



# **Constitutional Modernization Initiative Public Consultation Meeting**

**Held on**

**Thursday, 17 April, 2008**

**John Gray Memorial Church**

**Grand Cayman  
Cayman Islands**

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**THURSDAY, 17 APRIL 2008**  
**CONSTITUTIONAL REVIEW SECRETARIAT MEETING**  
**JOHN GRAY MEMORIAL CHURCH**

**PRAYER**

**Reverend Dr. Yvette Noble-Bloomfield:** Let us pray:

*Lord, God, You are truly a God who love Your people and who constantly care for each of us. We thank You for these Islands that you have formed, that You have given Your love and Your grace to.*

*We pray for Your continued blessing over our lives. We pray for Your Wisdom. We pray for Your courage. And we ask oh, God, that through Your spirit we will be united in the bond of peace.*

*Bless our proceedings tonight and cause each of us to look to You as we pray in Your name. Amen.*

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

I'll then like to perhaps hand over to the Leader of Government Business who is joining us tonight, and after that we can begin with our discussions. But it's not going to be any long presentation but really, hopefully, a more interactive discussion on the issues.

Okay.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Thank you very much, Suzanne, and a very good evening to all of you. I was mentioning to Reverend Yvette that someone mentioned when I came in that the chairs are hard. And I —I was wanting to make sure that everybody understood that the chairs weren't hard for us so that the meeting won't last long, but it's rather they're made hard so that the church service doesn't last very long.

It is certainly good to be in the District of West Bay once again for another in our series of meetings on constitutional modernization. Prior to this we were doing fairly extensive presentations at the meetings, but we've gathered that most, if not everyone, most everyone if not all, have been grasping the issues and — and talking about them. So we didn't think that we had to make a long presentation tonight of all of the various issues, and rather we'd like to give you an opportunity.

I see some faces tonight that I've seen at other meetings. And what we'd like to really shape the meeting tonight is if you would let us know which specific areas that you may wish to comment on or that you have concerns about so that we can speak to those rather than us go through a long list of the various issues which we believe that, by and large, the most of them have been thrashed out by those who wish to interact.

And just to let you know that what we've been concentrating on outside of the regular scheduled meetings in the various districts in the past few weeks is trying to connect up with the NGOs and even — and the churches also.

We met with the Cayman Ministers Association (CMA) very recently. In fact, we had two meetings with them: we had a meeting with representation from them; and we also organized a meeting with their representation with Professor Jowell, QC, who is here this week.

And from all indications, I understand that the meetings have gone very well, and they have gone back to prepare their own list of concerns for us to address, and not only concerns, but there are some specific areas that they would wish to make contributions in what they would see as the completed document, and we welcome that.

We also met with the Chamber of Commerce, and they too have indicated that, by and large, they are pleased with the process. And they had some specific concerns which we addressed with the benefit of Professor Jowell, QC.

But we want to be able to harness all of the energies, so to speak, so that we can get input from everybody because somewhere along the lines some people are misunderstanding the role that the Government is playing in facilitating this process. And I — perhaps some of you have heard me say this before but I think it is worth repeating.

When we launched the set of documents that we had prepared on January 12<sup>th</sup> at the Pedro Castle . . . Suzanne, I keep forgetting this, the *Summary of Proposals*, I keep forgetting it.

Our *Summary of Proposals* that we launched — and I think we distributed some 35,000 of them; is that correct? About 25,000 of them throughout the Islands — the whole purpose of that was not to say to the Caymanian public that that *Summary of Proposals* was what we expected to be going to London or for London to come to us, for us to sit down and negotiate as a new constitution. It was simply our best take given all the information we had, given the experiences that we've had, and given the benefit of contributions from people like Professor Jowell, QC. And we knew that if we didn't have a document to start with that people were going to be scrambling to really get the ball rolling.

And so, that document that we produced was a starting point to get people in tune, to get people interested and to get people trying to come to grips with the various issues and understanding the issues so that they could make their own conclusions and let us know exactly what their wishes and aspirations were. And that is what the process is continuing about.

So, when I speak to you and ask for you to tell us exactly what your thoughts are on the specific issues, including this meeting tonight, it is for that reason and for that purpose only.

What we — the Secretariat led by Suzanne, what they have done, they are facilitating and they are meticulously taking all the notes at all

the meetings with the various contributions that people are making so that we can, at the end of the series of meetings when we're all satisfied, that we can prepare a new document which reflects the contributions made by the public and that is the basis on which the referendum will be held.

So, without taking any more time for this meeting, I just wanted to give you a little background, and perhaps I'll turn it back over to Suzanne and we can get some discussion going.

Thank you all very much and welcome again. And thank you, Reverend Yvette, for the use of your hallowed hall.

Thank you.

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

I'll just like to recap some of the issues that we've been discussing very quickly and just to indicate some of the feedback we've gotten, some of the issues surrounding these topics.

### **People-Initiated Referendum**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** People-initiated referendum was something that we discussed this week on our talk show. We had Members of the Opposition on. Second and Third Elected Members for West Bay were on our talk show, Constitutional Conversations.

And I think that all parties are in agreement that the citizen's right to petition is something that's very important, that there is a particular disconnect after the elections when we as citizens vote in our elected representatives in perhaps lobbying to get our views forward during the four years whether it is through the LA directly or to government, mainstream government.

And oftentimes petitions, we're not sure what happened to them, where they go, but there are signals that we feel that these particular issues are of national importance.

One of the things that the Government has proposed is that we implement — we recognize in our Constitution the ability for the citizenry to have people-initiated referendums, and this was set forward, specific procedures and enable legislation for issues of national importance to be presented to Government and to be taken on by Government through our Constitution.

Now, in the United Kingdom this issue is also one that's being discussed and they're right now discussing their own constitutional reforms. And they recognize that the public petition is an historic and fundamental right and that there's a need even in their own House of

Commons and in their own parliamentary system for up-to-date procedure because considering petitions presently no formal mechanism for considering petitions exist in the UK.

Now, for Cayman what would that mean? It would potentially mean enabling provision in our Constitution. It would mean that we would have to put in local legislation. It would create a new avenue for citizens to — to be able to indicate to Government issues that they believe are of national importance outside the election period.

And some people feel that this is a good thing, that it's about time, others are hesitant as to whether or not this is the way we should be going. I believe that the discussion we had on Monday afternoon was that presently the Standing Orders allow for, I guess, standing — committees to be created — standing committees to be created and they are presently underutilized by the members of the legislature.

But one of the things we have to consider is whether or not we feel our existing system is sufficient, whether we feel that even though the systems are there, if they're underutilized whether we should remain that way or whether we should find new systems that would not cause or would not prevent us from being able to — to have our voices heard.

So, people-initiated referendums is — is a topic not of tremendous discussion, but it's definitely food for thought. And the Government's proposal is — specifically is that it would be triggered through a petition, the petition — the persons who are carrying the petition will have to field 20 percent of the signatures of the voting electorate, and right now we have just over 13,000 voters. And if they are able to field 20 percent of the 13,000, then they will be able to — that will cause an automatic trigger and cause the legislature to debate the issue in the House, come up with a question based on the petition, and cause the necessary electoral officers to carry out the referendum in a reasonable time.

### **Future Changes to Our Constitution**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Now, the other issue — I'm gonna stand up because I feel like I'm so far away. The other issue that I know is being discussed, and it was being discussed this morning on a local radio show, is that of future changes to our Constitutions [sic].

Now, you'll see in the companion guide to the Constitution if you look . . . someone tell me which page it is. There's a list of all the changes to our Constitutions [sic]. It was in the beginning.

Yeah?

Well, when we get there it's one of — in the document it lists all the changes that we've had to our Constitution. I think it's page [54] of the document. And we see that changes have been made from 1984 right up

to 2004. And oftentimes these are done through Parliament, within the realm of Parliament itself. Oftentimes we as citizens are not really aware necessarily of these changes, but as we've progressed as a nation over the last, perhaps, 30 years we're recognizing that our Constitution is a very important document. And one of the things that we ought to at least consider and look at is how should future changes to the Constitution take place.

