



Constitutional Modernization Initiative Public Consultation Meeting

Held on

Friday, 8 February 2008

Aston Ruddy Centre

**Cayman Brac
Cayman Islands**

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FRIDAY, FEBRUARY 8, 2008
CONSTITUTIONAL REVIEW SECRETARIAT MEETING
ASTON RUTTY CENTRE
CAYMAN BRAC

PRAYER

Hon. D. Kurt Tibbetts (Leader of Government Business): Miss Sybil, would you please come and start us off with a good prayer? Would you?

Hon. Sybil I. McLaughlin (Former Speaker of the Legislative Assembly, National Hero): Will we stand, please?

Our Father in Heaven: we come to You again tonight, Lord, asking You for guidance, asking You, Lord, to give us faith. Most of all, Lord, we want to ask You to help our country to be what You would have it to be.

Father, there are so many concerns and yet there are so many that are working hard to make this place a better place to live. But, Father, You have told us in Your word that a house divided cannot stand. And You've also told us that all things work together for good and so, we pray tonight that You will bind our hearts together as one in love and unity; allow that we will be a country that will be an example to others; that when they see us they will say surely they have God as their pilot.

We ask Your blessings now in the meeting tonight. We pray for these that have come and we pray, Father, that You will continue to keep us together, keep us always looking to You, who is the author and the finisher of our Faith.

We thank You for what You have done and for what You will do. We pray this now in Jesus' name. Amen.

Hon. D. Kurt Tibbetts (Leader of Government Business): Amen. Thank you.

WELCOME

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Thank you, Miss Sybil. Good afternoon, everyone. Good afternoon.

My name is Suzanne Bothwell, I am the Director of the Constitutional Review Secretariat, and tonight is the first meeting for doing the public consultation to discuss the issues presented in the "Blue Book", the *Summary of Proposals*. I hope everybody has a copy of that document because we will be referring to it tonight.

Now, I will just say, unfortunately, we are still trying to work out the technical details. Something has happened either to the projector cable or by computer during the trip over to Cayman Brac. But I think it is time for us to begin, and hopefully at some point in time we will have the aid of the projector but if not, I think we're just going to do it old-school style.

[laughter]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I would first like to ask the Honourable Leader of Government Business to say a welcome and to speak first.

Thank you.

Hon. D. Kurt Tibbetts (Leader of Government Business): Thank you very much, Suzanne, and I must say good evening to all of you, too. I really would love if everybody who is at the back would come to the front, including my wife, but anyway, she never does listen to me most times.

[laughter]

INTRODUCTION TO CONSTITUTIONAL MODERNIZATION

Hon. D. Kurt Tibbetts (Leader of Government Business): Seriously, folks, this is perhaps one of the most important times in our history. It has been a long time since we have had the opportunity to engage in what we term “constitutional modernization” — good evening, Ms. Julie, how are you doing?

And just so that you will have a feel for the exercise that is ongoing as we speak, you will recall that this process really started with the 1999 White Paper, “Partnership for Progress and Prosperity”, where Britain called on all of the Overseas Territories to engage in the constitutional modernization process in order to achieve self-determination to what acceptable levels could be had that Britain herself would accept, once those territories desired to remain British Overseas Territories.

Now, contrary to what you may have been hearing in recent times, the fact of the matter is that this Government (and I am sure that I can speak for the vast majority, if not all, of the people of the Cayman Islands) this Government has no desire not to remain a British Overseas Territory, meaning that we have clear indication from the entire country that the country wishes to remain as a British Overseas Territory. So, the business about trying to get independence through the back door is just political rhetoric, to be kind to what has been said. So I want you all to

understand that very clearly; there is absolutely no thought regarding that.

But what is a fact is that since 1972, some 35 years have passed, many things have changed. The entire world has changed. The country, meaning the Cayman Islands, has grown in leaps and bounds, and so the needs and desires for good governance will always prevail. And the demands are more and the constitutional framework that [portion not on recording] is just like an old car that you need to trade in and get something that is newer that you can afford and that's what this process is all about.

We began the process in 2001 and we got to the point in 2003 after the Constitutional Commissioners had developed their own draft constitution after the consultation process. And then the negotiating team went to London, renegotiated with Her Majesty's government, and at the end of the day there was a 2003 draft constitution that was prepared and sent back to us. Unfortunately, at the end of the day, the Leader of Government Business, at that time, chose to discontinue the process and everything stopped dead in 2004.

So, in restarting the engines to go through this modernization process it is really not that we are starting everything from scratch. The Government decided that by the time we got to start the process and we announced it several months back (in fact, probably a year ago), we decided that it would be best for us to develop an initial position paper so that the public could have something to start from with regards to them engaging in trying to learn more about what the options were and what decisions we have to make so that we could develop a final product that we were satisfied with as the framework for us to go to negotiate.

Now, we need to understand that the two documents that have recently been produced by the Secretariat, which is *The Cayman Islands Constitution: A Reflection of Who We Are*, the *Summary of Proposals* and also the *Explanatory Notes*, are simply the starting point for this discussion between us and the public.

There is no thought in our mind that what is contained in this document is the final product. Some people are also saying that. This is simply so that you would have something to bring to stimulate your minds, to begin thinking, and you will perhaps agree with the majority of the proposals and there may well be some reasons you will not agree with. The fact of the matter is, we want to hear your thoughts on it so that when this exercise is completed we will know that we can develop a further document which takes all of those discussions into consideration so that we'll be able to get to the point where we can hold a referendum and know that what you have said to us and what we have captured in the new document is basically the picture that we are taking to London to begin negotiations with.

Now, when we get to that point, folks, even then we cannot guarantee that the final product of a new constitution after the

negotiations will be exactly what we want, because when we go to negotiate we certainly are going to negotiate with what we believe and the people believe is in the best interests of the Cayman Islands. But the fact that we wish to remain a British Overseas Territory, and the fact that we see many advantages in doing so, and the fact that London has said to us: *If you so desire, we are quite happy to continue the relationship. Only thing is you have to appreciate that while we wish for you to have constitutional modernization and while we wish for you to have self-determination to a point, we also have to ensure that if you are a British Overseas Territory that there are certain interests that we have to protect on our own behalf.* So that's the reason why there will be negotiations.

We have to find the level where we can get what we consider to be in our best interest, at the same time understanding that there will have to be certain accommodations for Britain to feel comfortable with the relationship continuing. If there is a relationship that has to continue, then certainly there have to be interests on both sides, and we have to simply take those into consideration and see how best we can blend those that everyone is as satisfied as is possible. So, I say that so that we can have a clear understanding and I implore of you tonight . . .

For some reason — and I'm not going to get this meeting into that tone or flavour, but for some reason there seem to be those who are determined that the process should not continue. Ladies and gentlemen, if we just step out of the box for a minute and just look at the big picture, the fact of the matter is that we have been at this for quite some time. It is time for us to be able as our own jurisdiction to make the determination for us to move forward to get this put to bed.

There are millions of other things that are important that we have to face as challenges; that the country faces; that the government has to deal with whether it's this Government, the next government or the one afterwards. There are always going to be challenges. The country is growing rapidly; the population is growing rapidly; there is infrastructure; there is education; there is health services; there are social gains that we need to accomplish. So, this is not something that we need to stop the whole world and spend two or three years at; it does us no good. While this is as important as anything else, we just need to be able to put our minds to it.

And, Miss Sybil, you were as good tonight as I've ever heard you. Thank you very much.

Because that's what we need, we need to put our minds together understanding that not any two people are exactly alike so there will be expressions of opinions which will vary. And the ability for us to listen to all of those and pull from everything to bring something that can bring consensus is what the exercise is all about.

I'm not going to take much longer but I just would like for us to be into that frame of mind when we go through the various views issues with the Constitution. There will be other aspects to discuss, but I think

perhaps I should stop there presently and ask our facilitators to be able to go through the process with us tonight so that we can have some time to discuss and you can air your views.

[pause]

Hon. D. Kurt Tibbetts (Leader of Government Business): I just want to take a minute now to introduce you, because Suzanne hasn't done it yet so I'll take the opportunity to do so.

Suzanne, as she has already said, is the Director of the Secretariat, and she has her team with her. She has Christen Suckoo, who is in the Secretariat. Where is Yvette Cacho? She has Yvette, who is a part time everything. She is taking some photographs tonight. And down in the back is the mother hen of them all, Doralyn Stewart. She takes care of everybody. So, that's the group up here tonight. And of course we have Hilmae Anderson . . . is she here? Should I say Anderson or Bodden? Bodden. [laughter] All right, Hilmae Bodden. Hilmae is also part of the team, forgive me.

And of course we would also like to thank the other Members of the Legislative Assembly who have either travelled from overseas and also — or “overseas” meaning Grand Cayman, and also our two representatives from Cayman Brac and Little Cayman, First Elected Representative, Ms. Julianna O'Connor-Connolly, and also our Second Elected Rep, Mr. Moses Kirkconnell. So, I want to welcome all of you here.

I'm forgetting things as I go . . .

The Cabinet Secretary had a birthday last week and I didn't even remember that he had travelled all the way. I thought he was still resting from the celebration! The Cabinet Secretary, thank you for coming up and attending, too. Just so that you will know, the Secretariat which Suzanne heads up is under the Cabinet Office, so the Cabinet Secretary actually oversees all of its activities. Thank you very much for attending, sir.

Okay, Miss Suzanne, over to you.

Thank you.

COMPANION GUIDE TO CURRENT CONSTITUTION / SUMMARY OF PROPOSALS

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Thank you, Mr. Tibbetts. I would just like to start off by saying, again, thank you for coming tonight.

And just to put everything into context, exactly what we're doing into context, I wanted to know — I want to know how many people have picked up a copy of the Companion Guide to the current Constitution that the Secretariat put in place. And the reason I'm starting at this juncture is because, if you look on page [54] of that document you will see the number of constitutional amendments our current Constitution has undergone since 1972. In fact, we've undergone seven separate statutory instruments, with perhaps over 30 or 40 changes to our '72 Constitution.

You will see on page [54] that in 1984 there were amendments to the sections relating to:

- qualifications of elected membership — and that is something that we're going to be revisiting again today;
- similar changes were made in 1987;
- we see 1992 changes again about the elected membership to the [Legislative Assembly] LA

And in 1993 there were many, many changes to our Constitution from:

- the role and powers of the Attorney General;
- the recognition of the three Official Members — Attorney General, Financial Secretary, Chief Secretary — as Official Members of [Executive Council] Ex-Co;
- the procedures for delaying an elected member who's required to vacate his seat;
- the qualifications of Speaker and Deputy Speaker;
- the ability of the Governor to recall a dissolved Legislative Assembly;
- the jurisdiction and composition of the Grand Court;
- the establishment of the Complaints Commission — Commissioner;
- the establishment of the Office of the Auditor General;
- the creation of the Public Register of Interests;
- the ability to hold a referenda in Cayman Islands; and
- increasing the number of members of Ex-Co from four to five; and actually
- being able to call members of an Ex-Co "Ministers".

And, again, we have changes in 2003 to allow for the establishment of an Electoral Boundary Commission, and in 2004 about two separate amendments.

So we see in the Cayman Islands from the 1972 document that we had governments over the decades have found it necessary to revisit the constitutional provisions so that we can make our government and our country run better, and we are but in another stage in this process.

So, everybody will see that really what the Leader of Government Business has just stated is that to restart the constitutional discussions that we've been having for the last ten years, what the Government has put forward is a *Summary of Proposals*; and the basis upon which they've been making these proposals, some of which were based on their positions perhaps in the last 2001 constitutional review, and others have been as a result of perhaps particular challenges they've been facing over the number of years. Also the desire for a partnership between the Cayman Islands government and the United Kingdom government, a partnership in decision-making processes between the Cayman Islands government and the Governor.

And . . . and as a matter of fact, the 1999 White Paper which was published by the Foreign and Commonwealth Office (FCO) who is responsible for overseeing all of the British Overseas Territories, part of that paper spoke about the desire of the United Kingdom to encourage the territories to revisit their constitutions. There is also a desire there for us to look at the issue of human rights and also to ensure that the community [portion not on recording] not just our elected representatives and the FCO.

So this has been a movement that has been afoot not only unique to the Cayman Islands, but in all of the Overseas Territories. And as a matter of fact, Cayman is one of the last territories, British Overseas Territories that has actually successfully negotiated a revised constitution. And we see our neighbours in the Caribbean specifically, namely the Turks and Caicos Islands, I believe, successfully negotiated their constitution in 2006 and the British Virgin Islands negotiated theirs in 2007. So there is an expectation of us as a country to come to the United Kingdom and discuss constitutional reform. This is not something that has been picked out of the blue.

FULL MINISTERIAL GOVERNMENT

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, I did say before that part of this process is about examining relationships, and I would just like to move us on to page [5] of the *Summary of Proposals* where it speaks about the Executive . . . and we will start with the whole concept of a full ministerial government and what this means. What does this mean in terms of establishing a modern and current and proper relationship with the United Kingdom?

The first thing it says is this is a question of basic democracy. Democracy means that to some extent the decisions of government, the rule of how government operates is consistent with the public will. Now, we operate in a system whereby we have a local government which we elect as citizens every four years, but part of this governmental system is

that we are not a sovereign country, we are a territory of another sovereign country, namely the United Kingdom, and they have in Cayman their local — their representative locally who is in the name of the Governor. So, the Governor is here on behalf of Her Majesty the Queen to administer the country, to make sure that Britain's interests are preserved, are protected.

Now, the question we have then: well, if the Queen has a representative here and there's a local government, what is the role of the local government? What or what should be the role of the local government? And that is the issues that we are here to discuss today.

Now, one of the first statements you will see is that the full ministerial government, that the — that the government at present does not believe that Official Members should be Members of the Legislative Assembly and Cabinet. And we see here what I mentioned earlier, that in 19 . . . I mean one of the past constitutional amendments, an amendment was made to recognize them. So why are we at this point in time now saying that we do not feel that they should be Members of LA — Legislative Assembly and Cabinet? Well, who sits in the LA? How do you become a Member of the LA? You become a Member of the LA ordinarily if you are elected by the citizens of this country.

The power and the responsibility of the Legislative Assembly is to make laws, and they have other [portion not on recording] but I will not go into detail. But part of that is, for example, there's Finance Committee that we listen to every now and again on the radio where there's a discussion over the budget approval of government's budget so that the government can carry out its policies. So, one of the questions is: if the persons that we elect sit in the Legislative Assembly and they have to vote on particular issues that are in terms of — that would affect the governance of the country, should persons who have been appointed, should persons who are technically civil servants have that capacity to vote as Members of the Legislative Assembly?

