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Constitution News

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History Guides the Future



After months of behind-the-scenes research and planning, Cayman's constitutional reform is picking up speed in anticipation of the May 2008 referendum.

The public discussion document, containing suggestions for constitutional changes, titled *The Cayman Islands' Constitution: A Reflection of Who We Are*, will be widely distributed. A companion explanatory document will also be circulated to help persons who want to carry out a more detailed study of the constitutional proposals.

To get residents in the mind frame of participating in the Constitutional Modernization Initiative (CMI), the Constitutional Review Secretariat (CRS) has re-published the summaries of Cayman's constitutional development. Secretariat

Director Suzanne Bothwell believes that "the actions our forefathers took regarding the course of Cayman's future in the 1950's and 60's should be an inspiration to us all. It is our turn now to make a difference and to guide our Islands towards a productive and promising future." With this in mind, the Secretariat has issued this special edition newsletter that brings readers a six part series on Cayman's constitutional history.

"I trust our readers will enjoy this step back in time, and I hope that especially our youth will take an interest in our Constitution and its significance to every day life," Mrs Bothwell said.

For more information on the CMI, log on to www.constitution.gov.ky

This six part series is a chronology of our constitutional and political developments as a Territory of the United Kingdom from 1850 to 1972 taken primarily from the local history text “Founded Upon the Seas, A History of the Cayman Islands and Their People”.

The Cayman Islands, a Colony of a Colony

Part I

During the 1850's, the Cayman Islands experienced a period of isolation and neglect as a dependency and as a result, self reliance emerged. There were constitutional and administrative uncertainties such as, the relationship between the Cayman Islands and Jamaica, the extent of authority of the Government of Jamaica over the

Cayman Islands and the relationship between the Cayman Islands and the Jamaican Courts.

Until 1863, the status of the Cayman Islands was unclear and there was no real decision taken by the United Kingdom to properly establish the islands as a crown colony. However, a clarification of these issues eventually bore fruit with the unwavering determination of Governor Edward Eyre and others.

Between 1863 and 1865, The Cayman Islands was recognized as a full dependency of Jamaica with approval by the Jamaican Assembly. With this, the islands saw the first signs of meaningful constitutional developments which settled many domestic administrative, constitutional and legal issues.

The Act for The Cayman Islands Government was enacted on June 22, 1863. This Act allowed for all British Acts or laws which were valid in Jamaica to be applied to the Cayman Islands. The Act also allowed the Governor of Jamaica to exercise authority over the Cayman Islands as if it were a part of Jamaica and vested the Supreme Court of Jamaica with the jurisdiction to hear any legal action that could not be tried in the islands.

However, for the people of the Cayman Islands, the most significant milestone was the fact that the 1863 Act caused for the full recognition of the local legislature and gave it greater internal autonomy to handle the islands' domestic affairs. Some of these increased responsibilities included control over the collection, custody and expenditure of the legislative revenue, the establishment, maintenance,



Photo: Cayman Islands National Archive collection
Justices and Vestrymen in George Town Grand Cayman on June 22, 1911

discipline and powers of the Police, the management, occupation, disposal of public or common land, the abatement of nuisances and the construction of works and public utility to name a few.

This was a tremendous achievement which resulted in a better quality of life for the people of the Cayman Islands. However, the memory of these successes faded as new problems emerged in the 1870's. The hurricanes of 1876 and 1877 adversely impacted Caymanian vessels and sailors and humanitarian and financial assistance were not freely given. To further compound these economic and social stressors, the livelihood of Caymanian seamen in Cuba and other areas were severely affected. The islands were left to fend for themselves once more whilst their fate was left to a Governor and his Assembly men across the seas.

limited form of ministerial government and the recognition of political parties. In contrast, the Cayman Islands had no written constitution and no universal adult suffrage.

In 1947, Cayman Assembly representatives, Messrs. Earnest Panton and William Farrington attended the first Federation meeting held in Montego Bay, Jamaica as observers. With the consent of their legislature, they proposed that the Cayman Islands would agree to join the Federation, only if Cayman had direct representation.

This position was rejected by members of the Standing Closer Committee of the Federation in 1949 and instead it was recommended that the Cayman Islands should continue as a dependency under the administration of the Governor – General of the Federation.