Now, some — the recommendation is that they should — changes to the Constitution should take place by referendums because the Constitution is deemed to be the people's document. However, minor changes to the Constitution would be able to take place without a referendum if both leaders of Parliament agree.

Some people have said that is okay because they recognize that we probably cannot incur the expense of a referendum for every single change to the Constitution especially if it's something minor.

For example, I know — I think the last constitutional change there was an error in the wording dealing with our BOTC status, and between the UK and Cayman we had to make sure and quickly change that because it would have adversely affected us and that they did that very quickly and it was a modification of a previous amendment.

But things like, for example, introducing new offices, new positions, new powers, maybe those are things that we should consider whether or not the Government should come back to the people.

I guess some people may feel that the system we have is okay right now, and that's what we need to hear back from people. And we've heard — recommendations are okay. Some people say no, they believe that if we're going to be a democracy we should be a true democracy and that we should really go to referendum every single time a change is made. And some persons have cited cases in Australia, cases in the United States whereby many, many constitutional changes have been put forward but very few come through because they're rejected by the people. So it's definitely food for thought.

### **Bill of Rights**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** And the last one — one of the last few I'll talk about is this morning again speaking about the Bill of Rights. And this area is a little bit technical, but I think that everyone here is quite capable of understanding what I have to say.

The Government has obviously proposed that we have a Bill of Rights in our Constitution. And in enforcing the provisions usually you will see in constitution where the court has the power to strike down an

offending legislation to say it is unconstitutional, it is in breach of these particular rights.

What has been proposed in the Cayman Islands and what currently obtains under the United Kingdom Human Rights Act is that there should be — if a court in hearing a Human Rights case finds that there has been a breach in a legislation, that instead of the court being able to strike down the legislation or strike down the section that it should be able — its powers should stop at being able to declare it incompatible with the Constitution, and then that matter will be taken to the legislature to assess and determine if and how it needs changing.

Now, some persons say, well, why? What's the sense of having a Human Right or a Bill of Rights if the courts can't actually strike it down to legislation? Well, it comes from the principle that who has what powers in a country, some people view that the courts are there to interpret laws and Parliament is there to create laws. And the ethos is that if Parliament is there to create laws, then if something has been declared to be wrong with the law you should send it back to Parliament to — to modify and correct.

Now, in the United Kingdom this is a system that they have. It's what's being proposed here, and actually we've been told that Professor Jowell, QC — and I would like to trust his information as being accurate and correct — that the — about the 20 times that this has happened in the UK the Parliament has in those cases, they have changed the legislation to ensure that the provisions were Human Rights compliant.

However, he did say that the reason why — and one needs to consider the reason why a country may wish to have the system is — and he has cited to me the example of Canada, especially Quebec — is that sometimes a court may declare a piece of legislation incompatible, but because of the national situation the Parliament feels it must keep it in place. And I think in Quebec he has cited, for example, those laws which promote nationalism, citizenship and so forth. And we — and we do know the relationship between Quebec and the other areas of Canada and wanting to preserve your unique cultural identity.

So, we do see that Parliament sees merit sometimes in being able to preserve — preserve its right. And we do not operate — our constitutional system is not one whereby, I think, as Mr. Steve McField said, it's not one by — whereby the — the law is supreme, the court is supreme, but that Parliament is actually at the very top of the tier.

So, these are all things that we've been discussing as a country, that we will continue to discuss until the referendum. I think we are nearing a point in time whereby we are feeling a pulse of how people feel about certain issues. Earlier on in the meetings people made it very clear their views on the provision on eligibility to vote and stand for elections which was sourced from the 2003 Draft. And we are of course still galvanizing people's views on Human Rights.

And, of course, I think by now the Secretariat has a very clear picture of what the opinions are of our society, and we are as best as we can we're trying to deal with those and trying to allay certain fears which are — maybe have no basis in law. But those concerns that are legitimate concerns, we do wish to work towards scrutinizing every aspect of the Constitution, especially our Bill of Rights, to make sure that we as a country get it right.

I don't know if anybody has any questions or comments at this time. I know a few of the — of the members here tonight have already submitted their views; I didn't know if they wanted to share some of them with their colleagues. But if you have any questions or comments on any parts of the reform process, we'll be happy to answer them.

[pause]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Okay. Sure, we have one person.

**Member of the public:** Thank you.

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

### **Declaration of Parliamentarians**

**Member of the public:** Good evening to you both.

The question I have accompanies — is in relationship to some comments that have come in the paper recently, and they seem to be reasonable topics which I would like expanded on, please.

One is the declaration of — by parliamentarians or candidates as to the contributions they've received from lobby groups, for want of a phrase. And I'd like if the panel's opinion on that.

And a comment has also been made in connection with the transfer of powers from the Governor to, perhaps, the Chief Minister, and to whether, in fact, that is creating imbalance by perhaps appearing to move greater powers from the Governor to the Chief Minister.

And probably the third point is —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Can we take — can we take them one at a time [laughter] before we —

**Member of the public:** Oh, of course. No problem.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Just don't lose your train of thought, Peter, if you don't mind.

The first one you spoke to about contributions to either individuals or parties, not so long before the last election there were some amendments to the Election Law put forward by the then government and approved, which really threw everything, in our view, totally out of whack because — because we didn't support it. And we have every intention, once we get through this process of constitutional modernization, to do the necessary amendments to the Elections Law so that there is a — there is a straightforward and reasonable method by which contributions can be declared, but not only contributions being declared, but also to set limits.

Because I think fair comment is, if there is a donation — in today's real world if there's a donation to either an individual candidate or to a party of — and the figure was used today at our press briefing, let us say \$5,000. In most instances, one would not think that that would have any underlying motives behind it. That would simply be someone who is supportive of the cause and someone who has the ability to make that type of contribution towards the success of that party or that candidate.

But if there's a contribution of \$50,000 or \$100,000 or \$500,000, then that's going to raise everybody's eyebrows and — and going to make the whole world wonder, well, why would somebody make that type of contribution if that person did not have some underlying reason somewhere down the line to get something out of the whole affair.

So, it is important, we believe, that what obtains in the Elections Law now be changed so that there are rational and reasonable amounts set as limits to prevent that type of situation.

But also we have in our Register of Interests for those who are elected to Parliament, and it has to be updated on an annual basis, and that obtains now where people have to — well, elected Members have to update the Register of Interests, and there is a — there is a series of questions where you have to speak to certain types of contributions, what companies you own shares or directorships in or have directorships in and that kind of information. That — that's there now.

But I think from the point of view of a candidate and declaring contributions, while there is a time span now by which this has to be done, not just elected people but candidates, we need to fix the Elections Law and to make the situation one that is — is not unreasonable and too onerous, but that is practical but also is a preventive measure from the type of thing that although you didn't say so, I'm suspecting that that's why you're asking the question.

**Member of the public:** One of my questions really is: is this a relevant issue for a Constitution —

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

**Member of the public:** — as opposed to what you're indicating.

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

**Member of the public:** — that it is solely an Elections Law issue?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yeah. Well, I'm just reminded by Suzanne that one of the things that is proposed in our *Summary of Proposals* is a Standards of Public Life Commission.

And, quite likely —

**Member of the public:** Can you explain what that —

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

**Member of the public:** — is intended to achieve?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I'll let Suzanne speak to some of that, too, but — but in the context of the question you're asking, certainly the Elections Law should address a fair amount of the fears that people may have regarding that issue. But a Standards of Public Life Commission, what that would do once that is instituted — and I'll let Suzanne go into some details with it — but what that will do is that — while that is enforced that will also have to do with the life while that person is elected and his or her activities during that time.

So I don't think it is a situation where one situation will cure all, but I've outlined to you —

**Member of the public:** How can you possibly remove the concept that a contribution is always deemed to be buying a favour?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Peter, I don't know the answer to that. When you say how could we remove that concept, I mean, people will think that but —

**Member of the public:** If it's declared and who the contributor is.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Well — and that is — that is what —

**Member of the public:** [inaudible talkover] That is what the contributor thinks —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** — we say should happen,

**Member of the public:** — you know, be a little bit more conscious of what he's trying to achieve.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yeah. Well, what I'm saying is that is part of what we're saying should happen.