Similarly the question of sitting in Cabinet, Ministers of government, those persons who have been — who come from the LA who have been given responsibilities of different governmental portfolios, they sit as the Executive and direct the policy of what should happen in Government. So, all of those proposals that they put forward during election about how they will reform the country, change the country, improve the country, part and parcel of how they do that comes through Cabinet.

They sit in Cabinet along with the Governor and the three Official Members. So one of the questions is, well, again, should these Official Members be voting in Cabinet, should they be sitting in Cabinet? So these are the thought provoking issues that we have to ask ourselves.

Secondly, the issue of examining our relationship as the Cayman Islands government with the United Kingdom, and separately the Governor, and I will deal with the United Kingdom first.

And the issue at present is particularly that in relation to external affairs. And we can look at page [7] of the *Summary of Proposals* and we see that what is being said is that the Governor, in all cases, should consult the Cabinet in advance of any international agreement and should require the approval of Cabinet if the agreement should affect internal policy or require implementation by legislation. And they also are asking for a corresponding assurance from the United Kingdom itself is that any international agreements that are going to be extended to the Cayman Islands they should be at least having some level of dialogue with us.

Now, the current state of affairs is that as an Overseas Territory the Cayman Islands cannot sign on to any treaties by itself, so none of our members of government can sit as a member of the United Nations or sit as part of the European Union and agree to ratify treaties and so forth. However, because our relationship with the United Kingdom, part of our international obligation is that we need to sign on or have extended to us a number of these international treaties that are being agreed. And at present the United Kingdom as the — our administering country can do so, they have to do that, but the question is: in doing so, should they be able to do that without having some level of dialogue with us first? Because what is being asked of us is that we, separate and apart from the United Kingdom we must take on particular responsibilities internationally. And lots of — many times the question may arise, well, in doing so how does this obligation affect Cayman's interests? Does it have any possible adverse effects? And also, are there cost implications? Because sometimes some of the agreements that we are entered into require us to put in money, infrastructure in place, mechanisms in place so that we are compliant with the respective convention or treaty.

So, what is being asked in terms of our relationship with the United Kingdom, particularly the United Kingdom, is that if they are going to be signing us on to any treaties as their Overseas Territory that we should have a mature enough relationship to have dialogue about this first. Because sometimes, in some treaties you are allowed to have reservations which means that particular sections may not apply to you, and that is not uncommon.

So, I think that it is — it is 'food for thought' for us as a country that in revisiting our Constitution that — and looking at what is in Cayman's interest as whether or not this is relevant, a relevant issue for us to be discussing. Of course, as according to the *Summary of Proposals* we believe it is. But the question is: are you in agreement with this?

Historical — this is not a new issue. Actually in — after the 2001 revision and some people may have a *Hansard* Report in their packet, a 2004 *Hansard* Report, and this is an official public document of the Legislative Assembly. And this is not a new issue, this was raised before. And in that report it stated that the Cayman Islands government should

take a greater role in foreign affairs; that senior Members of Cabinet should engage in those international bodies; that there must be greater consultation and consent between the United Kingdom and the Cayman Islands on diplomatic issues; and the Cayman Islands must maintain a strong presence in all organizations that could potentially implement policies which could have a direct impact on our economy. So we see that this is not a new issue and is something — it is an area where we are looking at protecting Cayman's interest.

As a matter of fact, in some of the newer constitutions, for example the British Virgin Islands, I believe in particular, if our government was able — if the BVI government, if they wished to enter into perhaps regional agreements that did not adversely have any impact on the United Kingdom's interest but that would promote development in their own country and improve their relationship with other countries, then their new constitutions have allowed that to be done. And, of course, that would entail approval, ultimate approval through the Secretary of State in the United Kingdom who has overall — on behalf of Her Majesty the Queen who has overall responsibility and oversight over the territories.

Now, another aspect of — for a ministerial government that has — we'd like to discuss is that issue of the relationship between the Governor and the local government. Now, we just spoke about examining the relationship between the Cayman Islands and the United Kingdom directly, but what about her local representative?

In the 1972 Constitution, the document itself pretty much gives absolute responsibility for administering the country to the Cayman Islands — to the Governor, separate and apart from assignment of specific responsibilities. But over the decades and over the years, many politicians have felt that there needs to be some formalization of the relationship especially where changes have been made and also particular recognition of those persons who have been elected by the people in Cayman.

PREMIER

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): One of the very first issues that was highlighted and identified which you will see on page [5] of your *Summary of Proposals* is that issue of the Premier. And whether you call them the Premier, the Chief Minister, Leader of Government Business, the issue is, in particular: what is the role of the person who has been elected by the majority of the Legislative Assembly to be the Leader, to be the head?

Under our Constitution it is Mr. Honourable Kurt Tibbetts who has been elected by the majority of his peers to be the Leader of Government Business, to be the head of the Legislative Assembly. But if you take a

look, or if you even have taken a look at our current Constitution you will see that apart from identi — [portion not on recording] person from being the head of the Assembly, that position has been given no role. There is nothing constitutionally which says what his responsibility is.

The only thing our Constitution says is that the Governor will assign him ministerial responsibilities. So, of course, this weekend we know he's coming here not only as the Leader of Government Business, but also the Minister in charge of Agriculture. And it also gives him the opportunity, if the Electoral Boundary Commission is being invoked, to recommend a person. But apart from that our Constitution does not go into any detail as to what is the role of the Leader of Government Business, what is the role of the Premier, and that is inadequate, that is what is being proposed here.

Now, what is being proposed is that . . . sorry. What is being proposed is that the Premier should have specific executive responsibilities that are outlined in the Constitution.

Now, I spoke earlier about the Cabinet. Who sits in Cabinet? The Leader of Government sits in Cabinet, Ministers sit in Cabinet. What does Cabinet do? Cabinet sets out policies so that the different ministries and departments know exactly what they're allowed to, what they can do, what projects they can begin and so forth. And so, if Cabinet sets out policy then the question arises: who should direct that policy, who should be in charge of that and also who should be responsible or who should sit in Cabinet and who should direct Cabinet?

Our present Constitution says that the Governor sits — presides over Cabinet, so he's the Chairman of the Cabinet. It also says that he sets the Cabinet agenda. So, the recommendation here is that the Cabinet should be presided over — or presided by the Leader of Government Business and that he should be the person responsible for setting the agenda as the head of the Legislative Assembly, that person who is also a Member of Cabinet. And I, of course, cannot speak to the reasons why. If you have questions about why is it they're asking for this, I'm sure Minister McLaughlin or the Leader can speak to that.

But one of the issues is definitely, you know, if you — if the Ministers are in charge of the ministries and they have to carry out policies and they have to sit in Cabinet and say what policies should take effect, then should they not have to be in charge of the agenda that Cabinet has every Tuesday, or should that be the responsibility of someone who is the Governor? Yes, he is the Governor but he does not have any direct control over the ministries and the departments. So that is one of the recommendations that is being made towards a full ministerial government, that in terms of executive responsibilities that some should be given to the Leader of Government Business.

And we — this is not a new issue. For those people who believe that oh, it is absolutely radical what is being said here, I know

sometimes our memories are short, but it is also good to refresh them and it gives us an opportunity to consider the issue once more.

Historical positions which I'll outline, for example, in 2003 the current Government, PPM Government, did agree in their position paper that the post of — or recommendation last time was Chief Minister should be assigned constitutional responsibilities. And, similarly, the UDP 2003 position paper also recommended that a Chief Minister should be assigned constitutional responsibilities.

Now, this person, the Leader of Government Business, the Premier, the Chief Minister, is there — is there — if you name that person something does it make a difference? And the answer is no. It is all based on what you want to call that person and what responsibilities he or she ought to have. And the position of Leader of Government Business, for example, is only mentioned in the Cayman Constitution. None of the other Overseas Territories actually have anyone called the Leader of Government Business.

So when Mr. Tibbetts meets his counterparts, those persons who hold exact same position as him in the other British Overseas Territories, he is not called what they are called. In Montserrat, Gibraltar and Anguilla they are called Chief Ministers, and that may actually have to do about — regarding the time that they negotiated their constitutions or what they thought they liked, what they thought they would prefer to be called. And we see in Bermuda, Turks and Caicos and the British Virgin Islands that those individuals prefer to be called Premiers so that constitutionally that is what they are referred to.

I'm going to skip that.

EXECUTIVE RESPONSIBILITIES

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, one of the recommendations that are being made, and we did say this in relation to Cabinet again, is that even though Cabinet informally every Tuesday they meet to discuss policy of Government, there is nothing in our Constitution which actually talks about that. It doesn't give guidance, and our Constitution is supposed to set the proper framework for how our government is supposed to operate, who is responsible for what. And there's an absent statement in our Constitution. It doesn't say who should be directing or setting policy.

And what is being recommended that you will see on page [5] under Executive Responsibilities is that the Cabinet should be — we should be stating in the Constitution expressed specifically the Cabinet should direct the implementation of government policy except in those areas which are the special responsibility of the Governor. And they also believe that the Constitution should say that the civil servants has a

responsibility for implementing the policy which has been directed by Cabinet.

Now, the reason that the second part of that statement is in there is because it provides guidance not only to the Ministers when they are appointed as Ministers, but it also provides guidance to civil servants who every four years has the responsibility of working with these Ministers. And it sets the framework and it sets the tone for the civil service that our responsibility is to carry out the policies that have been directed to Cabinet. That may be stated somewhere in a policy document in the civil service, but we are speaking of the Constitution which is supposed to set out the framework of how our government is supposed to operate.

Now, in relation to . . . Um-hmm?

[inaudible interjection]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay, now I've pretty much covered some of the recommendations that have been made in relation to — for a ministerial government. And if anybody has any questions at this time, because I don't want to just be me talking here, if you have any questions about the reasons why these recommendations have been made, what your feelings are, I would like to open the floor at this time and invite anyone to ask a question. I would just ask that if you do have a question that I'm going to ask you to speak in the microphone because this is being recorded for Radio Cayman and it will be played at a later date.

No questions?

Okay.

GOVERNOR'S RESPONSIBILITIES

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, I mentioned earlier on that the recommendation is that for the Governor — for the Premier to preside over Cabinet and to have responsibilities . . . and this again is also not a new position that is being raised. This is something that was discussed again in the 2004 *Hansard* Report which is a part of your package where a recommendation and agreement was made the last time around that the Chief Minister at the time should preside as Chair and should sit as Chair in place of the Governor and that the Governor's role in Cabinet should be advisory and non-voting.

Now, the other area of concern to the Government is that there seems to be a lack of partnership when it comes to some of the Governor's special responsibilities. And some of you may ask, well, what

is the Governor's special responsibilities? I didn't know that he had special responsibilities. And in the Constitution I mentioned earlier that the Governor assigns ministerial responsibilities to the Ministers. Well, when he does that there are some responsibilities that would affect government that he's not allowed to delegate; he has to keep those for himself, which that's what our current Constitution says.

And those involve, for example, the same area of external affairs which we spoke about which included the whole issue of international agreements that we discussed; it includes internal security so that would perhaps cover the issues of immigration, border control, prisons; it includes the police; it includes the appointment of civil servants and the appointment of the judiciary.

And some of the — last year there was an audit, a review of the operations of the Foreign and Commonwealth Office and it's called the *2007 UK National Audit Office Report*. And what that report did was it assessed the risk and how the FCO managed risk in its Overseas Territories. And one of the recommendations was that in some of — in the areas of government, some of the areas of government that are reserved to the Governor, there should be greater dialogue in coordinating [portion not on recording] government because they felt that would assist and facilitate risk management, keeping the countries in a stable condition and also minimizing the risk overall to the United Kingdom. And one of the recommendations was that there should be greater lines of accountability and coordination between the Governor, the Commissioner of Police and Cabinet. It's felt that because the United Kingdom cannot manage security risks from the outside only, local involvement was necessary.

And what has — what we have seen as a result of their belief in the United Kingdom is that a number of overseas territories, British Overseas Territories who have been reviewing their constitutions have been implementing, for example, a body called a National Security Council. And one may say, well, what is this National Security Council, who would consist of this and what is its role? Well, the purpose of the Council is to address that issue of — to create a coordination between the Governor, the Commissioner of Police and Cabinet when dealing with matters of internal security and police. And the reason why it is being recommended in this case is because . . . because police is a special responsibility of the Governor, what that means constitutionally is that the Governor — is when he makes any decisions regarding internal security in the Islands or regarding police and the Commissioner of Police makes any decisions regarding internal security and police, that that dialogue happens only between the Governor and the Commissioner of Police.

So, the elected government, the Executive of government has no input, it has no understanding, it is provided no information about the state of affairs in our country regarding internal security.

INTERNAL SECURITY AND POLICING

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, every year the government, the elected government is asked to vote a budget to the police, to the various organizations that are responsible for internal security and policing. And therefore the question is: should they not be involved, not in micromanaging these institutions, but in being aware of the policies of these institutions and helping to direct the policies of these institutions to ensure that internal security in our Island is managed properly, and also the direction — or the direction policy decisions regarding police.

And what is being recommend is that there should be, in accordance with the views of the United Kingdom, and similarly in terms of similar mechanisms that we see in other constitutions, by implementing a National Security Council, our government with the Governor, certain Ministers and the Commissioner of Police that they would sit periodically and discuss policy decisions regarding internal security in our country and police.

And I do not know if you recall sometime in April last year in the newspapers there was a — there were a few reports regarding concerns the Ministers had by not being even involved with the discussion of being informed of what's happening. And I don't know, Minister McLaughlin, if you perhaps would like to just recap about what the specific issue was so we can actually see how this is actually not something that has been just thought of, but it is a practical issue that needs to be dealt with at this point in time and what steps have been taken after that.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Thank you, Suzanne. Good evening everyone. Good to be here again to talk to you about this very important matter, our constitutional modernization.

The matter that Suzanne has just raised and been talking about is the creation of a National Security Council which would help to guide, direct and develop policy in relation to internal security issues, essentially, the police.

