



Constitutional Modernization Initiative Public Consultation Meeting

Held on

Thursday, 25 February 2008

John A. Cumber Primary School

**Grand Cayman
Cayman Islands**

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MONDAY, 25 FEBRUARY 2008
CONSTITUTIONAL REVIEW SECRETARIAT MEETING
JOHN. A. CUMBER PUBLIC SCHOOL
WEST BAY
CAYMAN ISLANDS

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): This is the second meeting in West Bay for the Constitutional Review Secretariat, and because it's our second round of meetings our approach has been — is going to be slightly different.

The first round we practically did a presentation of all the issues which was very lengthy. It was detailed but it was lengthy. We did have people asking questions, but we have been asked to see if we can cut down the presentation.

So, what I would — what I would propose to do tonight so we can maximize the use of time, make it hopefully the most productive, is perhaps have more formal discussion of the issues.

I've asked some of you beforehand that if there are particular topics that you feel very strongly about and you want to ask questions about them, then, you know, please feel free to raise your hand up and that will probably start the discussion.

Now, I know that most people, if not all, in the room today you have a copy of the *Summary of Proposals*, that's the blue document.

Yes?

And I hope that you've had a chance before to take a look at it, but if not, that's okay, that's why we're here to discuss the issues.

Now, any thoughts on perhaps what are the most pressing issues in your mind that you would like to talk about?

Human Rights. Okay. Human Rights. If we can go to the screens there.

HUMAN RIGHTS

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Now, what I — before we go into exactly what the questions are, for those of us who are thinking what about Human Rights, why are we talking about them? Well, basically, the United Kingdom in their White Paper in 1999 indicated that this is something that they would like all Overseas Territories to have in their constitutions. And this kind of mobilized — their White Paper mobilized a review of the different Territories' constitutions from 1999 to now. And Cayman is one of the last British Territories to actually finalize their constitutional arrangement with the UK.

Now, in the area of Human Rights, basically, it generally places an obligation on the state. That's really what the overarching principle is. It recognizes that the rights — certain rights of the individual, not all, are universal and it places an obligation on the state to respect the rights of the individual, to protect the rights of the individual and to fulfill those rights. And, basically, that means, for example, to respect the rights. I'll take the use of education which I've done before.

In relation to respecting rights, for example, respecting rights would include if persons or groups of persons in the community wanted to establish private schools to teach their children particular ways, for example, a school to put — carry forward their faith instructions. That is a respect issue between the individual and the government. And what the Human Rights Conventions basically say is that a state or a government must respect that individual's right to express his freedom in that way.

For example, obligation to protect the individual. What that would mean, for example — let's take the theme of education again — is that let's say we do have these faith-based schools, which we know we have in Grand Cayman. And what that says, basically, is that even though the school may have a right to teach its faith, and especially to the members of the school who subscribe to that faith, in instances where you may have individuals who are not members of the faith but who attend the school, unless they have the consent of the parent to teach the faith itself then you know they will have to exercise what they call a Conscience Clause.

And that is something that is actually done right now without a Bill of Rights in some private schools and definitely in all public schools, that if it is that there are particular individuals in the school who do not subscribe to the faith or — whether it's Christianity or whatever, that they may be excused, they may be allowed to do other activities whilst the school carries on that exercise.

And then we have obligation to fulfill, a state's obligation to fulfill. And I'm going back to education itself.

The state's obligation to fulfill would mean, for example, providing education. So we rely on the state for the most part to build schools, to use the money that it gets through its revenue to build schools for education.

There is a requirement in relation to education that a country, a government must provide facilities for its people to pursue education, definitely primary and secondary, to some extent tertiary, vocational, et cetera.

And then the issue of right to reparation. Basically that means that, for example, if any individual here feels that their individual right has been breached by the government or the state, then, they should be able to pursue a remedy through the local courts. And that remedy, it can be varied. It can be an undertaking not to commit the breach again by the government; it can be a public apology; it can be monetary

compensation; it can be — we have here satisfaction. So they actually go through the list of the types of remedies that one can obtain.

Now, it is important to — I note that in order for an individual to obtain different types of remedies they must be able to go to a particular court or body that has the power to enforce that.

So that is one of the issues that we are facing with Human Rights is that if we have a Bill of Rights, we will be able to say exactly which public body, whether it's the Grand Court or whoever it is, has the jurisdiction to hear your complaint and to deal with it effectively.

Without the Bill of Rights we don't particularly have a statement in our laws which specifically speak to the remedies you can seek for your breach of your human rights.

Okay?

Why Protect Rights Locally?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Right. Now, question: why protect rights locally?

That's a question that lots of people have been asking.

The ability to include rights that are important to the Islands, I know that, for example, in the British Virgin Islands (BVI) they have actually put in something about their children, rights of children, and the rights of their environment, because just like Cayman their environment is, you know, one of the things that attract people to the country, their tourism industry.

One of the issues that has been raised is making sure that some of our rights preserve our culture, and there are usually provisions in Bill of Rights which can allow for the — the protection of indigenous people.

Then localizing right, as I explained before, allows the individual to receive protection against the state, the government or even the government to protect itself. So, for example, the UN Convention allows for legitimate limitation of rights. So, for example, if somebody is saying things to incite a riot in Cayman and that's gonna put our security as a country at risk, create strife among us and physical violence, that is when the state can step in to prevent that.

Christen, if you want to go to the next slide we will have some more there.

So there you — there you go. Some of it can be to the protection of reputation of rights of others, for example, slander and defamation and so forth. The state can actually restrict a person's freedom of expression so that it doesn't infringe on another person's zone.