So, I mean, some of us already have our own — I'm not bringing politics into it, but I'm just telling you. Like our party, the PPM, in our Constitution we have limits and we have methodology employed in that Constitution where the executive of the party has to be satisfied of the source of the funds, and we have limitations.

For instance, in our — in our own constitution, the maximum is \$10,000, and the executive must approve the source, meaning the executive, which constitutes not the elected Members but individual citizens like yourself, they must be satisfied that the source of that contribution is *bona fide* and not untoward.

Now, that is just us, but I'm saying to you in domestic legislation we believe that that should be the case, but — I will let Suzanne speak about the Commission that I'm speaking about, but that Commission will take over and operate while people are elected and their activities outside of declaring their Register of Interests on an annual basis, those activities, there is a check and balance there through that Commission. I hope that helps with your first question.

But I'll let Suzanne expand a little bit on this Commission.

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

I'd just like to remind those of you here tonight and those listening on Radio Cayman that every week the Secretariat puts out a full-page ad, and if you see it please don't skim past it and flip over the page. Please read it because I believe the article either this week or last week was a full advertorial on the Standards and Public Life Commission, its role, its functions, and its ethos.

Now, this is a body which in some countries is called an anti-corruption commission. In the United Kingdom it's a standing committee of Parliament; in Cayman it would be a constitutional commission. And the role of the Commission really is to act as an oversight body of public — of the government, including those — all of those in public life, namely, elected officials, those persons who may be appointed to certain positions, those who sit on statutory boards or bodies, even those who volunteer their time but provide — carry out public functions like those of us who sit on the boards. And we are, at the end of the day, carrying out public function, and it is deemed that you are also susceptible to undue influence or so forth.

Now the Standing of Public Life actually — and I'm going to use the UK example because we are taking our model, to a certain extent, off of theirs — sets forth a code of conduct. And the code of conduct expands on or sets out certain principles; and the first principle is selflessness, second one is integrity, and the third one accountability, openness and . . . I actually don't have the rest of them here — activity is one. And basically it sets out a code of conduct for all of those persons who carry out a public function.

Now, at present in our Public Service and Management Law, there's a code of conduct for civil servants because we are those who are employed to carry out the public function. However, in our governmental system civil servants are not the only group of persons that carry out the public function; we have elected representatives and I said we have those who are appointed to boards or statutory authorities.

Now, I do know that at some point in time there was discussion about a code of conduct for our parliamentarians. But short of that the — if these principles are adopted here they would help guide the conduct of our representatives and those carrying out public functions.

Now, the *Summary of Proposals* and the *Explanatory Notes*, the red document, if you look on page [13] of the red document you will be able to see a bit more discussed on the Standards of Public Life. And one of the things that it says is that this body, this commission would supervise the Register of Interests.

And it is very important for us to look at that because not only will the commission just supervise the Register of Interests, but it will have general oversight of what is happening in government.

For example, I cited the case of the postal ballot fraud that took place in the — in the — I don't want to say district or the — a district called Slough in the UK, whereby a person running for — for parliament actually acquired a number of ghost ballots and filled them out in favour of himself and posted them in.

Now, he was caught thankfully and he was prosecuted, but it highlighted a flaw, an opening in their electoral laws that allowed this kind of corruption to take place.

And it was the Standards and Public Life Commission that was charged with doing the report and making the recommendations to Parliament on the changes to the electoral law. And this is the most recent thing that they've addressed, but they have been doing different things over the years.

And it is envisioned that that body — or our body would perform a certain similar function, that they would almost be there as a watchdog to see if there are certain corrupt practices that are taking place to highlight it, to investigate it, to make recommendations on it.

Similarly . . . similarly, with respect to dishonest practices, you know, we can probably sit down here tonight and talk about a hundred different things that could — that's dishonest, but, you know, it is there

as an oversight, a monitoring body. And usually in Cayman, right now we don't have that sort of general oversight body. You know, it's almost as if sometimes we are reactive to things, sometimes things happen and it's shelved or it goes into a . . . well, it's shelved sometimes. And there seems to be a disconnect as to who is responsible for what.

And what the Standards and Public Life body will do is bring this all together, bring it into a cohesive and identifiable commission whereby — whereby they are almost the watchdogs for the society and they are there to highlight what is not working and find ways of making it better through making recommendations.

And I think that they will perform a particular public function and their function will be very different from the Complaints Commissioner that we have because it's — the terms of reference of his office are very narrow, they would have much more — a global view of what is happening, and they will be able to make recommendations on a much wider scale, namely, from your parliamentarians down dealing with these things.

I wonder if things could possibly be if they are inadequacies in the Register of Interests Law they will be able to highlight that and make recommendations for change. That recommendation may not necessarily come from Parliament itself, but could come from them to Parliament and, of course, it will be public. The findings or recommendations would be public so that the citizenry would then be — become aware of things that are happening and things that need to be changed.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And just to add to that, too, Peter. On top of that there is also the advent of the Anti-Corruption Bill which is now in the Legislative Assembly, and we expect that that will have safe passage very shortly. That also has its own checks and balances as part of this whole mix.

So I do believe that by the time we get all of this done that life will be a little bit different and people will be a little bit more careful even to think certain things much less to do them.

And you're next one?

**Question #1 - Member of the public:** Thank you, sir.

The next question was dealing with the transfer of powers from —

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

**Member of the public:** — the Governor to the Chief Minister, for want of a phrase. And how can you assure us in a way that the pendulum isn't going to swing the other way?

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

Well, let me first of all preface any discussion we will have by saying to you that the exercise is not about transferring power from His Excellency the Governor to a Chief Minister or a Premier. But it is simply about a rebalancing exercise, I would call it, because several of the changes that are proposed do not actually give a Premier or a Chief Minister more authority or transfer the authority from the Governor to that individual or the post. But rather, it involves, for instance [missing portion]

So, what obtains now, for instance, constitutionally, His Excellency is responsible for police, that's it, no more discussion. It means that when we vote funds, and for instance in this term the Government has voted some \$50 million over the four-year period for various enhancements to security nationally, and border control and everything else. And the fact is we really don't have any method to guarantee that those funds will be spent wisely outside of the Governor having his meetings with the police and reporting back to us.

And what we're saying is it is not a matter of distrust, it is simply a matter of having a mechanism by which you would be ensured that those things take place. And that National Security Commission would be chaired by His Excellency, but it would include elected Members along with perhaps the Chief of Police, perhaps the Chief Justice and perhaps the — and the Attorney General and perhaps even two representatives from the public.

So, I use that as an example to say to you that it is not — people — and I will point to other things which will have lead people to say about the transfer of power. But I use that as an example to say to you that when we look at the whole scheme of things it is not so much about shifting the power from His Excellency the Governor to the elected representative via the Chief Minister or the Premier, but rather to rebalance the situation so that there are checks and balances in the system that do not exist now. Okay?

And just give — one second so that I don't lose my train of thought. But feel free afterwards.

One of the things that we're proposing, for instance, is where His Excellency now is president of the Cabinet, and at present he decides solely whether or not a paper coming from any Minister or any Official Member of Government is put on an agenda and decided on in Cabinet. I can send a paper tomorrow saying that the John Gray Memorial Church is in need of a sliver of land right behind it that is Crown property, and after discussions with the people they need more parking because it's always causing traffic jam around here, so we would like the Cabinet to approve that and then go through the normal process of vesting. And if in his mind he doesn't like it, it doesn't go anywhere. And no matter what we say or do it can't be done.

So, we are proposing that the elected arm of government decides on the agenda, because the truth of the matter is, he is really — while he

has his reserve powers — and we're not suggesting at any point in time that those reserve powers change — in what we're proposing, that post will still hold the reserve powers. So, we're not asking for that to be removed, but we're saying that he, for instance, really only facilitates Cabinet by being the president, and we give him advice as to once a paper is approved in Cabinet the action takes place.

So we're saying that that being the case, then the elected arm of government should decide on a Cabinet agenda, not the Governor. Now, that shifting of authority I agree, but we believe that it should shift.