The current arrangement, the Governor takes the position that because he has constitutional responsibility for the police and it is one of his special responsibilities so he can't delegate responsibility to the elected Ministers, that that means that the elected government should not be at all involved in anything to do with the police and should not even be permitted — and we don't — attend briefings about what is happening in relation to the police. So we have a situation where the Governor and senior civil servants — the Chief Secretary, the Deputy Chief Secretary, sometimes even more junior civil servants — are

involved in discussions about what is transpiring with the police, but the elected government is essentially unaware of what is happening.

One of the events, just to remind you, that occurred some time early last year in relation to the Cuban refugees who were holding a demonstration, essentially they had broken out or escaped the confines that they were in and had determined that they were going demonstrate in central George Town. Decisions were taken by the police not to — to let it go ahead, to not use any force or means to corral these people and put them back behind the gates of . . . I forget where they were staying now but it doesn't really matter.

Fairbanks. Fairbanks.

And, you, know, we didn't take issue with that decision; that would probably be the conclusion we would come to ourselves. But we were placed in a very difficult and embarrassing situation where us, as the elected leaders of the country, were completely unaware that this was happening or what the decisions were and the basis for the decisions that were taken in relation to it.

To make matters even worse, of course, you, the people, and the media in particular, expect us to know and expect us to explain why certain decisions are taken. So we turn up at a press briefing and we're asked these questions about: why did you do this, why didn't you do that. And we can't answer because up until that point we hadn't even been officially advised. That is an example of what happens on a regular basis.

The Governor has said that he's prepared to have the Police Commissioner come in and give us a briefing occasionally, or to have a separate briefing afterwards with the Leader so he can tell him what he thinks he should know. We believe that that is an unacceptable state of affairs.

It doesn't transpire in any of the other Overseas Territories. Turks and Caicos, the BVI have all moved to a National Security Council of some kind where the elected government is not — we're not talking about being involved in operational issues about who you arrest and which case you pursue, not those sorts of matters at all. Those are operational issues which are quite properly to be dealt with by the Commissioner. But it is — it is — we believe it is just wrong, out of step with the maturity that we have demonstrated as a country, as a people and as a government for the individuals whom you, the people, elect to be left out of this important area of government administration.

And so the proposal that we have — and this position is, as Suzanne has explained, supported by the Foreign and Commonwealth Office who have recommended in their most recent audit report that there needs to be greater involvement of the elected government in matters of internal security because the UK cannot possibly hope to be able to deliver the level of security that is necessary without involvement

of the elected government. So we don't expect that there will be a great deal of resistance from Her Majesty's Government to this proposal.

This Governor has taken the view that he is not allowed to involve us because of the constitutional provisions. We don't agree with that but it's his decision, and he has responsibility — those special responsibilities and that's the view he has taken.

But if we are to move — continue to move forward as a growing, developing, increasingly mature democracy, the people whom you elect must have insight and knowledge of what's going on in matters involving internal security; and you need to be in a position to hold the elected government accountable when things go wrong, when they don't do as you think they ought to do.

At the moment most people still hold the elected government responsible because they believe that we [portion not on recording] control over these things when, in fact, constitutionally we don't. So from an elected individual's perspective, it is a rather unhappy arrangement at present. So I hope that sort of helps explain what we're talking about.

We're not talking about taking over control of the police, we are talking about the establishment of a National Security Council so that it is not — it is not just the Governor who is making these decisions and who's in the know. But you'll have Ministers, you'll have other . . . if you go through the list of proposals of who we propose should be on the council, let's just take a minute just to quickly . . .

Right here. Um-hmm.

[pause]

[inaudible interjection]

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Yes, we propose that the National Security Council should comprise:

- the Governor as Chairman;
- the Premier or Chief Minister, whatever we call him;
- the Attorney General;
- the Commissioner of Police; and
- two other Ministers appointed by the Governor acting in accordance with the advice of the Premier.

So, essentially, what we are asking for is involvement of the elected government in matters involving internal security, not the taking over of it. The Governor would still chair the National Security Council.

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

Now, another aspect of improving the relationship between the government, the local government and the Governor, if you see on page [7] — on page [6] and [7] of the *Summary of Proposals* there is a heading that says The Governor's Responsibilities. And two statements were made and I'll read the last two paragraphs — that last paragraph on page [6] and the first paragraph on page [7].

“The Governor should be required to exercise his powers for the benefit of the Cayman Islands and in a way that is justified and proportionate. The Governor should also be required to communicate to the Premier the reasons for his [decisions].”

And that is a constitutional recommendation that's being made because if it is that the Governor has reserved to him special responsibilities that he is not accountable to local government, he doesn't — he's not required to discuss with the local government, then what is being asked is that the Constitution should say that when he is exercising these powers that he should do so in a manner that is reasonable, justified and proportionate, meaning that is fair and is appropriate, not — because, of course, in any exercise of power, whether it is the Governor, whether it is the Elected Official, whether it's a civil servant, the overarching principal is that when someone exercises power that they should do so in a reasonable manner, in a manner that is aboveboard, that will address the issue appropriately and that is not done unreasonably. And that is what is being asked in this statement.

What is also being asked is that the Governor's — some of the Governor's actions should be — the Constitution should allow a court of law to enquire into them. Now . . . sorry.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Sorry, Suzanne. Just on this particular point, if I can explain what is meant by **“the Governor should be required to exercise his powers for the benefit of the Cayman Islands,”** that bit of it. The Governor wears a number of hats, but in this particular case two hats. He's the representative of Her Majesty's government and he's also the head of the government of the Cayman Islands.

Increasingly, that brings his position into one of conflict, because as we have seen over more recent times, often the UK's agenda is not necessarily in the best interest of the Cayman Islands. We have seen this happen particularly in relation to financial services issues and the so-called initiatives and so forth which have impacted the Cayman Islands. Because we see it increasingly with — in relation to treaties and conventions and so forth that the United Kingdom signs as increasingly she becomes sucked into the vortex of Europe. And many of her decisions are made even if they don't necessarily agree with them because of the relationship they have with the European Union.

So, what we are suggesting should be written into the Constitution is that in exercising his powers that the Governor does so for the benefit of the Cayman Islands and in a way that is justified and proportionate. And the proposal that — the decisions of the Governor become challengeable in the courts, what enable us as a people to challenge those decisions of his which we felt were not in the best interest of the Cayman Islands, not justified or justifiable and proportionate.

It may seem strange to you because it seemed strange to me when I first realized that no decision of the Governor is capable of being challenged in court, in our own courts.

[inaudible interjection]

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Well . . . well, most decisions are not challengeable that the Governor takes in court, which is — which basically runs counter to certain modern judicial principles about the importance of all decisions, regardless of who makes them, being fair, proportionate, reasonable. And so the bit that Suzanne is going on to now is our proposal that, like everybody else's decision in government, that it is possible to challenge in the court — assuming there is a proper basis to do so, of course — decisions which are made by the Governor.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Thank you, Minister McLaughlin. And to just put this issue into context, I'm just going to take briefly what our current Constitution says.

It basically says in section 7, if you want to take a note, that ordinarily the Governor, if he's going to exercise his power he should be consulting Executive Council, he should be consulting the Executive of government before he . . . you know, in terms of formulation of policy before he acts on certain things.

But there's a provision in our Constitution which says that the Governor is not required to consult Ex-Co (which is now Cabinet) in any case when in his judgment if:

- (a) the service of Her Majesty would sustain material prejudice by doing so;
- (b) the matters to be decided are too unimportant to require consultation; or
- (c) the urgency of the matter requires him to act before the council can be consulted.

And it says that every single case falling within (c), which means the urgency, is too urgent for him to consult Cabinet, in every single case that the Governor shall, as soon as practicable, communicate to the Ex-Co the measures which he has adopted and the reasons for those measures.

So, what it says is that okay, you can act in a matter of emergency before consulting Cabinet, but you are supposed to go back and tell them your reasons why. Where we are at is what if Cabinet feels that the Governor has acted wholly improperly, has acted in a way that is not in the best interests of the Cayman Islands. What can they do to rectify that position right now is perhaps ask the Governor to reconsider his decision, but the question is, which Minister McLaughlin alluded to, is that enough?

If you are the Executive body of Cabinet and you are very unhappy with a decision that has been made or you feel that it was made improperly, the wrong decision has been made, it was not fair, it was not justified then what recourse should the Government have to ensure that a proper decision is made?

Now, in my life and your life, in our everyday lives, when we interact with government — I'm sure many of us have had to go in for various applications whether it is work permit applications, planning applications, so forth. When we get back a decision that we are not happy with we feel they are — they have no reason for denying my application, it's usually a denial of an application, what is our recourse? Our recourse is appeal. Our recourse is to go to the judiciary, or a quasi judicial body, an independent body so that they can review all of the facts and come to a fair decision. Sometimes that fair decision may be that the lower body or that that person would have acted correctly, but sometimes their decision may be that this person did not act correctly, their decision is wrong.

So, that is — by extension that is what is being proposed here, that if the Government feels that a decision of the Governor has been made in poor judgment sometimes or as a wrong decision that will have real adverse effects on our country that they should seek recourse before a court of law to enquire into this decision, so that is what is being advocated for here. Because short of that the only thing that we can ask is that can you please reconsider your decision and the answer can very well be yes, I can reconsider it or no, I will not. So that is what is being asked here.

And the reason it is being asked is because at the end of the day what is being proposed is that we look after our interests. Who looks after the interests of the Cayman Islands? Who do you expect to look after the interests of the Cayman Islands? And if you have an expectation of that, then how are they to do that? What mechanisms do we have in place in our Constitutions that would allow our government to do that?

Now, one of the recommendations that have been made, and I'll refer you to page [6] of the *Summary of Proposals* because we have spoken about full ministerial government, providing responsibilities to the Premier, Cabinet, et cetera. And one of the proposals that has been made and the recognition that has been made is that any time you are going to provide an office holder with a responsibility there must be an accompanying measure that will hold them accountable so that we can ensure that they are operating properly and that — and so forth.

CHECKS AND BALANCES ON EXECUTIVE POWER

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): And one of the proposals that are being made — that's being made is that there should be term limits on the office of the Premier, and this you will see on page [6] of the document under Checks and Balances on Executive Power. And the recommendation, I believe, that the present Government made in 2003 was that a person can hold a position of head of government for two consecutive terms, so that would be eight years only, and this will mitigate against the creation of an autocratic and dynastic-type leader which is also deeply feared.

So, what it seeks to prevent is perhaps someone who has been elected by his peers to perhaps sit as the Premier for 20, 30, 40 years or 20 years, you know, and if he is — so that there is — it gives government a break. You know, you do not have someone who is always appointed to this position continuously because if you recall, we do not appoint the Leader of Government Business, but the Legislative Assembly does. So what it does is it checks — it is a check and balance which will ensure that in a democratic society we make sure that our leaders . . . you know, we put in place measures that will allow leadership to be carried out fairly, to be carried out in a way whereby our representatives, perhaps not through an entitlement to a particular position, but it would ensure that democracy prevails.

Now, that's the proposal that's being put forward today. Historically there have been similar views but there have also been opposing views; and one of the opposing views is that no term limit should be imposed on the position of Leader — of Leader of Government Business, that the Electorate should have the right to choose the number of times that any one individual may serve as Chief Minister, very much like the situation in Bermuda. It is something for you to consider whether or not someone who's appointed as Chief Minister can only do so, or a Premier can only do so, sit in that position for a number of times.

Now, this does not mean that the person cannot run for elections. What it means is that person will — can run for elections and can sit in the LA as many times as he or she wishes to do so, but — and the

Cabinet, but what it does mean is that holding that position of Premier that they would not be able to hold that for a continuous period of time.

Another provision that the government would like to see as a check on Executive power is that we reflect in our Constitution limits on public debt. Now, currently our Public Management and Finance Law does set the boundaries upon which government can borrow and maintain a budget surplus. And what is being suggested here is that there should be constitutional backing for these provisions because the financial health of our nation is very important, and it should be something that has a constitutional backing so that if there's any abuse in the future, non-compliance that we, as a country, can constitutionally, I would say, stop it because it would be unconstitutional, and ensure that our limits on public debt are maintained.

I don't know if anybody would like to speak about this now, the minutes on public debt.

No?

Another — another recommendation in relation to checks on Executive power is that there should be a commission that would be called the Standards in Public Life Commission whose responsibility would be to monitor corruption, conflicts of interest of Ministers and senior public officials. And you will see a bit more detail about that in the 'Red Document', the explanatory document. But what the purpose of this commission is, is to be an independent appointed body who would have a specific mandate — who would have a specific mandate to enquire into particular corruption, conflicts of interest, and this is something that would increase accountability in the government itself.

There is also a recommendation that there should be constitutional backing for specific provisions — the Freedom of Information Law — particularly those regarding whistle-blowing provisions, because one of the recommendations is that our freedom of information is actually a human right. So, what the Freedom of Information (FOI) does is it allows you, the public, to access government information.

In the Westminster system of government the position has always been that the information belongs to the government and the government alone. So when you as a citizen come to the counter or you go to any government department, you say, well I would like to receive information on this, or I would like to obtain information on why, then traditionally, you would be barred from doing so because you have no right to access that information.

International convention says otherwise. It actually says that as a citizen, as an individual you have a right to participate in public life. And part of your participation is to access public information, and therefore we see that in January 2009 the FOI Law will be coming into force. It will be effected — it will be coming into effect and a provision in that Law will allow for whistle-blowing by civil servants. And this is a feature that is common in many developing countries because what it is — what it does

is a measure in which to prevent or to stop any possible corruption that is taking place in the civil service.

So it is felt that this provision should be one that the Members of the Legislative Assembly should not be able to amend because it may not suit us having that, but that should — it is something that is a core issue for the country. We are about accountability, about operating at an aboveboard standard and therefore we should ensure that those kinds of provisions that are for the benefit of the Cayman Islands should have some level of constitutional backing.

HUMAN RIGHTS

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, I'm going to move to the Human Rights . . . to the Human Rights — to the issue of the human rights. And I know this is an issue that some people are very interested in discussing and I want to discuss what is the UK's position.

Well, I said earlier on that this was an area that the United Kingdom wished for the Cayman Islands to look into because of its international obligations and also our international obligations.

At present the Cayman Islands has been signed on to approximately seven separate human rights conventions. Also, our 2003 draft constitution which is not in place had in it human rights — a Bill of Rights in our Constitution. We are being asked to look at this issue because, ultimately, that is what we are being asked to do; we are asked to put in a Bill of Rights in our Constitution.

Now, this is an area perhaps that some people have some little knowledge about, no knowledge about, or a lot of knowledge about. But I would just like to perhaps have a very brief overview on what are human rights.