Issues of National Security in times of war, states of emergency, territorial integrity, anything to deal with the borders of our country or anything to deal with the Territory itself.

Public safety. I mentioned the whole issue of riots and so forth. The limitation of individual rights can be undertaken by the state to prevent these things or protect these things, to prevent disorder and crime, to protection of public health and public morals.

So, for example, some people have raised questions about cults. Those are one of those issues of protection against public morals.

For example, one of the things in Cayman that we've mentioned, we've seen persons have asked about in previous meetings is: what about specific issues like the issue of marriage?

Under the Bill of Rights there's a provision there that says a person has a right to marry and found a family. And there's a concern in Cayman that, well, our understanding of marriage is between a man and a woman. Will Human Rights affect that? Will it change it? And the answer is no. Human Rights are meant, for the most part, to protect the individual but also recognize the culture of the jurisdiction.

So, we've seen even in our 2003 Draft Constitution which did not go through, there was a provision in the Bill of Rights section there which stated that marriage was between a man and a woman. Our decision right now is: do you want to keep it that way, between a man and a woman, or do you want to change it?

In the British Virgin Islands they just passed their new constitution in July — I think it was April or July of last year. In their Bill of Rights section of their constitution they had that marriage was to be defined by their Marriage Law. So what that did was left it to the legislators, like Minister Clifford and Minister McLaughlin, so that when they go to the [Legislative Assembly] LA and they have to visit the Marriage Law they can say in the law what marriage is. They can define it.

So, really and truly, all of these fears perhaps or some of these fears that we may have in relation to Bill of Rights, it is good for us to discuss them and work them through. If you have questions let's find the answers. If you have concerns, it is important for us to put them out so that your government knows exactly what's a concern to you so that when they have to negotiate a Bill of Rights they can tackle those specific issues when they have to negotiate it with the [United Kingdom] UK.

Now, does anybody have any questions after what I've said on Bill of Rights?

Perhaps we can come a little closer with the microphone so that we don't have to . . . yes, thank you.

Somebody's coming with the microphone.

I'd just like to welcome those persons who are listening on Radio Cayman. This meeting is being aired live. So we're asking that everybody who has a question use the microphone and to ask your question because it's being recorded, it's being aired live, and I'm sure those members of the listening public would like to hear what you have to say.

Thank you.

Question #1 (Member of the public): I was just wondering, having said what you just said about the British Virgin Islands, how does that impact us? I mean, are we going to leave that decision up to our legislators or is there gonna be a clause in there from now to say, you know, how is marriage defined in the Cayman Islands?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): I'll let Minister McLaughlin answer that for you.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): Normally, this whole question of the definition of marriage is not usually something you see in a constitution.

We have already moved to act in advance of any constitutional change in relation to clarifying any possible ambiguity in relation to what marriage means. We are in the process of proposing an amendment to our current Marriage Law to define marriage as a ceremony or as a relationship between a man and a woman because our — believe it or not, our Marriage Law doesn't expressly say that at the moment.

But when we saw the discussion that was going on with the BVI when they were in the process of their constitutional discussions, it made us think about our own situation and then we examined our Marriage Law. And we sought advice from the Attorney General and elsewhere and we've concluded that we should amend our Marriage Law.

We announced this some time ago actually and it's in the process of — the drafting is being done at the moment.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Does that answer your question?

Member of the public: Yes.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Yeah, so basically for those of you listening out there, in the issue of marriage and the Bill of Rights what the Government has already proposed based on issues raised locally is that they're gonna make sure our local legislation defines marriage as a man — between a man and a woman.

But at the same time in looking at Bill of Rights we need to make sure we have that companion section in the Bill of Rights like the British Virgin Islands which basically says that a definition of marriage would be reflected in your local legislation, so we would know that what the local legislation says is between a man and a woman.

Do we have any other questions on Human Rights in relation to any subject in Human Rights?

Okay, sir.

Member of the public: Yes, since I got a mike already.

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

Question #2 – (Member of the public): I just want to find out what about the part of religion in Human Rights? Okay, 'cause like, for example, like the Muslims and stuff like that. Do they have the rights also to come to the Cayman Islands to worship their way?

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Well, the whole — at present in our jurisdiction, right now today there is no restriction in any major religion coming to Cayman, person within a major religion coming to Cayman and practicing that right. So right now that's the situation. The — including a Bill of Rights will not change that. It will allow an individual to practice their religion freely.

So a question was asked I know earlier on whether or not it will prevent them from, let's say, building a mosque so that they can practice their religion. No, it will not. Our Planning Laws right now do not prevent that. If any group wanted to build a temple, a mosque, any other physical structure so that they can pray in that structure, our Planning Laws would allow that. All they have to do is meet Planning Regulations.

And the situation with the Bill of Rights will not change simply because Bill of Rights are recognizing the rights of the individual, the equality of the individual.

And, as a matter of fact, an individual's right to worship is perhaps one of the highest rights recognized in the Bill of Rights. Even in times of war they say that you should not prevent a person from being able to practice their faith because that is something that is personal to them, it is something that perhaps is more important to them than even being alive on this earth, based on your faith.

So — so no, if a Bill of Rights is introduced in Grand Cayman, it will not place these kinds of restrictions on — on religions, persons practicing their religion. What it will do for matters of public morals and public safety if, for example, as I said, a person wanted to introduce a cult, what was recognized as a cult in the Cayman Islands there would be some restrictions on that.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): If I can just say — say this:

There is a widely held misconception in Cayman that because we do not have a Bill of Rights that Human Rights Conventions and so forth don't apply to the Cayman Islands.