We will have a Cabinet who is directly responsible to the public and with whom the public can decide Kurt Tibbetts has to go, we not putting him anywhere near that again because we have lost confidence or trust in him. But as it stands now, can you tell the Governor he has to go? Not being funny, but — but you take my point?

**Member of the public:** Point taken.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Right. Okay, so I just use those two examples to say to you. But we have proposed several other areas; I just use those two examples to show you that not all of it is about a shifting of authority.

But the one thing that is very important, Peter and others, is that at all times the Governor, as Her Majesty's representative, will still retain those reserve powers so that if there's anything that is amiss, anything that he thinks is untoward, he still will have the ability to contact the Foreign Office and say, listen, things are not going right here in the Cayman Islands. I don't believe this is the case. Here are the facts. And they will instruct him and then he will still have authority to either prevent or stop or do what an elected government doesn't want to be done.

**Member of the public:** I suppose in a way — is it possible somewhere along the line that a slide could be produced?

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

**Member of the public:** Is it possible that somewhere along the line a slide could be produced which would show perhaps what the current balance/imbalance is —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** What obtains now and what —

**Member of the public:** — and what will come [inaudible talkover]

**Hon. D. Kurt Tibbetts (Leader of Government Business):** — the proposals are?

**Member of the public:** And, more convincingly, you'll show to the public that —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yeah, I don't —

**Member of the public:** — whether these —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I don't think that's an impossible situation.

**Member of the public:** It would —

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

**Member of the public:** It would seem to be a good communicator way of saying that an imbalance is not occurring.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Your point is — your point is well taken and I'm certain the Secretariat is taking note of it.

**Member of the public:** Okay.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But — but I have to say to you that I'm very sorry that we can't just make it happen tonight.

**Member of the public:** I'm not saying tonight.

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

**Member of the public:** Obviously, it's —

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

**Member of the public:** It's a topic out there —

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

**Member of the public:** — and simmering.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No, your point is well taken. I was just taking a light moment, that's all. But I think Suzanne wanted to weigh in or Christen.

**Mr. Christen Suckoo (Member of the Constitutional Review Secretariat):** Mr. Martin, not to belabour the point, but at the end of the day, these issues really amount to — to risk, and it's really about a sharing of risk. We know — the UK has responsibility for the Cayman Islands, therefore there's a certain amount of inherent risk. And we take a risk by voting people into office.

So, with a lot of these issues what it comes down to is: in a risk analysis what is the best situation for the country? And coming back to the Internal Security and the police, what is the best situation for the country in terms of how that kind of risk should be managed. And, in fact, this is one of the areas that the UK audit office has examined, and what they found, not just for Cayman, but for all Overseas Territories is that the best way to manage risk in this particular area is to have it shared between the UK government represented by the Governor and the local government.

And this is — this is a notion that has been echoed in the House of Commons in the UK. It's being echoed by some of the parliamentarians there, and the Foreign and Commonwealth Office has also weighed in on it. And basically what they're saying to the FCO, the Foreign and Commonwealth Office, is that, look, if you want these things to work properly, then you need to ensure that the local government is included at the policy level in these things.

So, basically, that's really all it is. It's just a way of . . . at the end of the day it's a way for us to weigh in on it because currently we really have no say in the matter. But by electing people to office and then by causing those people to have to answer to us and having them sit on these kinds of commissions and boards, it gives us a way to effect policy in areas like policing. And I know we've all had at different times when we wanted to weigh in on policies such as these that are under the Governor's mandate.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And just — just one more addition to that, Peter. Just so that it is very clear, nothing is proposed whereby the elected representatives of Parliament will have anything to do with the day-to-day operations of the police, or with the hiring and firing of — of police personnel. Nothing to do with that, simply at the policy level, that's all that is being proposed.

So, I say that to ensure that — because I've had it said to me already: why are you all proposing this? Why do you want to interfere with the police? Why do you want to tell the police where to go? And it's nothing like that. Nobody is proposing that.

The truth of the matter is, as an elected representative I would not wish that responsibility because what it would mean is that every day of the week whenever something goes wrong they run coming: *you gotta do something about this one, you gotta get rid of that one.* It happens now. Thank God I can truthfully say, well, I really have nothing to do with it and I'm a bit impotent in that regard. So, forgive me, but I can't satisfy what you're saying to me. And most of the times it's all personalities that are clashing, if you understand what I'm saying, so — so I hope that that helps a bit.

**Mr. Christen Suckoo (Member of the Constitutional Review Secretariat):** And it's something that is being done in other Overseas Territories. This slide actually shows the version that is — is happening in the [British Virgin Islands] BVI and [Turks and Caicos] TCI right now. So, it's not a — it is not a new concept, it's something that other — other Overseas Territories have seen the need to do and are putting into practice as well. And Gibraltar has a policing authority that is — that is currently in operation.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And it is obvious that because of these new constitutions with the BVI, the TCI and Gibraltar that the UK is in favour of it themselves.

And there was a third one which we hadn't got to.

**Question #2 - Member of the public:** Yes. It deals with the issue that — of how does the Island protect itself from stipulations from the European Union?

And I remember speaking with a colleague from Ireland not so long ago, and they basically indicated they had a law that basically said no, for want of a phrase, stipulation can come out of the European Union and be subjected on to another jurisdiction without the acceptance of the population which basically meant a referendum.

Now, what is being proposed here in Cayman in connection with that sort of similar scenario?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Right. Okay. Well, let me start by saying what obtains now.

As of now, the UK government can extend any convention, any legislation through an Order in Council to us.

Now, there were times — and I'm sure Mr. Benson with his own experiences will certainly recall during his tenure that it probably had happened — when things like that were done without any consultation whatsoever and you simply hear about it by His Excellency the Governor dropping it on your lap.

We have asked and have been told — this is when we were dealing with the first set round of constitutional discussions in 2002. At that

time the word was they would not be another Bermuda, because at present the UK government cannot simply do an Order in Council and extend legislation or anything else to Bermuda via that method, constitutionally or otherwise. And that's the only Overseas Territory that is like that now.

What we are proposing is that there is a much greater limit to the United Kingdom's ability to do that. Now, we've had informal discussions on more than one occasion, especially after the sort of sorted affair that occurred when we had the [European Union] EU's savings tax directive, and there was this hammering of the head and saying you better do this or we gonna do that type of thing.

And I remember when I was Leader of Government Business on the very first occasion when we got the letter in early 2001 about that same EU savings tax directive. It was simply a two-liner telling us this is what's gonna happen, end of story.

The Baroness came down and I had discussions with her after that; by that time I was the Leader of the Opposition. And I remember speaking to her about it and she was apologetic almost to the point of tears because she . . . she is now the Attorney General in Britain, Baroness Scotland. And I remember when I saw her in December last year, I said you remember that discussion, she says well I'm not gonna cry now but it still hurts. And that gave me some hope actually because I believed her. But that was just the way it was.

But I believe in those informal discussions that it is recognized now that that is unacceptable in today's world, not just with the relationship between Her Majesty's government and the UK Overseas Territories, but on a global — on a global outlook. I don't think the UK wants to risk operating in that fashion because they would be looked down upon by the rest of the world if it were to continue to happen and people were — people made enough noise about it, meaning their Overseas Territories made enough noise about it.

So, we will see in some of the new constitutions that have been agreed upon with the Overseas Territories that there is a certain limitation to that.

I am very guarded in what I'm saying to you is because I don't know exactly what we will get at the end of the day, Peter, because of that same word that will take place: it is negotiations. What I do know is that their disposition presently is different from what it used to be.

The same gentleman who was the deputy legal advisor to the Overseas Territories Department, a gentleman by the name of Ian Hendry, and he was our point of contact when we negotiated the last constitution that the draft was sent down in February of 2003. We have had — since this government took over, when we attend the Overseas Territories consultative council meetings in London on annual basis, I've had opportunity to discuss with him off the record on several occasions, and he believes that . . . and I'm not taking tales out of school, but the

word is: go for it as far as you can go and see where they'll stop you. And I think that's the method that we have to employ during these negotiations.