Human rights are about universal equality. So what it means is that every person sitting in this room, every person who is living in the Cayman Islands are to be viewed as equal human beings. It is relevant to the issue of democracy because we as citizens — democracy is not just about how government is ran, but it is about how we as citizens interact with government and our ability to operate freely in a democracy.

And . . . it also sets out the state's obligation or the country's obligation to the citizen or to the resident; and it's the obligations of respect, there are obligations to protect and obligations to fulfill. Now I'll just kind of briefly highlight what these obligations are.

The obligation to respect means that the state is obliged to refrain from interfering. It entails the prohibition of certain acts by government that may undermine the enjoyment of human rights. For example, with regard to the right to education it means that the government must

respect the liberty of parents to establish private schools and to ensure the religious and moral education of their children in accordance with their own conviction. Now, you may say, well, we do this already. But the question is why do we do this? We do this because [portion not on recording] for a number of years, or to some extent, been applying human rights principles to ensure that your fundamental human rights are not being breached.

The obligation to protect requires the state to protect individuals against abuses by non-state actors. Once again, the right to education can serve as an example.

The right of children to education must be protected by the state from interference and indoctrination by third parties including parents and family, teacher and the school, religious sects, clans, business firms, et cetera. And then they go on to say a state has an obligation to fulfill, and this means that under an obligation to fulfill states are required to take positive action to ensure that human rights can be exercised.

So, for example, in respect to the right of education, for instance, states must provide ways and means for primary — for the very least primary education and not just primary education for some, but primary education for all, secondary education and higher education. So what — and a ratification of the choices. So what it's saying is, for example — and I — I — through my readings of our history I recall in our history, one of our history books that there was a point in time when the government did not feel it was necessary to — school in the Cayman Islands because financially it was not feasible. It is a good thing that it was back then because today something else applies. That is not acceptable internationally. Internationally it is acceptable that every child should have access to an education. No child should be, for example, the Cayman Islands who cannot go through a school door and be illiterate, receive education.

So these are the fundamental — for the fundamental principles of human rights. And the reason why — the recommendation is that we need to have a Bill of Rights here is because our reliance on practice and convention, our reliance on the goodwill of our politicians should not be good enough for us as citizens because it does not provide us with a guarantee of our right. The guarantee of our right would be in the Constitution because ordinarily constitutions cannot be changed very easily. So — and what it does is it allows you as a citizen to seek an immediate remedy in the Cayman Islands if your human right is breached.

Now, because we do not have in our constitution a Bill of Rights that means that you as a citizen cannot look at a particular law or document here. Well, you know — you know if it walks like a duck and it talks like a duck it probably is a duck? Sometimes you know that somebody is breaching your right. But how do you know that they're breaching your right? There's nothing that you can — in black and white

that you can say here it is, this is my right and you cannot do this. And usually it is a right against the state. Usually it is to prevent impositions of the state.

So if it is that a person here in Cayman, his or her human — fundamental human right has been breached, that means that their ability to get a remedy in our local courts is extremely limited because what is the court to rely on? And we have had cases in Cayman already. For example, I do know the Grant case through the Ministry of Education. That was actually a human rights issue, where the young man was not allowed to come to school for a particular reason, the way he wore his hair. That was in fact a denial of his right to education.

But because we do not have a Bill of Rights our courts have to find an alternate way of dealing with that issue and they went by way of judicial review. And it was fortunate that they were able to use those procedures in our courts, but that is not always going to be available to us in relation to each and every one of our rights.

Now, I want to just briefly touch on the issue of religion, because I know that is something that we as Caymanians — and through this process there've been many persons who have voiced concerns over what it would mean if we implement a Bill of Rights and how this would affect our right, our religious practices and our right to religion.

Now, I'll just very briefly read for you what in fact the report, the Convention says. It says everyone has the right to freedom of thought, conscience and religion. This right to includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice worship and observance. The right to freedom of thought, conscience and religion is so essential that it is not subject to delegation even in a state of emergency.

So what that means is that if for any reason Cayman goes into a state of emergency, for example, like during Hurricane Ivan, if you wish to practice your religion, your faith at that point in time—

[inaudible interjection]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Right? The state cannot dictate otherwise. You are required — you're at your absolute and fundamental right to do so. They cannot legislate against that to prevent you or to limit that. That is what it's saying.

The right to what — to form one's own thoughts, opinions, conscience, convictions and beliefs is an absolute right protected against any form of state interference such as indoctrination or brainwashing. However, the public manifestation of religion or beliefs may be restricted on religious grounds. So, what that means is that, for example, in a hurricane you may not be able to go to the church to pray because we're

having a hurricane, but you would still be allowed to pray in the confines of your home based on the emergency.

So — so you see that — that human rights are meant to empower the individual. It is meant to show — to set the boundaries where the state — the government — the legal framework that we live in as a country cannot — it cannot interfere in our lives. It goes to the heart of our right to have privacy in our homes; it goes to the heart of our right to have a family, to have children so that the state perhaps — I know many, many decades I think there was forced sterilization of women in India in the past. It is to prevent things like those. It is to allow people to be free to have — to have their children, to have families, to live in their homes, to exercise rights over their properties.

You — what I would recommend, I know that the Human Rights Committee — I'll be asking them to come to Cayman Brac at some point in time to engage their community discussion about human rights. But if you have books, if you have computers, and what — our office will be trying to do more work on this area, but if you want to learn more about the purpose of human rights, it is not supposed to be something that we look suspiciously at [portion not on recording] to protect us as individuals.

Here we are talking about our Constitution, talking about how our government is run, feeling very passionately about what our government should be allowed to do and not allowed to do in the day-to-day affairs. But the human rights is about our relationship as individuals with the government. And as a civil servant who's worked in the government for quite a few years, we — in all of our practices, even though we do not have a Bill of Rights, we try our very best to adhere to human rights principles. Sometimes we get it right, most times I hope we get it right, but I am sure in government itself sometimes we get it wrong. And it is in those times that we get it wrong that that right should be there for you to look at and for you to be able to make sure that your right as an individual is not breached.

CONSTITUENCIES/ONE PERSON, ONE VOTE

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay, the next thing I'd like to deal with very quickly is that of single member constituencies —

Pardon?

[inaudible interjection]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): And the one person, one vote.

Now I'd like to refer you specifically to page [9] of the *Proposals*. And it says specifically that although there has been a controversial issue, we believe there is widespread support for one person, one vote principle. It is proposed that there be single-member constituencies throughout Grand Cayman; however, it is proposed that the Sister Islands remain single constituencies sending two members to the Parliament but that each voter should have only one vote, so the two candidates who receive the greatest number of votes would be elected. The effect of these proposals would mean that the total number of members in Parliament would increase from 15 to 17.

And I'd like to at this time take a pause and ask you as a Cayman Brac community how you feel about these proposals and what are your views because in the — this particular proposal a specific statement has been made regarding how you will be — what the recommendation is for you in terms of single-member constituencies and one man, one vote.

And does anybody have any comments or any questions that they'd like to make at this point in time?

Okay.

Just pause. We have to use the microphone and somebody will be coming there. Thank you.

Question #1 - Member of the public: Good evening, ladies and gentlemen.

I would like to see it to remain the same way as it always been for the Sister Islands, not for it to change. Everybody has been used to this and we want it to remain the same way: one person can vote for two candidates, and for it not to change. Who else here tonight agrees with that?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, can I ask the Leader of Government Business — I mean, this proposal is being made and my understanding of it is that it will not change in terms of the . . . well, it will change in terms of you can't vote for two people, but if we had a single-member constituency it means that two people will still get into the Legislative Assembly but that you can only have one vote.

Hon. D. Kurt Tibbetts (Leader of Government Business): Right.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I don't know if you want to make any comments about that.

Hon. D. Kurt Tibbetts (Leader of Government Business): No, no. The whole purpose of this exercise, Suzanne, and people, is to find out what the people think. Now, when we looked at it what we were doing the best

we could, because we've been down this road already with Cayman Brac and Little Cayman, we've heard a lot of the views expressed. But without trying to make it — make Cayman Brac and Little Cayman just totally different from what would obtain in Grand Cayman, that is how we ended up with this suggestion that they still have two members in a single constituency. But in order for it to be with the exact same level playing field as the individuals who would vote in Grand Cayman, it would be that each person would be able to vote for one candidate, and you would still have two candidates being returned — that is, the first two past the post — past the post with — with numbers.

I hear what you're saying, Raymond, and I understand, and the whole purpose of the exercise tonight is to hear what people views are. I just wanted to take a minute to explain the logic. It was not with any attempt to disenfranchise. It's just that if we propose single-member constituencies in the Cayman Islands, and in Grand Cayman with the single-member constituencies each person over there would only be able to vote for one person. What you get is almost a double standard if Cayman Brac and Little Cayman can vote for two people. I'm only saying to you so that you will understand the logic that we used in — in making the proposal. But I hear what you're saying. There are some people who will say that they're used to voting in George Town and they still want to vote four people, too.

It's things that we just have to consider, it's — it's all it is, so certainly we want to hear what people feel. So it is not, again, like anything is cast in stone and we'll just have to weigh all of the discussion and what people from each of the constituencies are expressing as their views.

Question #2 - Member of the public: Thank you, Mr. Tibbetts, for the explanation.

I have another question concerning human rights. This is concerning the Cuban refugees.

I was told and understand that the Cuban refugees arriving here, it is the Memorandum of Understanding (MOU) between the Cuban government and the Cayman Islands that we are not to assist them in any form or fashion by giving them water or food to assist them on their journey. And I must say, there is a new law that has been brought into effect as an International Maritime Organization Law, that all coastal states has the responsibility to assist anyone in need on the high seas, and I read this in a report from the International Maritime Organization published in London.

And I was also told that the UK government supports the Cayman Islands and Cuba in the Memorandum of Understanding, where, when the persons are badly in need, perishing for water and food, no one is allowed to go there to give them water. But I see it differently, that if they are in need of food or water, we can easily free will give them food and

water for their survival because they will get to Honduras or wherever they're going dead or alive whether we help them or don't help them.

And I happen to be one of the persons that spend hours on the radio with observation and assisting them to make it safe to Cayman Brac and other places that they are going. And I was told that today we have some Cuban refugees arrived, seven or eight. Anyone can confirm that?

[pause]

Member of the public: I heard so after arriving here this evening. Anyway, that's what I would like to mention to you all about what can be done that Cayman Bracers, which we are very free giving people, if we could just go out there, carry them cases of water and food to assist the Cubans and they will get there whether or not.

Hon. D. Kurt Tibbetts (Leader of Government Business): Raymond, I'm going to be very candid with you. As an individual, I totally support that position. And anybody who asks me — and they have to do what they want to do with me, I tell them the same thing. Now, what may be an official position — because you do recognize it is an immigration matter, and it is a matter that because of this MOU . . . and I think several attempts have been made to get — to renegotiate the MOU, but that has to be done through the British Embassy in Cuba. Because I have spoken to several of the officials about it and . . . I just want you to hear me and ask you not to make a comment, please.

As far as I know, what you are talking about still happens, nobody says a word, and as far as I'm concerned we just continue what we're doing until such time as the matter gets straightened out. That's my position and if they want to publish it they'll have to do so. I just have to be honest with you. And I have expressed that position to the Honourable Chief Secretary, to the Chief Immigration Officer, to the Deputy Chief Secretary, and to His Excellency the Governor. Unfortunately, it is a matter that immigration deals with, and that falls under the Honourable Chief Secretary who is with delegated powers from the Governor.

Member of the public: Yes, Mr. Tibbetts, thank you very much.

SINGLE-MEMBER CONSTITUENCIES

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

I just wanted to just revert back to the single-member constituency point. I wanted to refresh our memories that in the 2003 Electoral Boundary's Report we recommended that there should be 17 electoral districts in the Cayman Islands, in all three Islands, and that, I believe, would have meant that each person in all three Islands would have had one vote for — one vote. And for Cayman Brac I think it meant that Cayman Brac would have had — and Little Cayman would have had two electoral districts. So, therefore, they would have still been putting two members, two candidates would have been returned to the LA. However, you would have two separate electoral districts, which would mean you would have candidates running in one electoral district and candidates running in a separate electoral district.

Now, the issue of single-member constituencies is still live — is still a live issue in the Cayman Islands; and the last recommendation is that Cayman Brac have two separate electoral districts divided according to the boundaries of the Electoral Commissions Report and therefore they would — each person in all three Islands would only be able to vote in one candidate.

What is being asked here today is whether or not Cayman Brac — in looking at one person, one vote is whether or not you all should have two electoral districts as was recommended by the Electoral Boundary Commission, or that something more similar to what you have now should remain except that each person who will not be voting for two people will just be voting for one. So, Cayman Brac and Little Cayman would be one electoral district and each person votes for one candidate and those two candidates that get the most votes will be returned to the LA. So that is really what the core issue is.

Right now the Electoral Boundaries Report recommends Cayman Brac and Little Cayman being split into two electoral districts. So that is really what we're asking you to consider and to decide upon, is that if — if the majority of the Cayman Islands agrees that we are to move towards a single-member constituency electoral system and a one man, one vote system, whether or not you are happy with what was originally recommended by the Electoral Boundary Commission — splitting Cayman Brac into two electoral districts and Little Cayman into two electoral districts — or you would prefer to be only one electoral district, each person having one vote like everybody else in the Grand Cayman but two candidates will go up, those persons with the highest votes. So, that is really the — the — what is being asked.

What is not being asked as well as has been recommended is that whether we stay where we are now, because if we stay where we are now and that would imply a total rejection of the single-member constituency principle. And it cannot be that the Cayman Brac and Little Cayman, each voter will be allowed to vote for two people because that means you will be extremely different from everybody else in the Cayman Islands and what we're looking for in this particular system is equality, equality

of votes. Right now the complaint is there is not equality of votes. North Side has one; East End has one; Bodden Town three; George Town four; West Bay four; Cayman Brac and Little Cayman two. What is being asked is that there should be one.

So that means that in accordance with the Electoral Boundary Commission the boundaries for Grand Cayman would be split up in about 15 electoral districts and the persons, the voters who fall in that particular electoral district will be able to vote for one person. So what is being recommended here is that — is really for you to consider as Cayman Brac residents whether you believe if the Cayman Islands moves towards a single-member constituency system, whether you would prefer that you have two constituencies and each person being able to vote for one candidate and two members will go back — up to the LA. Or you feel you'd prefer to be one constituency for Little Cayman and Cayman Brac, but each person only being allowed to vote for one person.