As the route to Jamaica's independence would not be completed until the 1960's, the Cayman Islands found itself in a peculiar position, because Jamaica was still able to pass laws that directly affected the Cayman Islands without having to consult Caymanians.

Meanwhile, taking matters into their own hands, on April 7, 1955, six Assemblymen sent a petition to the Colonial Secretary through the Governor of Jamaica. They stated that "while...we look forward to strengthening ties both with Jamaica and with the other territories of the British Caribbean...we wish to restate, as clearly and as strongly as we can, three main aims. First, we wish to retain the right to control entry to our islands. Secondly, we wish to retain our rights to decide what taxes should be imposed upon

Bucking the Trend and Who to Join? 1944-1955

Part II

As a result of Jamaica's move to independence, Jamaica obtained a new constitution in 1944. This constitution provided for universal adult suffrage, a



Photo: Cayman Islands National Archive collection
Administrator Jack Rose, A.R. Thomas and Sir Hilton Poynton at Lancaster House on a conference on the West Indies Federation.

us. Thirdly, we wish to retain our right to maintain our established channels of trade and employment overseas.”

Premier Michael Manley was content to let the Jamaican Governor resolve the Cayman Islands’ question. Locally, however, there was support on both sides, some wished for obtaining and retaining increased local control over Caymanian interests whilst some factions favoured a break with the United Kingdom and a closer relationship with Jamaica within the framework of the Federation.

The Cayman Islands and the West Indies Federation 1959 to 1962 Part III

As the years passed, the Cayman Islands were described simply as “part of” the Federation. However, this issue became more pressing as the Federation States moved closer to achieving full dependency from the Great Britain and transitioned in to dominion status within the British Commonwealth.

In 1959, the Cayman Assembly chose

five delegates, Messrs Duncan Merren, Roy McTaggart, Willie Farrington, Ormond Panton and Administrator Jack Rose to participate in a series of conferences held between September 1959 and June 1961. Their instructions were to negotiate and settle all unresolved aspects of the Federation’s Constitution including the Cayman Islands position within it.

In July 1961, Governor Kenneth Blackburne visited Grand Cayman for the purpose of announcing the proposals that had been drafted in June that year. The details were presented in a public meeting. The proposal, if accepted, was to be set out in a trial period of about five years after which a review would be carried out by the Federation and the Cayman government to decide whether the islands should continue in an associated relationship or become a unit territory, and petition the Crown to revert it to a colony status.

The proposal for federation membership was that once the Federation became independent, the Cayman Islands would cease to be a British Dependency and would remain a member of the Commonwealth. The islands would enjoy full internal self government and the Governor of Jamaica would relinquish the responsibility over the islands.

The areas of Foreign Affairs and Defence would be the responsibility of the Federation and as a result, the Cayman Islands would contribute to their costs. The relationship between Jamaica and the Cayman Islands would be preserved through links with the University of the West Indies, medical and prison services and by the former providing periodic technical support and assistance.

The proposed arrangements meant that the Cayman Islands would have a Lieutenant – Governor as head of state, appointed by the British Government. In addition to this, there would also be a Chief Minister, appointed by the Lieutenant Governor and the Council of Ministers would comprise of the Lieutenant Governor, the Chief Minister, two legislators selected by the Chief Minister and an Attorney General chosen by the Public Service Commission.

It was expected that this proposal



Photo: Cayman Islands National Archive collection Sir Kenneth Blackburne, Governor of Jamaica and the Cayman Islands at a public meeting of the first legislative meeting under the Cayman Islands first written Constitution at George Town Town Hall.

would have been the main issue debated in the local 1962 election. However, surprisingly the decision of the Jamaican people upon voting at a referendum to not remain a part of the West Indies Federation caused the eventual collapse of the Federation in May 1962. What did this now mean for the Cayman Islands and its quest for greater self government?

The First Cayman Islands Constitution 1959 to 1962 Part IV

In spite of the uncertainties of who the Cayman Islands would join, on July 4, 1959 the Cayman Islands received their first written constitution by royal order – in – council.

Obtaining a written constitution was the first tangible step towards political advancement for the Cayman Islands, as the islands were now specifically exempt from the control of the Jamaican legislature and was placed directly under the authority of the Jamaican Governor.