It's going to be difficult for us to draw the line and say this is what we want. What we do know is that the United Kingdom is not going to simply say: we're gonna forget about that and we're not going to want to have any authority in that regard. But what we will be seeking is some definite changes in the way that anything could occur which would include consultation.

Now, I don't know whether we can get as far as — it would have to be by referendum for the people agreeing with it. I have to be honest with you, I don't know if we'll get that far with it but it's a good thought.

But I have to answer you the way I'm answering you because I'm not so sure exactly what the end result will be. But I can tell you our intention is to limit that as far as is possible because it is in limiting their ability that is the best safeguard for us for many of the fears that the people have, including in a Bill of Rights and same sex marriages and all that kind of stuff.

**Member of the public:** I suppose in a way I'm concerned with the — your choice of words of “limiting” as opposed to preventing.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Well, I say what I'm saying because I intend to be truthful to you. Because if I use the word “prevent” it means that they will agree that they cannot do it. And I'm here to tell you I have serious doubts whether they'll go quite that far.

What I believe that we're going to have to do is to be as innovative as we possibly can to create mechanisms which will give them at the end of the day, if something really bad were to happen in their eyesight that they could do something, but to make it onerous enough that they're gonna thing long and hard and make sure that there are discussions with the Territories that their action might affect and ensuring that it will not negatively affect the welfare of the people in those Territories which is what you want to achieve.

So, I could be glossy and say prevent, but I'm being truthful in what I'm saying to you simply because I do not know how far we'll get with that.

**Member of the public:** In your other meetings has there been sort of a sentiment that prevent would be better than limitation?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No. Well, if we didn't — I say this to you, Peter: if we didn't hear that — we didn't hear that from the public; that's the ideal situation. But in maintaining the constitutional relationship, which we all have agreed that we want to

maintain with the United Kingdom, that is being a British Overseas Territories citizen, I think that is one of the few things that they are not going to be prepared to totally give up. And it's a few of them, but that is one of the few.

I can give you every assurance that even opposition, NGOs, no matter how much we argue about other things that everybody agrees to go as far as we can with that one. I don't think anybody is going to not agree with that.

But your point and your concern is registered, and I can — I can only make you know that we have those same concerns, not only by experiences, but in looking forward to the negotiations I can tell you that we're gonna do everything that's possible in that regard.

**Member of the public:** Is it possible this might be a question in the referendum?

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

**Member of the public:** Is it possible that this might be a question in the referendum —

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

**Member of the public:** — [inaudible talkover] true sentiment?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yeah. That is possible because at least — and again your point is well taken. At least if everybody answers yes to that we can go to London and say listen, every jack man and his brother said this is what they want, so you tell us where we can get the mix that we can still live a happy marriage?

Okay?

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

I would just like to continue on that same vein and probably for the benefit of everyone here tonight to highlight the specific recommendations that are being made with respect to limiting these overriding powers that the United Kingdom and the Governor may have at this time.

The first is looking at how treaties are extended to the Cayman Islands. At present, you know, we are not an independent country, therefore we cannot participate in these — in these global organizations that create and agree treaties.

The United Kingdom is such a country and it has adopted a number of treaties over the decades, some of which have been extended to its territories, including the Cayman Islands.

Now, through those extensions they carry with them obligations on us; and what seems to be missing from that formula is some level of dialogue between the local government and the United Kingdom as to whether or not, first and foremost, those treaties should be extended to us. And if they're extended to us, what types of derogations or reservations to specific provisions in those treaties need to be made?

Now, this issue is currently up for debate in the UK also because it too, to a certain extent, its citizens are falling victim to the same feat — fate I should say. And what they're proposal is, is that their Parliament should be able to scrutinize the treaty-making process before it's formalized. And, likewise, we — or I should say the Government has — has also seen the prudence and the wisdom in ensuring that before treaties are extended to us as a matter of course by various branches of the United Kingdom government that there should be some consultation between the elected representatives, the Governor and very much so the FCO before such treaties are extended.

So, that's the first, I should say, umbrella area whereby the Cayman Islands would like to see a limitation on — or a restriction on the extension of treaties that would affect us.

Then the second area whereby the Government is proposing their will be change is in the area of External Affairs. And this is connected to the treaty-making process or the extension process but still can take many variances.

One aspect of it is Cayman's ability to advocate on its own behalf. I believe the Leader of Government Business mentioned the — the concerns and the situation we faced regarding the EU savings tax directive and the fact that the attitudes of the day whether it's to the United Kingdom or the European Union. And the — any time when the Cayman Islands government has to engage in dialogue with other countries about things that affect us or negotiations, it has to get that consent to even begin talking.

What we have seen in the British Virgin Islands in particular is a specific constitutional provision which delegates certain external affairs functions from the Governor alone to the elected government. And one of — and we will be seeking that — one of those — that provision.

And the effect of that provision would mean that — or the scope of it would mean that if there are new matters that affect the interest of the Cayman Islands, the Cayman Islands will be able to represent itself and advocate for itself. And perhaps we all know that who can speak best for you than you yourself. So that is one of the areas that they are specifically looking at implementing.

We have seen that our neighbour in the British Virgin Islands has made specific inroads and has successfully negotiated that type of provision whereby the special responsibility relating to External Affairs is now shared between the Governor and the elected representatives and allows the country to — to be able to stand firm and to represent itself

properly in the world stage especially when we have to — when we are potentially affected by matters that are set forth in other countries or in other international bodies.

And the third umbrella area whereby the Government would like to see some restrictions or some limitations is in the ability of the United Kingdom to or the Governor to legislate directly for our Parliament.

Now, we have our own Legislative Assembly (LA), and constitutionally, our LA is empowered to create laws. They are the — it is the law-making body in our country.

Because of the United Kingdom's position that it must maintain its ability to direct or dictate things that happen in these Overseas Territories to protect its contingent liabilities, there is that — those overriding provisions in our constitution whereby either the Governor or Her Majesty or through her parliamentarians in the UK can make laws directly for the Cayman Islands for peace, order and good government. That's the catchphrase — peace, order and good government.

Now, what does that mean? Apart from that statement there is no indication, expressed indication in our Constitution that if they are going to exercise this overriding powers that they're going to have dialogue with the Cayman Islands. And the proposal, the specific proposal that has been made in relation to the Governor and the UK legislating directly for the Cayman Islands is that it should be restricted and that there should be set procedures on how about — how they go about legislating for us. Restricted in the sense that it should no longer be under the broad umbrella of peace, order and good government, but it should be in emergency circumstances.

Secondly, that there should be procedures established in our Constitution connected to those overriding provisions so that in the event they decide it is necessary for them to legislate on our behalf that there is a set mechanism for them to do so and a set procedures. And I would assume that part of those procedures would include dialogue and hopefully extensive dialogue.

So, for those persons who had queries about limiting, preventing, you know, in terms of the overriding powers, a person said this morning, to a certain extent, we have to acknowledge that we are not independent. And if we are not independent, there is a certain recognition that the person who you are — or the country that you are connected to is not going to relinquish all of its responsibility over you.

But in that it does not mean that you are in indentured servitude. We are operating in a modern world; we are operating in a system of democracy, and those principles extend whether you are an independent country or whether you are part of a dependency. And as the Leader of Government Business has said, there has definitely been a shift in the winds, in the attitudes in the United Kingdom about its relationships with the Territories, and we hope — and we've seen that some inroads have been made. And the Government believes that in order for the

Cayman Islands to protect its own interest in the future that some of these limitations need to be implemented in our Constitution because sometimes Cayman's interests may not be the same as the UK's interests. And other times the UK's — may be sympathetic that the — they may understand the uniqueness of our societies, but they themselves are connected to a larger body that has no idea that we exist except for the fact that they know the UK has territories.