And what that would do is it will keep — in a sense, keep you where you are now in that Little Cayman and Grand Cayman — and Cayman Brac are one, viewed as one, but you will put you on equal sitting with the rest of the Cayman Islands in that you, like your counterparts in Grand Cayman, will only be voting for one person. So that is what we are asking you to think about, whether or not you prefer the recommendations in the Electoral Boundary Commission Report or you prefer this alternative recommendation.

Can we have a mike, please.

Question # 3 - Member of the public: Hello. I got some news the other day — good evening everybody, first of all — that you are not going to be adding the other two seats that's being asked about. Right now it's 15 elected Members; am I correct?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Yes, Percy, there are 15 now. I think the confusion might have arisen because of some statements that were made about when all of this — that is, the single-member constituency bit — would be able to come into effect, because given where [portion not on recording] what, 14, 15 months away, we don't — from a practical standpoint, I don't see — assuming the country gives us a mandate to go negotiate a new constitution and then we come back with a constitution which follows in a month, say, I don't see—

Member of the public: In other words, we won't be adding the two extra seats this — before the election?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): I don't see that we could get the constituencies divided up in time to accommodate an election

campaign where people — in time. So, these provisions wouldn't, as we see it at the moment, come into effect for the next election, it would be down the road.

Member of the public: Down the road. Well, down the road — and with this one man, one vote, two seats for one constituency, as an elector, I feel that I am deprived of making my choices when it is one district. I don't like divisions and I don't like to divide things up. And I don't see so much of a benefit right now as far as dividing the entire country up into single-member constituencies, not that it's a bad idea. It might be a better system as far as individual control is concerned, whoever falls within that registered area, you have so many candidates running for that and then one specific candidate will win and represent that specific area, which meaning it's a seat.

But if there's two seats for that one specific area and you only have control over making one vote, I'm being robbed of 50 percent of my rights to choose who — which two I want to represent me as a single constituency.

So, saying that I only have one vote and there are two seats is rubbish, to me. That is depriving me of 50 percents of my rights to select the two I want. Now, if I only have one select area and it's only one there, all good and well.

Hon. D. Kurt Tibbetts (Leader of Government Business): So — so—

Member of the public: But I hope you understand what my feelings are, and I think that that is the general feelings of the whole entire country, not just Cayman Brac.

Hon. D. Kurt Tibbetts (Leader of Government Business): I'll just ask you a question, Percy, if you don't mind me interjecting.

So, are you saying, then that — yeah, so — are you — are you saying, then that you would prefer for Cayman Brac and Little Cayman to be divided into two constituencies rather than have one constituency with two representatives but only one vote?

Member of the public: Only being able to make one vote.

Hon. D. Kurt Tibbetts (Leader of Government Business): So —

Member of the public: They can leave it like it is, leaving my two votes which is the way it's going to be for this election, I'm pretty sure of that.

Hon. D. Kurt Tibbetts (Leader of Government Business): Yes.

Member of the public: But coming down the line when we're going to our Constitution and different moves that we have to make in there, of course, as I look at it right now, the Constitution makes a certain amount of definitions and who and what way of life we're supposed to pursue, with religious things which I'll get back to on that point because we are a Christian heritage.

Hon. D. Kurt Tibbetts (Leader of Government Business): Absolutely.

Member of the public: God — right, we don't want to have Obea and Voodoo and Al Qaeda and all these people coming in here and just start shoving other different beliefs down our throat and wipe us out completely. So that, my dear friend, must be enshrined in the Constitution. Although I'm not a frequent churchgoer, but our Christian heritage must be enshrined.

But I hope you understand what it means —

Hon. D. Kurt Tibbetts (Leader of Government Business): Your mother can't be responsible for you now but she brought you up right.

Member of the public: Tell you what. She gave me to the Lord from the womb.

Hon. D. Kurt Tibbetts (Leader of Government Business): I know that.

Member of the public: You know that.

Hon. D. Kurt Tibbetts (Leader of Government Business): I know that.

Member of the public: That's why we celebrate her birthday even after she's gone. And her birthday's coming up on the 16th.

But as you can — as I can see it in that line, and then at the area of our human rights which I think is the most important part of our Constitution which is coming up, that's a primary thing. And speaking of that, you know, I want to — I want to ask you guys, do you know exactly what part of the Bible you find, **“He hath founded it upon the seas”**?

[inaudible comment]

Member of the public: Psalms 24:2 is only part of it. But the reason why that — that specific little phrase was chosen — and now that we're getting to our Constitution — was an open door for us to decide our own destiny, not only who we are, we have to recognize where we come from and where we're going. Because I'm already into the departure now and I'm waiting for my flight to be called, but my grandchildren is just on the way up, and we have to look for them.

[inaudible comment]

Member of the public: You got — you got that part right.
So, the Bill of Rights is primary.

Question #4 – Member of the public:

And back to the area of our Premier — I'd rather call you Chief because I have been saddled with that title for a long time. A lot of people think that you and whoever it is might become that — in that position power hungry. Well, I wouldn't call it "power hungry" but I do know that we have to do some adjustments with our system because it doesn't seem to be working right.

We need a lot more autonomy and accountability in order for our system to be able to run to the beneficial of the Cayman Islands people. Whether it — removing the Governor's powers and stuff like that I — I don't go into political rhetorics, but I think he is overloaded, and I think there's a lot of things in there that he can do without having to interfere with, and a lot of things that we need to get into such as what you have been saying in the line of negotiations abroad.

Of course, our defence, external defence, and some affairs like that that we really won't know anything about, we still need to be consulted on it. And as far as the Governor being above the law, I — he might be in a position to be able to create some funny little things, and I don't think he's above any law. So as far as him not being able to be accountable for his actions, if that's not also in the Constitution then it should be [inaudible].

There's also in the Bill of Rights there that I see where you have down here where it will be up to the Legislative Assembly to make a decision once we have — it says here: **As in most Commonwealth countries any decision by a public official Legislative Assembly which breach our rights would, if challenged, have to be justified in a court. And if it has been done in a court then it is going to be up to the Legislative Assembly to decide whether or not they should respond. If a person's rights have been breached it should be the duty of Parliament or the Legislative Assembly to immediately restore that person's rights and to ensure compensation for any and all sufferings that they may have done.**

I don't think it should just be up to you. If my rights have been breached and the courts have proven it, it should be your duty then to ascertain that I am compensated for what rights have been breached. Don't you think that should be the way it should read rather than it should be "up to"? In other words, why should we have a Bill of Rights if it's gonna still be left up to someone rather than they must ensure that my rights have been compensated?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Percy, you're right. I think if the courts declare that there's been a breach of your — of your human rights . . . even without a Bill of Rights that has happened. The case that Suzanne spoke about with the little Rasta boy who wasn't in school, the court declared that his rights had been breached and their — their reaction was — or I should say that their ruling was that you had to have him admitted to school. What this — so it's not — it's not up to the Legislative Assembly to decide —

Member of the public: He also had to have his hair cut, too.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): No.

Member of the public: No?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): No. No. No. That was the whole point of the case.

Hon. D. Kurt Tibbetts (Leader of Government Business): That's why we allow you to keep yours, you see.

Member of the public: [laughter] I'll cut mine when you take the picture of Christ from off of the Worship Centre.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): But the — [laughter] — this point — the point that's being made in this paragraph here relates to where the courts declare that a particular law that the Legislative Assembly has passed is in breach of human rights. And what this is saying is, with that declaration it would then be a matter for the Legislative Assembly to determine how to respond to the fact that the courts have declared their law or a provision in the law to be unconstitutional.

Because this is where the debate is: who should be or what should be the ultimate decision making body of the land? Should it be the legislature or the courts?

So, the position that has been taken by a number of countries, including the United Kingdom, is — that the courts — it's the job of the courts to interpret laws and to make rulings and so forth, but how — how those laws are — or how those rulings are dealt with is a matter — as far as they relate to the law is the matter for the legislature.

So — but it would be — and in every instance — in every instance since the UK has signed on to the European Convention and Human

Rights and so forth, where the courts have declared parts of their law to be unconstitutional, the court — the legislature — the Parliament has responded by changing the law because that's the way the system works.

Member of the public: Now, um —

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): That's why we're proposing the same thing should happen here.

Question #5 - Member of the public: Does the person under our present Constitution have the right to question the law that's been made by the Legislative Assembly?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): In the courts, yeah.

Member of the public: That can only be done in the courts, or can it be done through a referendum?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Not under the present Constitution.

Question #6 - Member of the public: All right, next question is: everybody's asking whether this referendum is going to be a yes vote or a no vote.

[inaudible comment]

Member of the public: You hope it's a yes vote. A yes to what or a no to what?

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): This might be a good chance for me to just talk a little bit about the process as we envisage it. I talked about it at one of the other public meetings, it was reported in the Compass yesterday, I think, or the day before, I've forgotten which.

But this is — we are at the stage now of what we call the consultation [portion not on recording]. Government has actually produced its — what it thinks the Constitution should look like, what it should contain. This is based on a lot of research, discussions and the seven years passed that we've had of these kinds of meetings and the use of constitutional experts and so forth and the experiences with the Turks and Caicos Islands, the British Virgin Islands and Gibraltar, all of whom have gotten constitutions over the course of the past few years. So we

have a pretty good feel for what the UK will accept in terms of constitutional provisions. And so with all of that we've produced these documents for your consideration "you" being the electorate of the country.

Now we're getting feedback from you. That's what this exercise is about — what do you think about this? Do you agree with this? Do you have concerns about that? All of that and the additional meetings we'll have both publicly like this and with the Chamber of Commerce, Lions, Rotary, whoever will talk to us, any assembled groups that are prepared to — organizations that are prepared to talk to us we get a feedback.

Once we feel that we are — we have a pretty good read on what the country wants, will accept in terms of a new Constitution, we will then prepare another document which hopefully — and it's a big undertaking on our part — hopefully will reflect the majority view. That document then will form the basis for the referendum question or perhaps questions. But what we don't envisage and what we've been advised is that it will be impossible and impractical to attempt to, for instance, take every section of the proposed new Constitution and write it out and expect the electorate to go and say yes I agree with this, no I don't agree with this.

So, as we see it, the document which follows this one will be the document that forms the basis for your referendum question or questions. They may be two questions. We haven't — we haven't reached that sort of decision yet. But it will be a simple, we believe, yes or no answer. Do you accept in broad terms this document as being the basis for which your legislatures should go and negotiate with Her Majesty's government for a new Constitution?

And I say "in broad terms" because as the Leader alluded to when he spoke at the start, it is not within our gift as the Government to say to you this is what your Constitution is going to look like. Because we have — even with your blessing we then have to persuade Her Majesty's government, in each and every single instance, that this provision ought to be in and this provision ought to say this or that or the other.

So, whoever goes away — and it'll be Members of the Government and Members of the Opposition as we see it — who would go and sit around the table in London and hammer out a document as was done in 2002 when this document, the 2003 draft was produced. But the UK did not accept then everything that was put forward and we're pretty certain they won't accept everything that's put forward now. That's why it's called a negotiation. But that's how we see the process going forward.

And to address — let me just finish this up by saying to address the question that has been raised by some as to whether or not May is too early for a referendum, what we say to that — I'll just repeat it here as we did in the other meetings. If we — if it is genuinely felt and if we get the sense that the majority of people feel that they need more time to consider these important matters, the Government is prepared to

consider that. What we are not prepared to do is to have an open-ended process which has no — no — no end in sight.

It's been seven years since this process started in Cayman, nine since it started in the UK. We have — a point has to come when the process is finished. The country will suffer from what I call "constitutional fatigue" because if this process doesn't reach a conclusion this time around, I don't know how many people are going to be prepared to come around when the process is restarted a year from now, two years from now by this or some other government. How many times are we going to go over the same ground? So we have — that's what we're trying to say to people, is if it is — if it is genuinely felt that the process that we are engaged in, the consultation and education, that the time doesn't allow for people to become comfortable with that, then, sure, we'll look at extending the time. But let's give this process a chance.

We've got 17 of these public meetings planned and let's go through them and let's see how we all feel as a people when we get, say, to the midpoint of it. Are we getting a sense that people are understanding what is being proposed that . . . you know, are reasonably happy that they'll be able to form a view when it comes time to vote? Because if we get it wrong . . . I mean, understand this: if we get it wrong we know what the result is going to be. Either people aren't going to turn out to vote in the first place, which is a failure, or they're going to turn in their vote no and we'll have no mandate to negotiate anything. So we have a vested interest in ensuring that people are engaged; that people understand; that people want to be part of the process.

So it's not — anyone who tells you, as some have told you and will continue, that we're trying to ram some document through, that we really don't care what the people think is misleading you. Because the whole success of this exercise is contingent on the people voting by referendum and saying to us yes, here is our blessing, go do your best with the United Kingdom. If you don't give us that mandate that's the end of the process, at least this time around.

Member of the public: Yes, I'm aware of that because this thing was supposed to have been part of the political campaign issue from last election, so before that. And matter of fact, this thing has been going on from 1991, when the first recommendation came that we should have had a Bill of Rights placed in it. So it's been 16 long — 17 years now, as a matter of fact, since it's going in. And I think May is ample enough time, for me anyway. I've already — I didn't really come here to write and read, you know, just from you. I'm also here to write as well and I have my notes down and I think May is ample enough time.

And again, the thing — political jargon going from here and there and what have you is something that even little kids that I got around here are fed up with. And I am well aware that nobody's trying to ram anything down my throat, I've been aware of this for a long time. I've kept

up with it, I've read every constitution that there is, and I'm telling you that what Bermuda has, what BVI has, what all the other places have is not a constitution that is 100 percent suitable for the people of the Cayman Islands.

It is my understanding from the FCO and Her Majesty that she wants to know exactly what it is *we* are prepared to do to take control of our own destiny. And to do that we have to know where we come from, where we're at and where we want to go. And I certainly know where we come from, where we're at and where we want to go.

The other thing, sir, I think the constitutional part is also another issue in here which is the Elections Law, who is eligible to vote and so on. So when you get to that I will — I do believe that you're going to be quite pleased with what I have to say on that.

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

Member of the public: Let me just — excuse me and somebody else might want to say something.