There were also radical changes to the Legislature. After 129 years, the body of Vestrymen and Justices was replaced by two new bodies, the Legislative Assembly (the LA) and the Executive Council (ExCo, now Cabinet). The composition of the Legislative Assembly was also reduced from thirty five to eighteen members which comprised of twelve elected members, three nominated members and three official members. ExCo consisted of two official members, two elected members and one nominated member. The Administrator of the Houses sat both as chairman and speaker and presided over ExCo.

The most significant change experienced by the average Caymanian through this new Constitution was that all adult Caymanians were now given the right to vote and stand for election.

However, for women, the road to universal adult suffrage was a rocky and tumultuous one. In 1948, twenty four George Town women wrote to the Commissioner at the time, stating that there was nothing in the 1865 Act of the Cayman Islands denying women to vote and that they intended to exercise their right in the forthcoming election. Unfortunately, the response of the Attorney General of Jamaica was that whilst the 1865 Act did not specifically exclude women from exercising their right to vote and their right to stand for election, the Act did not specifically include women either.

In a move to be taken more seriously, on May 29, 1957, Caymanian women came together to demand their political rights. The signatures of three hundred and fifty eight women were submitted in the form of seven identically worded petitions originating from seven different districts to the Legislative Assembly.

These actions concerned both the Commissioner and Governor so much, that on September 20th 1958, a draft bill was forwarded from the Governor to the Commissioner. Likewise the Select Committee unanimously recommended the granting of the petition on October 16th 1958. As a result of this, the Cayman Islands saw the swift passage of the Sex Disqualification (Removal) Law on December 8, 1958.

With the new constitution firmly in place and the Federation question having resolved itself, what steps would now be taken to obtain greater self government as a crown colony of the United Kingdom?

Is your name on the permanent register of electors? If not, you should register now in order to vote in the Caymans Islands' first ever national referendum on constitutional reform. If you are already a registered elector and have changed your name, address or occupation please contact the Elections Office at 949-8047 or visit their website at www.elections.ky to complete the necessary forms so that your information may be updated.

REMEMBER

Register by
29 February
2008
to vote
in the
May 2008
Referendum

*Our
Resolution
to Remain
British!*

Part V

After the collapse of the West Indies Federation and with Jamaica taking its final steps towards independence, the Cayman Islands had to make a firm decision as to who it would follow, Jamaica or Britain.

The political parties of the day took centre stage in discussing the issue. The National Democratic Party, which was led by Mr. Ormond Panton and Warren Conolly campaigned for greater self government above all. Most of the party thought that greater self government could only be achieved if the Cayman Islands remained with Jamaica.

On the opposite side of the fence, were the leaders of the Christian Democratic Party. Party members such as Ducan Merren, Willie Farrington and Burns Ruddy, felt that the Cayman Islands should remain with Britain and thought that the islands' quest for greater self government could be achieved this way.

This issue received support on both sides and the competition was fierce. The issue became heated and as a result of this Governor Blackburne revisited Grand Cayman on January 17, 1962 to see if a consensus could be reached.

Upon his arrival to the meeting, the MLA members of the Sister Islands, Capt. Keith Tibbetts and Mr. Nolan Foster, presented Governor Blackburne with a petition signed by 345 of the 435 registered voters of Cayman Brac and Little Cayman. The Petition stated that "if Grand Cayman chose to remain with an independent Jamaica, the Sister Islands would seek separate Crown Colony status under Britain".

The issue was finally brought before the feet of the elected members of the Assembly where it was debated and voted upon. To the Governor Blackburne's surprise, a unanimous resolution had been reached. It was resolved by the Assembly members that

"It was the wish of the Cayman Islands 1. To continue their present association with Her Majesty's Government in the United Kingdom; 2. To negotiate with her Majesty's Government in the United Kingdom for internal self government taking into account the wishes of the people of the Cayman Islands as to timing."

With the overarching question of who to join, now settled, was the only thing left to negotiate internal self government for the Cayman Islands with the United Kingdom. Would it be achieved in the next round of constitutional changes?

*The 1972
Constitution
- A quest
for internal
self control?*

Part VI

After the unanimous resolution in the Assembly for the Islands to remain a dependency of the United Kingdom, the legislature now attempted to fulfill its mandate to achieve internal self government.

During the 1960's the local legislature established select committees to consider constitutional change. A

British constitutional expert, the Earl of Oxford and Asquith was also appointed by the Foreign and Commonwealth Office to facilitate this process.