And they may not know, they may not be aware or concerned about our societal differences, our uniqueness, our cultural identity and things that — that principles that we hold there that may be distinct and separate from them. And so, therefore, to a certain extent, it is believed that it would be — constitutionally this type of relationship would be advantageous, not only to the Cayman Islands, but to the United Kingdom in some circumstances.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And just to add one thing, Peter, quickly, when you asked about — your question was based on EU. And I'm not suggesting that you don't know this, but I want to make sure that it is clear. The EU cannot extend anything to the Cayman Islands; it has to be done through the United Kingdom. So, in other words, any EU policy legislation or anything otherwise has to be extended to the Cayman Islands convention or anything else through the United Kingdom via Order in Council. But the difficulty that we have is that the United Kingdom is part of the EU, and they certainly are not inclined to upset their European partners and hence is why that's where we face the gun sometimes with the difficulty in them.

And the point that Suzanne made — *Suzanne* made is very valid. They recognize nowadays, that is the UK, they recognize nowadays that in many instances what they feel an obligation to extend to us because of their partnership with the European Union, they know that if it were simply left to them they wouldn't do it. So, they too will be amenable to finding a way which they would really have to be under severe pressure to — or want to do something of that nature, to have the ability to do so. And they would like, in general terms, to be able, in many instances, to say, listen, we have this arrangement but we don't have the ability from a constitutional relationship to pass these things on so we would like to, gentlemen. But we can't if you take my point so that — that will be part and parcel of the negotiations.

But I don't believe that they'll go as far as to say never, never, never, never. Okay.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Thank you. Do we have any other comments or questions?

If not, we'll just move forward on another area that I think the Secretariat and the Government would benefit from hearing the views of

— of our audience in relation to two specific areas: one is the Official Members in the legislature and Cabinet.

### **Official Members in the Legislature and Cabinet**

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Now, the proposal that has been led by the Government is that the Government should really be a full ministerial government, meaning that it should be comprised of entirely the elected legislature.

In terms of the Legislative Assembly, they have recommended the removal of the Chief Secretary, the Attorney General and the Financial Secretary. And in relation to the Cabinet, removal of the Chief Secretary, the Attorney General and the Financial Secretary's position will be converted to that of a chief officer position, and there would be a minister of finance who would represent the finance ministry in Cabinet.

We have seen in the British Virgin Islands that the Attorney General appears to be the only member of the LA, and he's a non-voting member. Bermuda and Gibraltar, there are no official members, I believe, in the Legislative Assembly, and in the Turks and Caicos there are four appointed and the Attorney General.

Now, perhaps, Mr. Tibbetts, you can explain to the audience the rationale for this proposal, because I think we are very keen to hear persons' views on this subject because it is one that we will have to look carefully at before we conclude the public consultation period.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** My daughter — [talking on telephone] Hi. I love you, I'll call you back. Kiss from me. Do your homework. Bye-bye.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Fatherly duties never stop.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Forgive me. No, that's my daughter. She's over yonder.

All right, let me say, first of all, that when we speak to the Attorney General . . . yes, Mr. Benson, sorry . . . sorry.

[inaudible comment]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Hold on. We need to get the microphone because this is being recorded on Radio Cayman.

**Question #3 - Member of the public:** What would be the case if no one with legal training is elected to the legislature?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** You saw me look up at the ceiling, Mr. Benson, and you heard me start: first of all, the Attorney General because . . . I really didn't know that that was what you were going to ask but what I was about to say would have answered it.

We're not proposing that the Attorney General does not advise the Cabinet or the Legislative Assembly. We are proposing that the Attorney General is the Government's chief legal advisor, not the *Governor's* chief legal advisor, the Government's chief legal advisor.

We haven't 100 percent wrapped around the issue of whether the Attorney General would attend both meetings in an *ex officio* capacity which I suspect is what we would end up with, because we recognize that in not every instance but in many, many instances we are going to need that legal advice before making a decision.

And I'm thinking — we've talked about this before. In thinking of the practicalities of it, you don't want to be in the Cabinet and ten times during the course of your Cabinet meeting you have to call the Attorney General in, and he deals with this specific thing, then he goes back out and whatever. So, I suspect that that's how it will end up being, but we recognize that we will need the benefit of the Attorney General's advice in both the Cabinet and the Legislative Assembly, but it would be in a non-voting capacity.

Okay?

Now, with regards to the Cabinet makeup being only of elected Members, what it means is — because we are proposing that the Chief Secretary will be replaced by the position of Deputy Governor and that will have to be a Caymanian, which I think is easily achievable. And, of course, we recognize again that the Deputy Governor would be by devolution of authority from His Excellency the Governor in charge of the civil service.

But we do propose that there will be a minister of finance, and the Financial Secretary's position now will be the Chief Officer in the Portfolio of Finance, or in the ministry of finance, and he will have all of the technical duties that he has now except he will not be a voting Member of Cabinet and it will come via the minister of finance whatever papers have to be dealt with in Cabinet from that ministry or portfolio. And the reasoning behind that is simple and it is all to do with the maturity of a democracy.

As of now, we have a Financial Secretary and we have a Chief Secretary and we have an Attorney General who are voting Members of the Cabinet, and who are voting Members of the Legislative Assembly, and they have no accountability whatsoever to the public of this country.

The 15 elected Members of the Legislative Assembly and the five elected Members to Cabinet are all accountable to the public of the country morning, noon and night. These gentlemen that I speak of have no accountability whatsoever to the public, and in a democracy that is maturing that cannot be right.

Now let me — because I'm always very careful, let me make sure that it is understood. The honourable Chief Secretary and the honourable Attorney General and the honourable Financial Secretary that we have are gentlemen for whom I have the highest regard and who I believe are and will continue to perform their tasks and their responsibilities in good style and are very capable individuals. But we speak of a system with a governance model now; we're not speaking about the individuals.

So I just want to make sure that people don't misunderstand that — that we're talking about the people, we're talking about the positions, and we are saying as has been done just about everywhere else that it's time that we understand that part of democracy is accountability. A huge part of a truly democratic nation calls for accountability, and you cannot have accountability with a system of that nature. So, that is why we're proposing it.

What we're not — where people get some difficulties, what we're not proposing is for those positions not to exist, because we recognize, as Mr. Benson's question was, if we don't have an Attorney General in Cabinet or in the Legislative Assembly, what happens if none of the elected Members are with that type of skill sets or qualifications? Then what do you do?

So, those positions will still be there to perform the task that they perform now, but as a matter of policy, there will be an elected Minister who will move forward with papers to Cabinet, bringing laws to the Legislative Assembly under the advice of these people in the same fashion that it is now except that it will not be them that will be voting and bringing those laws to the Legislative Assembly or bringing those papers to Cabinet. There lies the difference but there will be no difference in having the safeguards and mechanisms and the skill sets to ensure that the Cabinet is under the best advice and making decisions from a very informed position.

So I think that generally explains moving from the system that we have now which is what I would term "partially ministerial" to a full ministerial system. But the moment we do that some people think independence or think, well, what happens if the kind of people that you get elected nobody has any — any skills in this area, that area so what kind of government will you have?

The government will not in this system be short of any of the technical advice that it needs; it is simply that because the elected Members are accountable to the public the elected Members should be

the Members who make the decisions, although it is important that they're coming from an informed position.

I can — I can take any comments on that, but I think that generally explains the shift that is proposed.

Eugene?

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** We have two individuals. And we need the microphones before we start.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Eugene asked before you, Mickey. Gentlemen. Good gentlemen of West Bay.

**Member of the public:** Good night all.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Once you're not talking about tax we're in good shape.

[laughter]

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

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Good evening.

**Member of the public:** Good night. I must commend you all on your efforts despite a lot of people trying to derail the process.

I agree 100 percent with that initiative. Nobody should sit in Parliament and have a vote who is not elected period.

I'd like to ask a couple of questions. I don't know if it's relevant to what we were just saying but to me it's important.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Um-hmm.

**Question #4 - Member of the public:** At present with our administrative document or our Constitution, the Governor can dissolve Parliament and run the country under edict. Is it for an indefinite period of time, or is it as far as until the next Governor comes into play? Is that it?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No, it is not for an indefinite period of time and it certainly has to be justified. I'm sure that — well, maybe there may have been other occasions that it has occurred, but in the Overseas Territories of the Region, I only know of it happening on one occasion. Mr. Benson, you might be able to help me, I

think that was Turks and Caicos years ago. That's the only time that I know of that happening.