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

Hon. D. Kurt Tibbetts (Leader of Government Business): Before Mose speaks — hold the mike, I won't be long. Let me just say, Percy, while I was — and everybody here — while I was listening the thought came to mind it goes to show within the process how irresponsible it is for anyone to try to convince the public from this point in time to vote no for a referendum when no one knows what you're going to be voting on. That has to be irresponsible.

Question # 7 - Mr. Moses I. Kirkconnell (Second Elected Member for Cayman Brac and Little Cayman): Thank you. Suzanne, when you were — let me refrain. When we — when we talk here tonight we are talking about framing a Constitution for the next 40 or 50 years to take us forward.

When you were just talking about single-member constituencies, one man, one vote, I think that you made it sound like it was either/or how the document read. But how I read it is, the first part: **As far as the single-member constituency to continue for Cayman Brac and Little Cayman** is a real option that has a lot of reason behind it continuing to be that way, where two Islands that are 60 and 85 miles away from the main Island that has all of the main infrastructure that we basically need.

So the unique problems that we face on each Island are similar to each other, and I personally feel that we want to continue as being one

rather than be separated by two electoral districts, and I think that's stronger for the people of the Sister Islands themselves . . . Sister Islands themselves.

The second part of it is [portion not recorded] on one vote or you continue as it is today. If the people feel they want to continue the way it is today, that is an option or that is not an option?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I — well, I think it has to be an option, but it has to be an option in the context of what the Cayman Islands has said about either remaining or — single-member constituencies.

Hon. D. Kurt Tibbetts (Leader of Government Business): The truth is, Mose, anything can be an option at this point in time. We simply have produced what we thought to be the best combination looking at the big picture. We also understand and respect the fact that when we get to situations like this one, we know the Cayman Brac people, and pretty well those few who are in Little Cayman involved directly with the process and we understand how they feel. We just need to try to create a balance. But it is certainly no intention to try to get to a situation where enshrined in the Constitution is something involving the Sister Islands that the Sister Islands don't want.

So there is no such thing as “not an option” but we need to flush the whole thing out. We need to talk it through so that while individuals may have their own points of view, at least when they fix those points of view they have the big picture also in their minds. That's the purpose of the exercise right now.

Mr. Moses I. Kirkconnell (Second Elected Member for Cayman Brac and Little Cayman): Thank you. And that's the exact point I wanted to get clear, that we can continue as a community talking about this and coming to consensus on what we want to deliver to you basically —

[inaudible interjection]

Mr. Moses I. Kirkconnell (Second Elected Member for Cayman Brac and Little Cayman): Correct, for when you come back.

And the other part of it that I want to make sure is brought up and talked about and left for us again as a community to talk about, I think that — that we have been quite fortunate up until today as far as the representation we have had for the Sister Islands in Cabinet. We've had representatives that were elected here sit in Cabinet and we've had Cayman Brackers that were in Grand Cayman sit in Cabinet to represent us.

But as we frame this for the next 50 years we must consider that there are going to be times when there are not people with “roots”

available, so to speak, to sit in Cabinet and represent us. And —and . . . I don't know if you'll be there 50 more years

[inaudible interjection]

Mr. Moses I. Kirkconnell (Second Elected Member for Cayman Brac and Little Cayman): [laughter] But I think that's holistically part of our approach that we have to be very conscious of as we talk about this and go forward and prepare to give you input.

Thank you.

Member of the Secretariat: Thank you, Mr. Kirkconnell.

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

Just in relation to the single-member constituency, I think that the issue is a — is a very important one because what it is really looking at is whether or not Cayman is going to — the *Cayman Islands*, I should say, are going to change the type of electoral system it has. And if it has — if it decides not to, as the *Islands* decide not to change, then we remain as we are. But if the *Islands* decide they are going to change, then it has to be — there has to be consistency across the board.

So what is being put forward here is that if it is the Islands feel as a majority that we are to move to a single-member-constituency type of electoral system with a one person, one vote principle, what type of system does Cayman Brac see itself having? How do you fit into that picture? And I think that is part and parcel of the discussions that you will continue to have because it's — it cannot be that we have a multitude of standards if, *if*, the country as a whole feels that we should change the system.

The — the criticism at present is that there are too many different standards for each district. So what is being sought is consistency across the board and part of that decision for Cayman Brac is, how do you see yourself fitting into that picture, how do you see yourself in terms of the single-member constituency principle and the one person, one vote principle.

So those are the things that you have to discuss, and if you have anymore questions about it, I'm sure Mr. Kirkconnell will be happy to discuss the proposal with you. And also your [Members of the Legislative Assembly] MLAs — all of your MLAs are there to discuss the issues surrounding electoral systems.

I'm going to move swiftly to the last few topics of — major topics for discussion, and I thank you very much for your patience because I know it's getting late.

THE ATTORNEY GENERAL

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, we're going to speak about the Attorney General (AG) and you can see that on page [8] of the *Summary of Proposals*. And the statement that has been made regarding this issue is that:

“The Attorney General is currently appointed by the Governor in his [sole] discretion and has a multiplicity of potentially conflicting roles. He presently sits as a voting member of both the Legislative Assembly and the Cabinet. He is the principal legal adviser to the Government, and is also responsible for criminal prosecutions.”

The recommendation is that:

“The revised Constitution should require the Governor to make this appointment upon the advice of the Premier. But the appointee's [the proposed Attorney General's] qualifications, independence and suitability for the office must be acknowledged by the Judicial and Legal Services Commission [which is an independent commission proposed to be set up which will have oversight over the judiciary].

So it is recommended that in appointing this office — this person to this office that it should no longer be the sole discretion of the Governor, but that there should be some input from the Premier because the Attorney General's constitutional role is that he is the legal adviser to the government. So if he's the legal adviser to the government, which includes the Premier, the Ministers of government, the other Legislative Members — Legislative Assembly Members, the question is: should they have some input into which person is most suitable to be their legal adviser?

We've also recommended that to — to diminish any potentially conflicting roles that the Attorney General should no longer be in charge of criminal prosecutions in the Cayman Islands. And this stems from the principle of separation of the Administration of Justice and government, the political arm of government. Because if he is advising the political arm of government, should he be — also have the responsibility for administering criminal prosecutions in the country against the individual citizen? And what has been recommended is that this responsibility should be held by a new office holder who would be called the Director of Public Prosecutions.

And this person — right now — I am actually a Crown Counsel of the Attorney General, and right now the — my office, the Legal Department, is responsible on behalf of the Attorney General for carrying out criminal prosecutions. What this would mean is that you'd have a separate office of the Attorney General which will continue to provide legal advice to the government as a whole or the Ministers, the Governor,

Cabinet, the departments, the portfolios and ministries. But in terms of criminal prosecutions you would have a separate body or a separate office who would be responsible for criminal prosecutions.

It is also being recommended at this stage that the Attorney General should not be a Member of Parliament or the Cabinet but should be required to attend sessions of both bodies. And what — the basis of that recommendation stems from the fact that: (1) the Attorney General is not elected, he's not an elected member of Cabinet, so should he participate in the policy decisions of government as a whole if his constitutional role is limited to that of being legal — of principle legal adviser to the government. Should he only be a legal adviser or should he be a voting Member in the Legislative Assembly and a voting Member in the Cabinet, by virtue of his position as an Official Member?

Secondly, they're saying that he should — we — we must retain his role as legal adviser, but his role as legal adviser, whilst our current Constitution says the government, the question arises: well, who is the government? And they're asking that he advise Cabinet.

And I don't know, Minister — Minister McLaughlin or Leader, if you would like to perhaps expand some more for our audience about why you feel that we should change the constitutional role of the AG so that he's legal adviser to Cabinet as opposed to legal adviser to the Government, and if you see that there are any conflict — potential conflicts or real conflicts that you feel with the current arrangement.

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

This is another of those points that we have, I think, very real examples of how the — the system has outgrown itself.

In the good old days when there were little opportunities for conflict between the government and the Governor, or administrator or Commissioner as it was in the old days, [portion not on recording] it was quite simple and straightforward. Increasingly, we have seen over the course of the last, I would say, six, seven years occasions when the Governor . . . let me — let me back up a little bit.

The Constitution says that the Attorney General is the legal — the principal legal adviser to the *government*, it doesn't say anything about the *Governor*. But the practice has grown up over years to the Attorney General also advises the *Governor* on many issues. That is fine, as long as there isn't an issue between the *government* and the *Governor*, because when the Attorney General then advises the *Governor* Cabinet doesn't have the benefit of his advice if they have a different position.

We saw it most recently in the situation with the Commission of Inquiry, where the Attorney General advised the Governor and Cabinet was left without any legal advice. But we've seen it in the past as well, in situations like the one involving Mr. Ballantyne when he was Attorney

General and the whole question of the conduct of the infamous Euro Bank trial.

So, we have taken the view and we've had the advice that in this day and age in modern Cayman you really can't continue a situation where the Attorney General is trying to serve too many masters. He's legal adviser to the government, to the Governor; he is in charge of criminal prosecutions; he is the head of the law school. He just wears too many hats, too many opportunities, too many possibilities of conflict.

And what we're proposing is that the Attorney General is the legal adviser to the government full stop, that his other functions which he currently carries out are hived off to — to other offices so that you have a director of public prosecutions who's responsible for public prosecutions so the Attorney General isn't. And if the Governor — not if, as the Governor needs separate legal advice, I would think on a regular basis, that he has his own legal adviser appointed to deal with that so that the Attorney General isn't in this situation where he's not sure who he's bound to be loyal to.

One of the other fundamental problems we see is because the Attorney General is appointed by the *Governor* there is — under the current system there is that issue about who, in fact, he's loyal to. Is he loyal to the Cayman Islands government or is he more loyal to Her Majesty's government who actually appointed him?

And these are real issues because, increasingly — and we've seen it in the past, you know, what is on Her Majesty government's agenda is not necessarily what we believe as a country is in our best interest for reasons which I explained earlier. And so it's important that we can rely on the advice that we get and not worry about whether or not that advice is being influenced or painted because of obligations of the Attorney General to the Governor who appointed him or her in the first instance. So that's kind of the background to this proposal.

Hon. D. Kurt Tibbetts (Leader of Government Business): Folks, just — just so that we can all understand each other here, Suzanne is not quite finished yet. There are a couple more important issues that we need to discuss. Do you think that we can . . . okay, two more. Can we get another 15 minutes, please?

That's okay?

All right. We'll try to wind down as quickly as we can and allow you to ask some questions if you need to. But just bear with us, we'll soon be finished. I just don't want you to desert us. So we'll soon get there.

Thank you.

ELIGIBILITY TO VOTE OR STAND FOR ELECTION

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

Moving quickly to page [10] of the *Summary of Proposals*, the section regarding Eligibility to Vote or Stand for Election. The section starts off by saying, **“We propose the compromise reflected in a 2003 draft of the Constitution.”** And I think part of your package should be this little document here which is the 2003 draft Constitution and specifically in relation to section 73, I believe it is. **“This would make several adjustments to the existing rules. Because of changes in the United Kingdom rules, the existing requirements of Caymanian Status and British Overseas Territories Citizenship [BOTC] by virtue of a connection with the Cayman Islands needs to be extended to include those with Caymanian Status who have British citizenship by virtue of connection with the Cayman Islands.”**

So that basically means that — I’m sorry, I’m just getting over a flu.

That basically means that, you know, a couple years ago we had British citizenship extended to those of us who are — were naturalized — who are naturalized and were BOTC Cayman Islands and who have Caymanian status. So, we — it is recommended that, of course, you know, we need to address our own local Constitution to ensure that persons who are eligible to vote who have this citizenship there are no barriers to them being able to continue with their existing rights. And I think that those changes have been made, I believe, in our — in 2004? Two thousand and four constitutional amendments I think made those changes.

No? No?

Okay.

But, no.

So, for example, any of you who hold a British passport have taken advantage of your British citizenship as a Caymanian, you would have your B — you have your citizenship, BOTC which is a British Overseas Territory Citizen, but you would separately have your British citizenship. And at present our — our Constitution actually sets out the qualifications that would allow people to vote and stand for elections and part of those qualifications deals with citizenship. So some of these things have to be addressed in our Constitution.

Secondly, what is being recommended is that **the right to be registered as an electoral (voter), the existing requirements concerning residence, domicile and parentage would be replaced by single residence requirement for 2 out of 4 years preceding registration.** Of course, those who now have the right to be registered would not be affected.

Now, in the — in the old — in our current Constitution it says that you have to be Caymanian — you have to hold Cayman status, you have to be 18 years old, minimum 18 years old, a British Overseas Territory

Citizen by virtue of a connection to the Cayman Islands, domiciled and resident in the Cayman Islands at a date you're registered as a voter. And either: (i) if one of your parents or grandparents is born in Cayman and he or she has lived in the country, you —the voter has lived in the country two out of three years immediately prior to the date of registration; or he has been or she has been resident in the Cayman Islands for seven out of nine years immediately prior to the date he or she was registered, and in the three years before being registered he has not been absent from the country for more than 300 days.

It has been proposed that the criteria would be changed because what it's saying that you — some of the requirements require you to be, if you're already a voter, that you have limitations on how — how long you can be absent from the Islands. And what is being proposed is that, of course, you continue to meet those qualifications, for example, be a Caymanian, but at least 18 years old, hold your British Dependent Territory Citizenship by virtue of your connection to the Islands. If you have your British citizenship by virtue of your connection to the Cayman Islands and that you are resident in the Cayman Islands at the date of your — of your being registered. So that means that once you hold all these requirements, that you are resident in the Islands when you go to the Elections Office to register and that you've been resident in the Cayman Islands for out — two out of the four years immediately before the date you registered.

So it doesn't mean that anybody who has been in Cayman for two out of four years can all of a sudden become a voter in our electoral system. It means that you have to meet all of the same requirements that you need to meet now. But in terms of how long you have to be in the Islands, they're only asking that two years out of the four years that you are resident in the Islands. So that is the recommendation that's being made right now.

If you're still not clear on that let me know, but if you want to take the time and read it, the section on Qualifications of a Voter is in our current Constitution, and I said section 73 of the new requirements — the proposed requirements is in the 2003 draft. And all that it is really saying is that if you are Caymanian and you have all of — you meet all of the requirements that you should only have to resident here continuously for two out of four years in order for you to be eligible to vote.

