know that your zone — you're from that zone, then your chances of perhaps getting in would increase because that is really your community. Whereas, you know, before you may have said no, I'm not going to run because, you know — in the larger scheme of things I am not that well known.

So I think it — there are — there are always advantages and disadvantages of a type of system, but I think in terms of a single-member constituency what it does perhaps is it personalizes the politics. It really allows — brings the electoral system back to the neighbourhood type of system whereby you know who you are voting for and he's from your area and he could look after your area. He doesn't have to look after main Bodden Town and Savannah, Newlands or Spotts. He doesn't have to find his — find money to look after them, they have their own constituencies to do that, but he has to find the money and try to protect your constituency's interests for the purposes of elections.

Member of the public: Sounds good. Thanks.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay, we have a gentleman at the back and a gentleman at the front. Okay. Please use the microphone.

Okay, sorry. We have a gentleman here, and then you'll get that.

Member of the public: Good night everyone.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Good night, sir.

Question #14 - Member of the public: I have two problems with the single-member constituencies. I am not against the one man, one vote, but I think it should happen within the current electoral boundaries in the sense that if you make the electoral boundaries smaller, right, and I'm creating a bunch of imaginary people now.

You've got Peter from the PPM and Paul from the UDP. I want to vote but — and even though I would be associated with the PPM, I don't want to support Peter, neither do I want to vote for Paul, but there might be an independent called John who I support. And then, well, that basically — I vote for John, he gets in, but now comes the problem where if he's not affiliated with a party, he might actually get ignored and his constituency might get ignored, nothing gets done and the ministers replace him with their colleagues in the next election. It mightn't be right then and there but in the next election, if you understand what I'm saying.

So, I'm wondering if there going to be any checks and balances implemented or what can you say to that?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, I think that is something that we are going to have to live with in the society. The chance may be that one election the candidate of choice is one of the persons that you like and a candidate of choice is a person that you're not keen on. Whether or not they're affiliated to another group may be a separate thing. I mean, we have independents running all the time, and some people still have the freedom of choice to vote for that person, and I think that's the beauty of politics. But at the same time we have entered into a party system so it may not necessarily be a reality for the person but also for us as a community that how do we vote? That will shape how we vote because if we have to recognize we're in a party system, well, you know, parties are usually big and they sometimes hold the majority if they get in.

But I think overall, as I said before, there are advantages and disadvantages in every single system. I mean, there are those persons who feel that the present system is an unjust system because the whole coattail effect, there are those people who feel that perennially they have not been represented because the person — where they come from they are minority and they're never going to be represented because the attitudes of the particular district may be to just — if you like one person you vote whoever is with him or her.

So — so I mean there are advantages and disadvantages in both. Politics is about personalities but it's also about principles, and I think the issue of the equality of vote is one that really one has to look at is that you know whether or not my vote should be worth more than someone else's and we all live in the same country.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Suzanne, if I might — Alexis, the problem you identified or the issue you identified, which is real, cannot obtain even with multi-member constituencies. We have it right now. You have all four Members in West Bay belonging to the UDP, so they have no representation in the Government. So the situation you've identified is not unique to single-member constituencies.

I just want to — there's no perfect system. I mean we're searching for perfection and nothing wrong with that, but there's no perfect system.

The concept of single-member constituencies is really different than one person, one vote even though the two are related. Single-member constituencies mean that a constituency is represented by only one person. One person, one vote is that each person only has one vote. So they are two different things.

One of the benefits of single-member constituencies is — and Suzanne alluded to this — accountability, because a representative has two functions — we may say they have more, but essentially two functions: one is to represent your people at the constituency level, to be there for them for whatever their local issues are; and the other one is to be part of the broader legislative system or government depending whether you're in — to sort of deal with national issues and to vote and make sure policies, right policies get put in place and implemented and so forth.

At a constituency level when it is only you who are accountable to those people who voted for you that heightens your sense of responsibility, and it also makes sure that you can't say (as we can do in Bodden Town and George Town now) don't check me, check Mr. Kurt, he dealing with that. And you can essentially go around the block because you got four people who are responsible for the same constituency. Just — so that — there's that.