So all I'm saying to you — I understand your question loud, all I'm saying to you is that they're not going to, in my view —

[inaudible comment]

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Sorry? Anguilla. Okay. Yes, yes, yes, twice.

The UK are not going to, in my view, relinquish that final ability, but I can say to you that there will have to be very, very extreme circumstances for that to happen. And the United Kingdom does not wish to have the burden of running any one of their Overseas Territories on a day-to-day basis. So, as fast as possible that they can bring back a democratic situation and have a democratically elected government they are going to do that.

**Question # 5 - Member of the public:** Okay. With regards to this what I want to ask is this, and another question:

While we are under edict can the — while we are being run under edict can the British Foreign Office issue an Order in Council?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** You mean now?

**Member of the public:** No. While if we are being run under edict by a Governor, suppose for some extenuating circumstances the Governor sees it fit to dissolve Parliament, run it on. During that time can the British Foreign Office or the British Parliament issue an Order in Council to put something —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Mickey, yeah —

**Member of the public:** — into effect that we have signed on —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Mickey, the answer to me is very obvious. The answer would be yes, because if there is no Parliament the only how any legislation could occur would be through an Order in Council through that mechanism or through that vehicle. See what I'm saying?

**Member of the public:** Yeah. Okay, fine. What I'm suggesting is this and what I am saying: they could then bring into play something that's totally opposite to what we want in our Constitution.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I understand exactly what you're saying.

**Member of the public:** And after we have gone through this process which I'm in full agreement with most of the things I see here, will they be able to do the same thing? After we have gone through all of this will they be able to do the same thing?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Mickey, I have to say to you that some of my answers, as some of my answers were to Peter, are based on my own experiences of interaction with the UK. Because we wish to remain an Overseas Territory there are a few things that we can't get away from. Old time people will say we cannot have our cake and eat it.

The country, by and large — and no matter how many possibilities such as the one you just pointed out although it's a hypothetical situation.

**Member of the public:** Strictly hypothetical.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yeah. Yeah. No matter how many possibilities of that nature one might point out, I still believe we all are not going to wish to change the direction of the country and we wish to retain our constitutional arrangement with London. As a result of that, there are some things that we will be uncomfortable about we gonna just have to live with.

Things like what you just mentioned are matters that we will discuss, but I can assure you by the time we start talking about those things they will already have had their little list of items to say gentlemen, before we get into wasting a lot of time just talk about the most important things because here are the few things that we are telling you don't go there, if you understand what I'm saying.

**Member of the public:** Yeah.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** That's how it works.

**Member of the public:** I just wanted to get these things straight.

It seems as if a lot of people think that people are confused and don't understand what's happening. I don't see why but that's maybe people trying to push that idea forward.

But would you be willing to explain — and I know it mightn't take long, it might be in two or three meetings — what it means for the country to be run under edict. Thank you all.

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

I will get — sorry, I will get that information and we will be able to discuss it. I have to tell you the truth now. I'm not so sure that I could with eloquence and wonderful articulation put forward the whole sequence of events. Now, I have a pretty good idea, but I'd like to do a little bit more research because it's not one of those things that we've — we've had much discussion on so far.

I just want to close off what I'm saying or answer to what you've said, Mickey, by saying to you that of this I'm absolutely certain. Two things need to happen in the way people are thinking with regards to this Constitution, and I'm not being specific to what you're talking about. But while we have to look to have as many safeguards as are physically possible in any constitutional arrangement we may have with London or the United Kingdom, we also have to be fairly practical about it and we need to understand that there are certain things that people will have fears about that if you look at it from a logical progression, the UK and the United Kingdom government would have no interest in operating like that because it really serves them no purpose.

I mean, there's absolutely no benefit to the United Kingdom government to have to suspend or rather — what's that word again?

[inaudible comment]

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No. Dissolve Parliament, not prorogue. Dissolve.

It makes no sense for the government, the UK government to have to through their representative in the Cayman Islands dissolve Parliament and have the Governor running the show. He or she (if there ever was a she) might have a wonderful time doing it, but I can assure you the United Kingdom — the Foreign Office in the United Kingdom are going to be sweating bullets morning, noon and night when it's happening.

So they don't want — they don't want a thing to do with that so — so while people would look to have a safeguard as far as possible from that not happening, the truth of the matter is the constitutional arrangement which we wish to retain is not going to allow that to simply disappear. But I can assure you that it would be in very, very extreme circumstances.

And it might seem strange coming from me, but if it got to that point the country might be better off if it happened, if you understand what I'm saying. I'm not making any suggestions but just saying.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** If I may, Mr. Tibbetts, just on the question of what the law actually says, the Constitution.

Under our present constitutional arrangement which is section 47 the section actually just states that the Governor may at any time by proclamation prorogue or dissolve the Assembly. So that is what obtains right now. And the second provision allows him to — well, requires him to dissolve the Assembly after a period of four years, and that's for the elections to take place.

The — after the 2003 review, the 2002 constitutional review, the Draft 2003 Bill that was put forward actually modified the prorogation and dissolution section of the Constitution, and instead of the Governor just — instead of the section just saying the Governor may prorogue or dissolve the House at any time what it says is that after consultation with the Chief Minister the Governor may at any time by proclamation dissolve the Legislative Assembly.

Now, what this section means is that instead of him just — or him or her just dissolving it, he would engage in consultation before but he will still do it in any event even if there are objections.

The second provision, however, the second modification which deals with the proroguing of the House actually is a little bit different from the point I just mentioned above, and it says that the Governor would have to act on the advice of the Chief Minister if the House is to be prorogued. So, therefore, if it's going to be dissolved a consultation process could take place. If there is any discussion about the House being prorogued the Governor would have to act on the advice of the Chief Minister.

But this is a draft position and I assume that the Government would seek to retain the senior position at the very least and change it from the current statutory provision that we have which just says that the Governor may at any time prorogue or dissolve the LA.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Right. Just to add a little bit to that, while I was looking at that section that Suzanne found. The Governor at the end of the day will still, Mickey, retain that reserve power which means he'll still be able to do that depending on the circumstances once he, in agreement with the Foreign Office, considers it an emergency and that's what needs to be done.

What we achieved in the 2003 Draft simply didn't leave it how it is now, but at least there was consultation that had to take place. In the instance of dissolution he had to consult with the Chief Minister. In the instance of prorogation he was acting on the advice of the Chief Minister.

And I just remembered just this morning I had a conversation with His Excellency the Governor because the House has to be prorogued now at the end of this legislative year, and he has to do a proclamation to begin the next Legislative Assembly meeting which will be the first one for the [20]08/09 legislative calendar. And I had to call him this morning to tell him which day we were meeting in the House to do the Budget Address and Throne Speech.

So, in actual fact, while it doesn't say so in our Constitution now, he doesn't tell me when the Legislative Assembly sits, I tell him. That is after consultation with my colleagues and after speaking with the Speaker and making sure everybody's in agreement with that date and that kind of stuff. But when I say I tell him I don't mean that I dictate the terms to him, it's just that his role — he doesn't have a role in the Legislative Assembly so it's just for him to make the proclamations and we advise him of the day. That's what obtains now.

I think that's really what — with prorogation that's what the 2003 document was saying which is really what obtains now. That was just fine tuning it.

But I will look more into what you've asked me, sir, because the truth is I've never believed that the Cayman Islands might come to that so I've never really paid more attention to it than I had to.

I think Eugene had a question.

**Member of the public:** Yeah, good night everybody.

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

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

**Question #6 - Member of the public:** Mrs. Bothwell was speaking just now, said that the Legislative Assembly is the body that is empowered to propose laws and to make laws. I will go along with that to a certain degree.

What happens when the law is proposed, duly debated and passed in the Legislative Assembly and the Governor refuses to sign it? What happens in that instance?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** What obtains now, Eugene, then, it doesn't become law. But what I can say to you is that the Governor will have to display a very good reason which would come under the umbrella and the ambit of order and — how is that terminology, Suzanne? — good order and good government, peace order and good government.