The second part of this is Standing for Election, and it says:

“As regards the right to stand for election, the domicile requirement would remain but the parentage/residence rules would be adjusted. For those with a Caymanian parent the residence requirement would be 5 out of the 7 years preceding nomination. For those without a Caymanian parent the requirement would be Caymanian Status for at least 25 years, and residence for 20 years out of 25 years preceding nomination.”

And what this means — the issue — the core issue that is being raised here is whether or not first generation Caymanians should be permitted to stand for election should they exercise their full rights as a citizen.

So they already have the right — as a first generation Caymanian - they already have the right to be eligible to vote, but should they as a first generation Caymanian also have the right to be eligible to stand for elections. And what is being — some of the discussions that we've had before in other previous meetings is that under our present immigration rules someone would have to be in Cayman for at least eight years to obtain permanent residency. They would have to be in Cayman for at least 15 years to obtain Caymanian status. And what the present recommendation is stating is that if you have held Caymanian status for 25 years . . . so that means that theoretically if you've gone through the current rules, you have to put 15 plus 25 which is what . . .

Fifty?

Forty?

[laughter] That's why I did law.

Fifteen plus 25 is 40. And so it would be 40 years and then they would have to be living in Cayman for 25 — 20 years out of the 25 years after they got their status, then they'll be eligible to run. So that is really the issue of whether — we are going to — whether it is intentioned or the recommendation that if it is that we assimilate persons in our society as citizens, whether our section of the Constitution which the provision for Standing for Election should fully assimilate them so that they can also stand for elections, or should it remain the same where there are restrictions on who — who can — who can stand for an election right now.

And I think this is an issue — an area that has had much discussion. I would invite perhaps the Members of the Government if they wish to say anything further and also if you have any questions or comments at this time for us to deal with that.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Folks, I just want to say this: this has proven to be, without a doubt, the most controversial part of the proposals that we have put forward. But we didn't just dream this up.

The — if you look at the 2003 draft Constitution which came back from the UK, what is being proposed here is contained in this. This is what the UK accepted after the UDP and ourselves went to London in December of 2002 and made our — and negotiated with them. It's also the position that's contained in the PPM position paper which we prepared in early 2002 during the last round of constitutional discussions.

Now, a lot of water has gone under the bridge since then, a lot of things have happened which have changed people's outlook on these things, not least of which I believe was the wholesale grant of 3,000 status by the last government to people, which has, without a doubt, had a major impact on the way our people view matters such as this. Because the proposal that's in our document would essentially, as Suzanne said, give to first generation Caymanians the right to be able to stand for election.

We — what we had in mind at the time that the proposals were developed back in 2002 were cases of a child born in Cayman of non-Caymanian parents. So the child wouldn't have been born Caymanian but his parents subsequently obtained Caymanian status and the child grew up here, went to school here, spoke like a Caymanian, is culturally Caymanian in every respect. Should that child have the ability to stand for election in the only country they ever knew?

Are there other instances of the child comes — the parents come here when the child is six months, a year, two years old, so the child is born somewhere else. The parents subsequently get Caymanian status and the child grows up here and gets Caymanian status as well. Should that child have the right to stand for election?

So it was those sorts of instances that we were trying to deal with and accommodate and based on feedback we got from people we talked to in the districts as we went around at that time as the basis — as the basis for this proposal.

What seems quite clear to us, we haven't had any indication here tonight, and maybe I shouldn't say this, but — at this point, but I will anyhow.

There are other meetings that we've had, and the feedback we've gotten just one on one talking to people is that almost everyone that has spoken to us expressed concern that this is opening the door too wide and that we should stick with the — essentially the same rule we have now, although this one is so complicated, it would take a battery of lawyers to figure it out. But a simplified version of the current rule which essentially says that only second generation Caymanians can actually stand for election. So, in other words, for you to be able to stand, your parent would've had to have been Caymanian at the time you were born.

So — so essentially for us as a country there's a [portion not on recording] whether or not we will allow at this stage of our development first generation Caymanians to stand for election, or whether you have to be at a minimum second generation. So that is the policy decision that has to be taken.

Our feedback so far, people are saying you must be second generation. So an indication from you all — as I said, this is a proposal, that's what these are, and the purpose of them is to elicit discussion and feedback so that we know — or hopefully the document that we develop following this will reflect consensus . . .

[inaudible comment]

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Let's — let's — let's get the mike so that we can — we can get it recorded.

Member of the public: I said you can put it down from Cayman Brac as if you are not born or of Caymanian parentage and the parent had to be Caymanian at the time of birth, not an American citizen, you can't run for the Legislative Assembly. Allowing you to vote? Yes.

And as far as limiting the term is concerned, two terms for the Chief Minister and that's it, so that nobody gets it into their head that they're going to come in here and run this country from any other country other than from here. If you're not a born Caymanian, you're not gonna run. That's my opinion.

[inaudible comments]

[laughter]

Member of the public: I will second Mr. Whorms' request there. I fully support that. I would not expect to go in any other country and run for politics, because I don't know the everyday things that happens in that country and happened before I was there. I totally agree with that, that we have to be 100 percent Caymanian to run in Cayman Brac or Grand Cayman anywhere in the Cayman Islands. And I would not expect to go in any other place and run like, I just repeated, because I do not know how the country and the cultures and everything else cannot blend into a real solely wholesome Caymanian. I totally support Mr. Whorms' decision on that.

Thank you.

A New Caymanian

Member of the public – Mr. Walton Goody: Good evening. I'm Walton Goody, a new Caymanian. I've been here from 1st May 1974. My son came to Cayman Brac and visited the caves for the first time as Alden McLaughlin's son did. He's 16 years old and when he was born I was not a Caymanian, so he is more or less a first-generation Caymanian. He's a set-one student in everything that he's doing.

And if you're going to put in the Constitution that he, when he grows up, cannot give back to the only place he knows, and if he so desires to run and be elected by his peers, I think you'll be making a mistake. I think that the — Cayman has changed and I heard tonight

where the Cayman Brac people thinks that the voting arrangement, two people — the voting for one constituency, two people, I think that makes Cayman Brac Cayman Brac. And there are certain things that we have to hold onto. Right? But we must understand that there are kids who were born here.

I've paid my dues. I've been here 30 years. I understand I cannot run. I have no problem with that. I do not want to be a politician. Right? And Alfonso would know what I'm saying when I say "politician" there are a number of definitions for politicians.

But I must present the opposing view that if a person is born here, he has a grandmother who is 89, he's spent no more than probably two months in his whole life in Barbados. The only thing he knows is Cayman. And if you're going to say to him in your Constitution that because your father was not a Caymanian when you were born you cannot represent us I think you'll be making a mistake.

Member of the Secretariat: Thank you for your comment, sir.

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

I think the question at hand is what —I had discussion the other day with some people and I think the question at hand is one of nation building for the Cayman Islands.

I know that we hold very strong reasons, and I am not going to put forward my personal views but I'm just going to present the issue. The issue is that of nation building.

And we look at our Constitution in the next 30, 40, 50 years, but what about over the next 30, 40, 50 years the citizens that we have assimilated into our society? And I think that is really one of the core issues. How do we as a nation not only practically build our nation but constitutionally build our nation? And that is perhaps why one of the — this particular proposal is raised, and I — I do encourage persons to think about it from the various perspectives. Yes, preservation of the Cayman way of life, the Cayman values. But on the other hand, as the gentleman has said today, we do have a large cross-section of children where the Cayman Islands is the only home they have ever known, and how do we build our nation by excluding these class of people?

If their allegiance is to our country and at the end of the day our country tells them that you are not a part of us, then, who are they, what are they and where are they expected to go? So these are — this is actually perhaps a very complex and fundamental issue I think that we as a nation will have to look at.

In addition to which, I believe that it is one that our politicians will have to look at and it is one that the United Kingdom, I am sure, is looking at. Because it recognizes that we have a large cross-section of

citizens who are not full citizens and it looks at the issue of nation building.

So, as we said today, we are here to discuss the issues. We have two points of view on this, but at the very same time we need to hear from a lot of people, those who are either indigenous Caymanians, second generation Caymanians and also new Caymanians, because this is an issue that our government will have to deal with and the United Kingdom will be asking what are the issues, what are the positions, what their concerns are, they must hear what our concerns are.

Thank you.

PEOPLE-INITIATED REFERENDUMS

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): And the last item on the table which I will deal with at this point will be the issue of people-initiated referendums which you will find on the last page. It's page [11] of the *Summary of Proposals*.

It is being recommended that our constitutional provision regarding a referendum should be expanded to allow the citizens, if they feel that there is an issue of national importance, to be able to require our government to take it up at the legislative level. And the — the method in which they're recommending we do this is through people-initiated referendums. And this will include, very briefly, a petition whereby a certain number of citizens will have to sign an agreement that they believe that this is an issue of national importance. If they obtain a particular percentage which would — that they can — which in the law would require the Legislative Assembly to take this onboard, it will require the Legislative Assembly to form the question and to allow for the facilitation of our national referendum on this important national issue.

And we see here that specifically they have recommended that if it is that a petition is made and it goes to the referendum, that if 50 percent or more of the electorate agree with the issue that it should be binding on the legislature save for any issue that is inconsistent with human rights or other parts of the Constitution. And if it is passed by — by less than 50 percent of the electorate, then it would be advisory. So that would mean that it will not be binding on the legislature, but they would be required to look at the issue to see whether it is something that they should act upon or whether it is something that they should keep as is.

AMENDMENT TO THE CONSTITUTION

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I did omit one thing and that would be — two things and that would be the last issue (J) final Amendment to the Constitution, any future Constitution we have.

I started off this meeting by saying that we've had a number of constitutional amendments over the decades, and I don't know how many of us have had direct input into exactly what changes should be made or what changes were made. But what the future proposal is, is that if we do as a country agree upon a constitution that presents the vision of our country, that we must change the way that we are allowed to change it. And that means that we must — we must only be allowed to change the Constitution through a referendum.

So it will have to come back to the people, for us as the people to say we agree or we do not agree with these types of constitutional changes that are being recommended. And this is not only — this is for our local government to bring it back to the people, but in particular, also the United Kingdom so that the United Kingdom does not change our Constitution without consulting us as a people first. Because the basis of our Constitution sets the parameters of our relationship with the United Kingdom and if we are to have relationship with the United Kingdom therefore there must be dialogue between the countries on any constitutional changes that should be made in the future.

And the recommendation was that if it was a minor or un — non-controversial change, however, the exception would be if it's a minor or non-controversial change and both the Premier and the Leader of the Opposition agree that the change is minor and non-controversial, then it would not have to go to a referendum. But if it is something that is of major issue, it will have to come to referendum.

And perhaps we can ascertain or glean any views that you may have on both the people-initiated referendums and future changes to the Constitution.

[pause]

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Okay? Well, I think that wraps up our presentation. Does anyone have any other questions regarding any of the other topics?

I see two gentlemen to your right. Thank you.

Question #8 - Member of the public: Miss Suzanne, I have one question to raise concerning religious rights.

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

Member of the public: Yes, ma'am. For example, in our Constitution there are no limits to religious rights. As far as I know you cannot ban any type of religion out of the Cayman Islands. Is that correct now?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Yes, there are no restrictions on religion.

Member of the public: Right. For example, one of my concerns are — and it will happen somewhere down the line sometime or the other. If a satanic worshipping church wants to be established in Grand Cayman or Cayman Brac in times to come, we need to have that enshrined in our Constitution that that cannot happen.

And suppose if a mosque is to be established in Grand Cayman, that is nearing to come about, we need to say no to this. What can be done to have this enshrined in our Constitution to block certain things like that?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I'm going to answer your question in two parts, sir. One is on the freedom to exercise your religion.

I started off, when I was discussing human rights, that individuals should be free to exercise their religion and that means any religion. We are a multifarious society. We have many indigenous Caymanians who practice — and also visitors to our Islands and residents to our Islands who practice Christianity, Buddhism, there are Muslims, there are Jews, et cetera, and they are free to practice their religion. And the intention is that they will remain free to practice their religion and that would include if they wish to build a temple. I believe there is a temple in Little Cayman and also if it's a mosque or et cetera.

Where that the human rights — Bill of Rights will come into play is that there are provisions that would allow for limitations of expressing your fundamental rights. But this does not go to your right to practice your religion. It goes to those issues that are of an — are Internal Security Issues. So, for example, let us take the very issue of cults which will affect the morals of the countries and the values of the countries.

There is provision for — or leeway for the governments if they implement of Bill of Rights to have limits on the exercise of rights if they are going to adversely affect the morals and values of the country. However, this also means, for example, freedom of speech. Yes, we can all talk, we all have freedom of speech and expression. But if your speech and expression, for example, incites racial or religious hatred for war, propaganda or for inciting others to commit crimes, governments have an obligation to interfere with the exercise of these freedoms in order to protect human rights of others.

So there are instances, very limited instances, where a government can limit one's rights.

So if it is, for example — and the very example of cults and Satanism, a person's Bill of Rights can protect its country against those sorts of practices which are believed to be contrary to the morals and values of that society. However, in relation to established religions that are — for example, the Muslims, the Jews, the Judaism, the Christianity, the Buddhism, so forth — those are religions that do not adversely affect the morals of society. They're not viewed as affecting the morals of society, they are peace loving religions. And therefore those persons belonging to these major religions will be able to continue to practice their right as they do at present.

Member of the public: Thank you, Miss Suzanne. And good explanation. Thank you.

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

Question #9 - Mr. Conroy Ebanks (Member of the public): Good evening, Honourable Kurt Tibbetts, and the panel. My name is Conroy Ebanks, and I would like to go over a few things that I heard tonight and just lay out my opinion.

The first one is that deals with your title. And my question is: a rose by any other name would it not smell the same?

Hon. D. Kurt Tibbetts (Leader of Government Business): Mr. Conroy, the answer is — and I will answer you personally — choice had to be made in the proposals. For me, I really don't care; it could stay how it is.

There is a real point — and I say from my own experiences, there is a real point when you are dealing with your colleagues either regionally or internationally, and this strange nomenclature of "Leader of Government Business", which seemingly, no one else has heard of before, and it really does make you feel kinda cute.

But if you're going into a ministerial system, and basically the choices are Premier or Chief Minister, as is used in most jurisdictions. If we look at our neighbours regionally that are part of the Overseas Territories we find that it's just about split in half with whose leaders are called "Premier" and whose leaders are called "Chief Minister". So, to be honest, I don't think personally that it really matters. What is your — I mean do you have an opinion?