In conducting his work, the Earl of Oxford observed that the islanders desired greater participation by the elected representatives in government business and for the abolition of nominated members in both the Legislative Assembly and Executive Council.

After the Earl produced his report, a new constitution came into force in the Cayman Islands in August 22, 1972. Some of the changes that resulted from this new constitution were that the Administrator, who was the Chief Executive, was now changed to the Governor. The term of the Legislative Assembly was extended from three to four years and the system of nominated members was abolished. In its place was the appointment of the Chief Secretary, the Financial Secretary and the Attorney General who were official members.

The new constitution also made provision for the Legislative Assembly to be presided over by a Speaker. The appointment of a speaker did not take place until 1989 some 17 years after the 1972 constitution came into force with Ms. Sybil McLaughlin appointed as the first speaker of the Legislative Assembly.

The Governor remained as the Chief Executive of the Executive Council and the four elected members were officially assigned portfolios by the Governor pursuant to the 1972 constitution.

Whilst substantial constitutional developments were achieved through the 1972 Constitution, the longstanding request of the people of the Cayman Islands for greater participation by the elected membership seemed to remain elusive.

This was evidenced by the fact, that although the Executive Council were bound by “collective responsibility” to support all its decisions in the Assembly, the Governor was vested with special responsibilities and reserved powers which excluded him from being bound by the collective will.

The new Constitution vested the Governor with special responsibilities which did not require him to consult with elected members. Additionally, the Governor was vested with reserved powers which allowed him to go against the advice of Executive Council in special circumstances.

Whilst, the Cayman Islands have been fortunate that it has had benevolent Governors who have used their reserved powers sparingly, we see that the tension between the Governor and the elected representatives still remain. Here we are, some thirty five years after the fact, making the same request - Have the winds of change finally arrived?



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copy of the
constitutional
public discussion
paper at all major
supermarkets
now!**

Our Next Issue

Look out for the next issue in February 2008!

- The Secretariat will not publish its next issue of "Constitution News" until February 2008

COME LISTEN AND HAVE YOUR SAY

Look out for public meeting dates in local newspapers and on our website www.constitution.gov.ky

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Wanted: Constitutional Champions



"Being involved is what it is all about", says CRS Director Suzanne Bothwell.

Do you want to be part of shaping the future? If so, you should sign up as a constitutional champion and help the Constitutional Review Secretariat (CRS) take constitutional reform to the people.

"Our Constitutional Modernization Initiative (CMI) needs to be a grass roots movement or it loses its legitimacy," says CRS Director Suzanne Bothwell, adding, "We can publish tons of literature, and hold countless meetings but if the people aren't involved, the process has no value."

Emphasizing the influence Cayman's constitution has on everyday life, Ms Bothwell comments: "Many people are unaware of the power of a constitution, for example, it is our Constitution that grants us the power to vote, not the Elections Law."

Working with a small staff of four, Ms Bothwell explains that the CRS need to have more hands on deck in order to reach every man and women on the street. Persons signing up as CRS constitutional champions will help disseminate material published by the CRS and encourage persons to participate in the public consultation meetings as well as the 2008 national referendum. Champions will also promote neighbourhood meetings.

"Caymanians need to own this process. It is not about particular viewpoints, it is

about getting people to talk about the new constitution, and having them voice their input into the kind of future they want for the Cayman Islands. The only way we can do that is to get more people going door-to-door," Ms Bothwell emphasises.

Meanwhile, the CMI is moving full speed ahead with the launch of the much-anticipated public discussion document, to take place 12 January 2008 at Pedro St James. An intensive public education campaign will follow and the Secretariat will also publish a full schedule of neighbourhood meetings early next new year.

For more information on the CMI or to book a meeting for your organization, contact Yvette Cacho at 244-3603 or email her at Yvette.cacho@gov.ky

CMI AT A GLANCE

Voter registration

- The drive started in October, and will close on 29 February 2008.

Public participation and consultation

- Roundtable discussion on a bill of rights in Cayman's new constitution in October 2007.
- Public launch of the discussion paper: The Cayman Islands' Constitution: A Reflection of Who We Are, 12 January 2008.
- Public meetings in every district on every island in January through April.
- Publishing of a final document, which will incorporate the people's input before Referendum 2008 in May.

Referendum 2008

- A referendum bill in the Legislative Assembly in February.
- Going to the polls in May.