It does reduce, although it doesn't entirely negate, the coattail effect because people will come to understand very quickly that it takes — out of 15 it takes 8 people to form a government. So there's not point in voting for Mr. Alden, no matter how good you think he is, if you're not going to give him enough people with him who are going to support him so he can effect the policies, the plans and programs that you think he'll be able to do. So people understand that. Instinctively people understand that. So it doesn't entirely negate the coattail effect, but it does create the real issue of — of accountability and responsibility and transparency. You can't say that's somebody else responsibility, this is your constituency and either you delivered for your constituency or you didn't deliver for your constituency. You can't blame nobody else.

And the second point, the second point — so that's that point. But under one person, one vote, it's essentially — that's the hallmark of true democracy, that each person has equality of vote.

Now, it's hard for us who grew up in multi-member constituencies to say, man, I gotta give up three of my votes? Because you feel like you're giving up something. But it's — you really shouldn't have more than one vote in a true democracy. Each person should have — regardless of where you live because right now depending on where you live depends how many votes you have. So, those are the basic points really.

One Man, One Vote in the Current Electoral District Level

Member of the public: Just to touch on that again. Like I said, I'm not against the one man, one vote idea. Like — I would rather see it happen on — in the broader — like in the current electoral district level. Like, say we got Bodden Town and we got eight candidates then implemented then, you know, each person gets one vote and, you know, whoever the top three are they go for Bodden Town kind of thing.

Going back to what you were saying about accountability, it is my understanding that because of accountability the ministries have been centralized in the sense that if you are a politician you have to go through your respective ministry to address, you know, any project, you know, problem that, you know, you have to get at.

So if, say, an independent is elected in a single-member constituency and they go to their respective minister and say, well, boy, you know, I need to fix a pothole, that would probably be the Works Minister. And you say, well, you know, okay, I told him. And he goes back and the people say, well, boy, this pothole not fixed. What happening? And he says, well, I told the respective minister but he didn't do nothing about it. And you see — unnah see what I getting at?

The current government could actually use it as a tool to get that person actually removed from that constituency and get their man in, in the next election, if you see what I'm saying.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Yes, if he's not a very smart politician, because I lived in an environment where I was the opposition with two government ministers in my constituency who didn't want to see me gain any ground in that regard, but you put them under pressure. You put them under pressure by publicly stating what it is you've done in the House, you write letters to them, you write [laughter] you write to the paper, you develop your own relationships with the government agencies and you go around them to get things done. But it's hard work. But it can [laughter] I promise you it can be done. Because these are some of the — as I say, it's not a perfect system.

Politics is adversarial by nature. It is — and most politicians believe that to make me look good I need to make you look bad and to get the numbers I need to remove you. That's the way the system works. As I say, it's not perfect but that's the way the system works.

So, it's not Sunday school, you know, so — everybody's not looking after each other and having this wonderful relationship which we all would like and everybody says oh, look how bad they're behaving in the House. If you listen to or see how they're behaving in most Houses you will understand that this — our system is very, very — we're very kind and gentle to each other [laughter] in the process. It is a tough, tough business but that's — that's the way it is.

More Time on the Referendum and Constitution

Member of the public: I speak toward — on the referendum and time and on the Constitution. I think we need more time and I think the people need more education on this very important issue. We don't need to rush anything at this time. I think we need more time to study it and more people.

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

We do have . . .

How much time were you thinking of, sir, are you suggesting?

Member of the public: At least six months more.

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

He's coming. [laughter]

Question #15 - Member of the public: My question was, I think, more or less answered. I was going to ask you as representatives to indicate to us what you felt were the pros and cons of the single-member constituencies. Maybe there are some issues that we may not have thought about. I heard your expressions, but I don't know if there are any other things that you might feel . . . Okay.

The other thing I was going to ask was in terms of the — the creation of the constituencies. Who would be responsible for doing that?

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

That's actually a provision that is already in our Constitution now, as a result of one of the changes they made in 2002, the establishment of

what's called an Electoral Boundary Commission which has a chairman appointed by the Governor and one Member appointed on the advice of the Leader of Government Business and one on the advice of the Leader of the Opposition. And that is the body that is actually charged with the responsibility for fixing the electoral boundaries or making adjustments as the case may be.

Member of the public: And are we trying to attain to a sort of balance where there would be sort of equal numbers, or is it more in a sort of equal geographical area or what — how are we hoping to do that?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): That was the attempt. The proposal was, and still is, to increase the seats to 17 and to have as fair a distribution as possible of the voters.