Mr. Conroy Ebanks (Member of the public): My opinion is it should not matter. Are your responsibilities to the people of the Cayman Islands—

Hon. D. Kurt Tibbetts (Leader of Government Business): No, I agree with you, but you have to have a name. So what do you think?

Mr. Conroy Ebanks (Member of the public): Pick one.

Hon. D. Kurt Tibbetts (Leader of Government Business): Okay. Well — and I share your opinion.

[laughter]

Hon. D. Kurt Tibbetts (Leader of Government Business): It just so happened that when we were talking about it the majority of the guys picked “Premier”. But if you want to pick something else, that’s fine, too. Whoever that is, whatever that is really doesn’t matter, okay?

Question #10 – Mr. Conroy Ebanks (Member of the Public): Okay.

And the second thing is in your opening remarks you referred to no one wants independence, but yet I heard a lot of information in reference to the relegation and deletion of the duties of the Governor.

Hon. D. Kurt Tibbetts (Leader of Government Business): Right.

Mr. Conroy Ebanks (Member of the public): And I —

Hon. D. Kurt Tibbetts (Leader of Government Business): But — sorry. Forgive me. Go right ahead. Go ahead. Go ahead.

Mr. Conroy Ebanks (Member of the public): If we remove, sheer those responsibilities now and in the future, are we not then becoming self-governing?

Hon. D. Kurt Tibbetts (Leader of Government Business): Self-governing to a point, Conroy, is in no way, form or fashion speaking to independence. There are those people who speak to steps up the ladder and what is automatic. Nothing is automatic.

Let me say this to you. The United Kingdom is not going to agree for the Cayman Islands to have a constitution that allows the Cayman Islands to act as an independent jurisdiction at the same time United Kingdom holding responsibility for certain areas in the operations of the country. I mean that’s a — that’s a fact. So, I used to call it “scare tactic” prior to this. I now call it “stupid tactic”. And it’s not meant to be rude to anyone.

But people get this impression that because — and I’m not . . . just hear me out, okay?

This business of the Governor being this wholly post, whoever he is, and if you start to shake the tree a little bit you want to become independent is nonsense. Just picture this: picture a Cabinet — not us, anyone — picture a Cabinet elected by the people of this country, and

you want to involve a certain initiative. The process has to come by way of a paper to Cabinet to be approved by the Cabinet so that that can get to the Legislative Assembly, into Finance Committee to approve the funds to implement this policy and this initiative.

And the Governor, who is appointed by Her Majesty the Queen and who is Head of State by default because of the constitutional arrangement, if when he looks at all of those papers when he's going to set his agenda, there is something in his little mind or his big mind that doesn't like that, when you are acting on the request of a nation he can withdraw that paper and it never gets done.

I don't think that that should be a constitutional arrangement that we have with a representative from the UK. Do you?

Mr. Conroy Ebanks (Member of the public): I agree.

Hon. D. Kurt Tibbetts (Leader of Government Business): Okay. So I want to use that as an example to say to you — and that's real and live in today's world. So in using that example I say to you what obtains now, the Governor who is the President of the Cabinet, for instance, which is what obtains now, can actually do that. And we are saying that in this modern relationship that we wish to develop with the United Kingdom he should not be able to do that. Now, us saying that he shouldn't be able to do that has nothing to do with any desire to become an independent territory.

But people just . . . because you want to change the status quo a little bit people just begin to form impressions that you have ulterior motives. Nothing could be farther from the truth.

[inaudible comment]

Hon. D. Kurt Tibbetts (Leader of Government Business): So sorry?

[inaudible comment]

Hon. D. Kurt Tibbetts (Leader of Government Business): Alfonso [Wright] just mentioned a point.

As it stands now, the only how legislation that is approved by majority in the Legislative Assembly becomes a law is when His Excellency the Governor *assents* to that law. So, if the Governor doesn't assent to that law, the 15 Elected Members of the Legislative Assembly could unanimously vote for that piece of legislation and he can say no and it's dead.

So let us not forget . . .

Minister McLaughlin has just quickly given me the specific section, section 52, the Power to Make Law. Subject to the provisions of this Constitution the Governor, with the advice and consent of the Legislative

Assembly, may make laws for the peace, order and good governance of the Cayman Islands. But at the end of the day it's the Governor who has to assent to them.

So, as I was saying to you, that there is nothing that we would wish to do to change the basic relationship when it comes to us being a United Kingdom Overseas Territory, and we believe wholeheartedly that the vast majority of the people of the Cayman Islands wish for that to remain.

But London itself — I tell you this: I attended the Overseas Territories Consultative Council meetings in December of last year and the Minister responsible — the UK Minister responsible for Overseas Territories (her name is Meg Munn) when we had our meetings she spoke on several issues, and on several occasions she raised the issue of the constitutional arrangement with London, in many instances, being antiquated and outdated.

Earlier on when Minister McLaughlin spoke about the police, the moment we mentioned the police, for instance, Conroy, people begin to think you want to interfere. You want to tell them who they can charge and who they can't charge. Let's not go there. That's not what we're talking about. Nobody wants to get involved with that because the truth is, as elected Members — and I know that I can speak for all of my colleagues, every one of them including the Opposition — we are fearful when we hear [portion not on recording] law because the first people they run to is us. It's the truth!

And I'm only glad that we don't have any authority in that area because — and that is why you have the separation of powers and that is why we want to retain those separation of powers, because politicians are more susceptible simply because people have to vote for them. Let's be candid, truthful and honest about it.

So nobody wants to change those arrangements. What we want to say is that if we as a Legislative Assembly, if a Cabinet approves a four-year plan of expenditure for the Royal Cayman Islands Police Force of \$50 million, that's plenty money. That's your money. If the Cabinet as a matter of policy decides on that we want to be able to at least know what's going on while it is going on to make sure that money is being spent wisely so that we can get the best results for that money.

As of now, we vote the money, we agree on what we want to see happen and then periodically we might get a report on it.

You see the difference in what I'm saying?

So, I only say those things, without going any further, to make sure — or I'll do my best to make sure that people understand that the arrangements that we wish to see that we believe should happen have nothing to do with any change in the constitutional arrangement. It is simply a matter of us having a little bit more control of our own destiny when, in fact, the nation holds us responsible for it.

If something goes wrong with the police they still blame us, you know?

Tell the truth now. I'm sure you've heard it — you've sat and heard it as often as anything else.

And again, as I said, we don't want and we don't expect to be part of any of the decision making when it comes to the operational side of the police because we believe that there should be that separation of power. But what is proposed in the Constitution is simply a matter of elected Ministers having some knowledge and being able to participate in some of the policy-making decisions with regards to the police itself, nothing to do with personnel or any of those matters, okay?

Question #11 - Mr. Conroy Ebanks (Member of the public): Okay. I have just a couple more things.

On the part of Bill of Rights—

Hon. D. Kurt Tibbetts (Leader of Government Business): Um-hmm [inaudible]

Mr. Conroy Ebanks (Member of the public): I heard a lot of information, but it seems to deal with specifics. And I am just curious if our inalienable rights and Bill of Rights shouldn't be under a blanket. And I think I could . . . maybe I thought I would explain that this way:

Our United States government has a Bill of Rights which deals — and it tells you are against colour, creed and religion and all the rest of it which is a blanket. But yet the black people got an amendment which gave them additional rights and gays have that same provision going. So, there are changes to a blanket that covers them already. Why repeat it?

And I'm hearing from the Bill of Rights specifics dealing with the Cayman Islands—

Hon. D. Kurt Tibbetts (Leader of Government Business): Yeah, but Conroy, when you say "Why repeat it?" the fact of the matter is we don't have a Bill of Rights. So it's nothing going to be repeated, we don't have one.

Mr. Conroy Ebanks (Member of the public): I understand that. I'm listening to the proposals that —

Hon. D. Kurt Tibbetts (Leader of Government Business): Yeah. Sorry. Forgive me but I'm trying to understand what you mean when you say "Why repeat it?" Why repeat it —

Mr. Conroy Ebanks (Member of the public): In other words, if you had a blanket amendment that covers you like the United States have in their

Bill of Rights, then there should be no need to specify all those various areas that were mentioned.

Hon. D. Kurt Tibbetts (Leader of Government Business): So you're suggesting that the Bill of Rights that we would want in a new constitution should be the blanket one; is that what you're saying?

Mr. Conroy Ebanks (Member of the public): Well, that's just my opinion.

Hon. D. Kurt Tibbetts (Leader of Government Business): No, no, but that's what I'm saying. That's what you're —

Mr. Conroy Ebanks (Member of the public): It should be a blanket that covers all inalienable and — rights.

Hon. D. Kurt Tibbetts (Leader of Government Business): All right. Suzanne — Suzanne will answer that.

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

I think the — I understand what you're saying.

At present, as you are well aware, we have no blanket of inalienable rights that are directly applicable here. We have signed on to conventions which says that the Cayman Islands, in good faith, agrees that our citizens and people who live here should — should have these rights. We've internationally made that statement. What we have not done is to make that statement in truth and in fact in our country.

One of the issues I see that you are talking about is the issue of dealing with specific rights, changing rights and so forth, and you have raised, for example, one with African Americans. I don't know — I'm not sure exactly what right you are speaking about there, but you did deal with that issue of gay rights in the United States.

And I do know that, for example, in the United States — and you can correct me if I'm wrong but — those are more civil liberties, and I think from State to State the position changes. It's not necessarily applicable in every single State of the Union. And that goes to the heart of this issue, is that if there is an issue regarding limitation of rights or expansion of rights, it is up to that particular jurisdiction to decide what it wants to do. So if you want to go beyond the "blanket", as you say, then, you know, it is for that State to decide what it wants to do.

And that is — that is one of the — I think in the United Kingdom a few years ago dealing with the issue of gay marriage, I believe that there's a House of Lords judgment, which is the highest court in the UK, which said that they do not have gay marriage there, what they have is a civil union which is something that's legal but it's not a marriage. Now that is

something that their Parliament chose to do, that is not in their Human Rights Act, okay? That is a parliamentary legislative provision or document that they chose, that's the route they decided to go down. So, we also have those types of choices and decisions to make.

If there are particular concerns about human rights, I think it is important at this stage that we do have dialogue about it, specifically because, as I believe the other gentleman mentioned, how do we protect certain interests. What are the legitimate interests that we can — can protect in the Cayman Islands in terms of granting rights and limiting rights?

And — and the European Convention on human rights does afford a sovereign state to do that. It allows you to go into those convention principles. And if it is justified, if it is proportioned, if it is reasonable then you can limit rights in certain instances but there's a legal test to that.

So we, as a country, have to decide what is it we want. I do not think that we are at a stage where should we have a Bill of Rights. I don't think that that's where we are in our constitutional development.

The United Kingdom has made it very clear to us that they will have an expectation by any constitutional reform that we have to look at — putting fundamental rights in the Cayman Islands because it is in — for the best interests of the individual person.

Where we are at now, I believe, is what are the scope? There are those that are absolute and fundamental right to — against slavery, forced labour, et cetera. There are those where there are limitations of — on rights, for example, the right to life itself has certain limitations on it. For example, in terms of border control, if — entry and exit into the Island is subject to limitations, for example, through immigration laws, et cetera. And then there are those rights that we can look at, for example, those rights in relation to vulnerable groups.

And that is something that the United Nations, through various conventions, have been looking at, have the conventions — the CEDAW Convention specifically addressing the needs of women in societies, women and children, the issue of the rights of the vulnerable groups, and the disabled persons.

Human rights in relation — relating to the environment, this is something that is relevant as a human right because our rights do not extend only as civil and political rights, but also how we as a society live in our environment.

Should our government, for example, put in laws and provisions in place whereby it affects, for example, our water, our clean air, our peace — our enjoyment of our environment, restrictions on that or depletion of our environmental resources. Those are increasingly issues that, you know, have been identified as fundamental human rights.

And we are now at a stage in our society where we are here to say, okay, this is my understanding of human rights, these are the core

things that I would like because they recognize their universal — their universal rights. These are the other areas of rights that I believe that we should also have these, what you call, second generational rights of the social and economic rights. For example, right to health is one of those things.

You know, it's not saying that — that everybody must have free healthcare and every single thing they want. But what it does do, it puts a requirement on the state to ensure that it has the facilities and the infrastructure in place that the citizens can — can access healthcare. It also makes sure that there are certain minimum standards of health that a nation is expected to have. So that is why we see in the Cayman Islands and many countries around the world, we have particular immunization projects that are the responsibility of government.

So we see human rights are wide and [portion not on recording]. We have been living in a culture of human rights to a certain extent. We have signed on to a number of these conventions, but what is severely lacking is the guarantee of these rights.

We have been fortunate, I suppose, over the past and over the years that we have had — either had benevolent governments or that we have responsible civil servants in that over the decades they have increasingly been trying to take steps to ensure that they are protecting your rights, fulfilling your rights, respecting your rights.

Where we are now is that benevolence, unfortunate circumstances moving into the future, into the next 10, 15, 40 years, I don't think that is sufficient, and the United Kingdom is advising us we need to take that next step. We have already made the international commitment to the world that we are committed to human rights, so why is it not reflected in our country? So that is really the issue at hand and some of the things that we need to look at.

And it goes straight, for example, to the heart of the gentleman's argument about the Cuban refugee system. It is inhumane to send someone out potentially and allow them to die. But that issue is so complex; it's a human rights issue, but it's also tied up in terms of our external affairs, our relationships with other countries, our ability as a Cayman Islands to negotiate directly to deal with these very real issues we are facing. Because we are but one party in that picture and that deals with our responsibilities and our ability to really manage our affairs as a country on our own and properly so that things are done in our best interest, so our citizens are not put in a compromising position where they are either — feel torn, they are unhappy about certain things, things are — the actions that we feel are correct, that the country feels is correct they cannot act upon because we do not have the jurisdiction to do so.

THANK YOU

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): And at this juncture, I would just like to thank everyone for coming. I hope that when I come back to the meeting again in April, I believe it is that we will have a larger crowd. Please encourage your family members, your children, your cousins, your friends to come out.

I will encourage you tonight to take the knowledge that you've received to all the discussions that we've had and within your own family unit to have your own meetings about this so that you — so we, as a community, can really discuss the issues. So when the time comes that we tell the government, in no uncertain terms, what it is that we want, that they have a very clear mandate and they are hearing the voices of our population, the voices of our people and not just the minority but the majority.

So thank you very much. Have a good evening and I hope you have a wonderful weekend.

[applause]