Member of the public: Okay.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): But again, it's very imperfect simply because of the numbers. I mean, if you take North Side and East End the numbers in those districts are so much smaller than they are in the other Bodden Town, West Bay and George Town in particular that you don't approach equality. But you'd have to increase the number of elected representatives to — I think they something like 20 or 21 which we really don't need and can't really afford.

Member of the public: Yeah. Thank you.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): But I can say that part of the things that the Boundary Commission had to look at were some of the natural geographic lines to — when they were looking at the boundaries so . . . And we do have their report on our website; and we will be publishing an article also, we do have someone working on that right now sort of explaining the process the Boundary Commissioners went through when deciding, you know, which — where to start a boundary and where to end a boundary and so forth. But if you want to read, it's right there on our website right now.

Question #16 - Member of the public: I have a question of . . . I wanted to talk a bit on a topic not related to the single-member constituency or one man, one vote.

Again, going back to the whole process of constitution advancement, Minister McLaughlin at a UN seminar in Bermuda last year . . . I'll just read a couple of excerpts of some of what you said. You stressed that the only true independence was economic independence

and talked a bit that the Cayman Islands had the least advanced constitution of the Territories but the most successful economy in the region and economic success had been equated with the constitutional link with the United Kingdom.

With that in mind — Sorry?

Economic — I'm just reading excerpts of it, not the whole thing.

It said economic success had been equated with the constitutional link with the United Kingdom.

Now, with that in mind what — and I'm taking that to mean that not necessarily with anything — that doesn't necessarily have to do anything that the United Kingdom does but more of the perception on the part of the people who do business with us here, right? And with that in mind, has there been any consideration of the economic impact of constitutional advancement and, if so, if you could expand on that.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Just — the process that we're engaged in is a process that's been mandated by the United Kingdom. I think I went through that a little bit before. They have said it is time that the constitutions of the Overseas Territories be modernized.

We have seen four of the Overseas Territories go through this process. Nothing that is being proposed by us is in any way radical. At its highest it is a rebalancing of some of the Executive power as between the elected Ministers and the Governor. Nothing that we have seen or heard indicates to us that anyone in the outside world would be in any way alarmed or concerned about what is being proposed here. On the other hand, it should reduce, assuming these proposals go through, significantly some of the stress and tensions that exist between Cayman as an Overseas Territory with a, shall I say — I won't say backward — a less advanced constitution and which still has one man sitting in the chair making many serious decisions which affect the interest of these Islands, without regard to what the duly elected government may think or say.

I think developed nations must be more concerned about a lack of democracy than they are of countries with more democratic practices, with more checks and balances on the power of the Executive. The Governor's accountable to no one but the United Kingdom as opposed to the elected government who are — whether they're good, bad or indifferent is subject to the poll every four years.

Member of the public: Yeah, that's specifically what I'm referring to. What I mean here is that — I mean, and I'm not in any way saying that I don't support the provisions you're proposing here. But that's exactly — what you just said there about the Governor being the single person in command of the situation, because as I started to say earlier, as far as you — the whole thing about — in relationship . . . the economic success

being equated with the constitutional link with the United Kingdom, again, I'm referring not to the countries that we deal with here now but the more — the people who come here to do business and just that perception of the stability of the relationship with the UK, the Governor being in control of the situation. You know, as I say again, do you see that any of these provisions for advancement having any effect on that perception?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): I think it'll improve the perception. Actually, we are — we are proposing to improve the constitutional link with the United Kingdom to modernize it so it reflects Cayman's evolution and maturity as a country increasingly capable of managing itself and with a more democratic system in which the people who are making the decisions increasingly are those people who are accountable to the people — to the electorate. That can only be good. Any right-thinking person must — must believe that a country which has more democratic practices is bound to be a more stable jurisdiction than one which is run by people who are — or by a person who is by and large not accountable to an electorate.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Just to explain a bit further how the constitutional modernization would actually help Cayman in terms of its economy and its industries and so forth.

What we have seen in the British Virgin Islands' Constitution is that there has been provision to allow the elected government itself to participate in tourism and tourism related matters when it comes to treaty agreements, taxation and the regulation of finance and financial services. And I believe that Minister McLaughlin earlier spoke about Cayman's increasing competing interests with the United Kingdom itself. And what this is intended to do is to allow Cayman, or the British Virgin Islands in this case which has an economy similar to ours, to stand on its own two feet in a regional international arena when it has to protect the financial or business affairs of the Cayman Islands. And we see that this has also been extended to allow the BVI to participate on issues dealing with the European Union matters directly affecting the interests of the Virgin Islands to participate in the Caribbean regional organizations and so forth.

So, what — part and parcel of the constitutional amendments — what it's supposed to do, the overarching theme is putting Cayman first, or is putting us in the best possible position. And when it comes to our economic affairs, yes, the relationship with the United Kingdom does maintain that perception of stability. What Minister McLaughlin said is that if we can sort out these areas of tension between the Cayman and the UK based on our Constitution, then we would diffuse a lot of tension

which would mean in the future these things will — ought not to be issues because the lines are very clearly drawn in the sand.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): See, Mark, one of the present situations we have now is BVI has actually put in their constitution and the UK has agreed to give them the ability to negotiate various international and regional agreements and so forth. In Cayman what we have to do is we have to apply to the UK for what's called a Letter of Entrustment on each specific area. There are some areas we actually do go into the international arena ourselves usually because the UK is there as well and her interests don't necessarily coincide with ours. So we need to present our own case and they'll essentially tell you that and then they'll give you what's called a Letter of Entrustment to allow you to do it.

These sorts of proposals which the — which BVI have successfully negotiated give them the constitutional backing or ability to do so without having to go to the UK in each and every case to be able to do so. It's a sign of growing maturity and responsibility for your own affairs. And I don't think — well, I have no indications that having such a provision in the Constitution has done anything but good for the BVI's international perception, or perception in the eyes of their international investors and so forth. They have a very, very thriving financial services sector as I think most people know and a very buoyant economy. BVI is doing very, very well.

National Security Council

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

It's now 20 to 11 so I've been informed. I don't know if there are any other issues outside of what we've discussed that you would like to talk about.

No?

We do have the National Security Council which was an issue that was raised — discussed earlier. This really is a proposal that a separate body be created which will consist of the Governor, the Commissioner of Police, the Attorney General, et cetera, to at least — to actually carry out — make policy-meeting decisions regarding police and internal security. And where this recommendation originally came from was the United Kingdom itself.

Last year December, just this December the Foreign and Commonwealth Office (FCO) was audited, and their audit office identified that when the United Kingdom was dealing with risk in Overseas

Territories that it had to, in some cases, include the elected representatives of the Territories itself because they are more in tune, in some instances, with the local conditions. And what they had recommended if you see in the second bar here is that there's a need to strengthen local ownership and participation in policing matters — the need for objective independent assessment of effectiveness and efficiency of territory police force according to local circumstances.

And what we see is that in the Turks and Caicos Islands — and I think they negotiated their constitution December 2006 — that they actually created a — a National Security Council. However, their — the scope of what they can deal with is actually quite wide. It covers Defence, External Affairs, International Finance, Internal Security and Police Force.

The British Virgin Islands, what they have done is they've also created a National Security Council and our recommendation mirrors theirs which is basically dealing with Internal Security and Police, limiting it to those areas.

So that is the recommendation that's being made, that we have some national body because right now these decision making — the decision making of the police is restricted to the Governor. The ability to have dialogue with the Cabinet, Ministers of Government is constitutionally restricted. And what this would allow for is for more partnership in protecting the Internal Security issues guiding how to deal with such issues in our country. And I know that someone has recommended that in addition to ministers of government and being of the — on the body that perhaps there should be added one or two laypersons from the community who would again bring a more global perspective to dealing with Internal Security issues in the communities in Cayman themselves.

Do you have a question or a comment?

Member of the public: I do agree that we do have a need for a National Security Council in this country. I am a strongly — I have talked about it several times and in this day and age I was sort of surprised that here in the Cayman Islands we do not have a National Security Council. Whether it's proposed by England or by the people of this country or by the government, I do recommend it.

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

Unless there are any other issues I would actually close off tonight, but I am, of course, at your service.

No?

Okay, I guess we can — sorry.

Thank You

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Suzanne, I just want to express our thanks — that is the Government — to all of you who've come out. We know this is quite an undertaking in the middle — well, not the middle, today is Monday you know — during the working week to come out and spend this amount of time talking about constitutional issues.

They aren't the — they aren't the sexiest things we can talk about but they are very, very important and I'm grateful for all of your suggestions and contributions and criticisms. We've taken them all on board and, ultimately, they'll go into — into the decision-making process which we have to make. There are a lot of things — there are a number of things we're going to have to decide upon in fairly short order. So thank you all again.

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

[applause]