It would have to be something that is *ultra vires* and contra that that would prevent him from signing that — that law and assenting to it.

So, if we — if we wish to say now that, as the term is, Parliament is supreme so he should not have to assent to the laws, then that is something else that the UK would be relinquishing.

And I'm not being funny, but are you suggesting that that is what we should be seeking from them?

**Member of the public:** I would think we should have been seeking that a long time ago.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Okay, and I just wanted to know what your opinion was.

**Member of the public:** Okay. Did we have a labour law that was passed here some years ago and never came into force or into that same situation?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But that's not because of the Governor. I'm just telling you that is not because of the Governor. That is simply because a day has not been agreed on or had not been agreed on from the previous Cabinet of it coming into force, but it was not the Governor that stopped that.

**Member of the public:** Okay, I was —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I'm just letting you know that.

**Member of the public:** Thank you very much.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Mind you — and not wanting you to lose your train of thought, but, Eugene, I have to say this to you. From all of my experiences, I only need a finger or two to remember when that ever happened. And on both instances that I can remember, after some discussion, we got the matter sorted out because there were some questions in His Excellency's mind about certain things and those questions were put in his mind by a certain infamous Attorney General, but we finally got it sorted out.

But I'm saying to you — that that it's a rare circumstance that a Governor would — would seize the opportunity not to assent to a bill, although he does have that authority.

**Question #7 - Member of the public:** Okay, thanks.

I see a conflict of interest in the Attorney General's position advising Cabinet and advising the Governor.

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

**Member of the public:** If you're at odds with the Governor —

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

**Member of the public:** — for some reason or the other, how is that gonna work?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** We experienced that recently and I had discussed it before you came in, Eugene, and what we are proposing is that the Attorney General will be the chief legal advisor to the Cabinet and to the Legislative Assembly, not to the Governor.

So, when the Governor wants his legal advice, as he does so now, he can contact his friends at the FCO or he can hire a local attorney. That's a layman's way of putting what we are proposing.

### **European Union Policy in Regards to Member States**

**Member of the public:** All right. Thank you, Mr. Tibbetts.

Something that concerned me, and I think it concerns a lot of people that I have been talking with, is the EU policy in regards to member states.

I raised this at a meeting last month . . . that was February — I'm not 100 percent sure on that; Mrs. Bothwell was there. In regards to the EU policy member states in regards to colonies, I wonder if she had any time to look into this to — could enlighten me on top of that.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** If you can perhaps just explain a little bit more about the EU member states policy on territories.

**Member of the public:** Okay. It is my understanding that in regards to EU member states regarding overseas — or colonies in general, no member state of the EU will be allowed to have colonies.

So, my real concern: what happens when United Kingdom goes in to the EU? It's not a matter of *if*, it's only the matter when. And if they wake up tomorrow morning and decides this is the morning, what are we faced with if that is the situation?

We can recall that France incorporated all of our colonies, so they're a part of France and a part of the EU now in a sense of speaking. So, you know, we're always — we have to be, in a sense of speaking, for our own national interests.

Our economy is very small, so we have to think ahead if we don't and something like this happens. Putting it in everyday words I think we probably wind up drinking a lot of saltwater.

So I would think that . . . independence is a bad word in a lot of people's minds, but it could be a very realistic situation that you might be faced with either wise going into the EU or going on their own. So I

think anything as important, especially as a Constitution, we need to be looking ahead as much as we possibly can.

History teachers and other things, you know, where a river ran, it will run again if it is allowed to do so. So, we don't want to lose sight of real possibilities that's on the horizon, so my honest opinion, we need to plan ahead for those possibilities because without vision we surely will perish.

Thank you.

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

I'd just like to commend you for — for making that kind of observation. In the public consultation period we've engaged in thus far there have been some sentiments — and I have to say they have been coming from the more distinguished members of our community, those of you who have been around a bit longer than I have — saying that yes, we are going through constitutional reform but to what end and are we looking — are we looking beyond tomorrow?

And I think what you were saying just now is that the United Kingdom is part of a larger body. It may not in all respects be a full member of the European Union and that is something that I will have to research. And I have to say that it is not something that I can come up right now and say what the EU policy is on colonies. But if there is a policy of the European Union that no member should have a colony, then in my mind the logic is, if that position is in fact correct, that our status would have to change at some point in time. It would either change from a dependency to independence, or from a dependency to integration which means that you almost — which means that you would be like any other parish or county in the United Kingdom.

We are flagging that right now because I do think, for all intents and purposes, that that perhaps should be a question, one of those important questions that maybe our government, all of our legislatures need to ask the United Kingdom upfront and ask them down the road: is there any obligation on you to shed in some way the colony status of us?

[inaudible interjection]

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** You would need your — you would need your — the microphone.

**Member of the public:** Mrs. Bothwell, I have with all due respect, on all due respect the United Kingdom, asking is one thing. You know, we don't ask what's in a contract, we want to read the contract. So, my advice is not asking what is the position, it's finding out what is the position.

Thank you.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Mr. Eugene, I absolutely agree with that and I did indicate that that is something we will have to look into. But I do believe at the same time that it would be necessary for us to engage in that dialogue.

Leader, you missed the conversation but what Mr. Eugene is saying is that if the — there is a policy that an EU member can no — cannot have a colony or territory, then the question needs to be asked and we need to look into as the Cayman Islands as to what does this mean to our current status. And, therefore, before we go to negotiations we would have to investigate this position whether or not this is in fact the position of the European Union, and if it is a position, a policy set out by the EU, then this subject needs to be broached with the United Kingdom because we ought to be in a position whereby there is full and frank disclosure and would create an opportunity for the Cayman Islands to prepare itself for whatever track it may ever have to go down.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And that certainly at this point time is almost an untenable circumstance.

Tell me this, Eugene — thank you, Suzanne for bringing me up to speed. I'd heard a little bit about it in between me going and coming. Eugene, can you — can you give me some idea because I have to admit to you that's new to me. Can you just give me some idea the genesis of that?

**Member of the public:** Well, that is from what I have been sort of reading between the lines.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Okay, it's not — it's not that you've heard some — or read something directly saying that.

**Member of the public:** No, I cannot direct you to a specific —

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

**Member of the public:** — instance.

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

**Member of the public:** But I could point you, like I said a while ago, you know, France have incorporate all your colonies —

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

**Member of the public:** And this I heard —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Um-hmm.

**Member of the public:** — this is quite a while a back — that this was a — prior to this happening that there would be no more independence.

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

**Member of the public:** And we can also refer to the Netherlands when they incorporated —

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

**Member of the public:** — Aruba.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Right. Yeah, well, so, as far as I know —

**Member of the public:** This is the reason why I said —

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

**Member of the public:** — to find out because if that is the case —

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

**Member of the public:** — it puts — puts us in a kind of precarious situation.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yes. Yes. I understand exactly what you're saying.

What I do know is that when both of those nations did what they did that it was not an EU directive, just letting you know that, I know that that was not the case. They chose to do it in that manner and the UK dealt with their Overseas Territories in a different manner when they allowed us British citizenship. But being a British citizen is not the same thing as what has occurred with France and the Netherlands because those people are all in one, and they pay taxes, they do everything as those who live in France and those who live in the Netherlands.

And I know that the UK chose to deal with it differently, for the same reason that many of the territories in those previous discussions said, listen, no, no, no, no. Don't go anywhere near there now because that changes everything that we know, and it also puts you, the UK, in — in different circumstances because many of us who are not grant-aided

now you might end up having to take us on to help feed all of us. I say that in loose terms, but you take my point.

But — but certainly from what you've said, it is something that we will investigate to make sure what their position is so that we don't find ourselves in — in any one of those precarious or untenable circumstances that you're alluding to.

**Member of the public:** Yeah, Mr. Tibbetts, I understand.

But I was saying to Mrs. Bothwell that going to the United Kingdom and asking them is one thing. I think the Government should have some sort of research into these matters, situations, because we hear so much different stories about the United Kingdom obligation to the Territories under the UN. And I don't know who else think that the United Kingdom is going to do anything for the Cayman Islands that the British people don't like. Their obligation is to Great Britain, United Kingdom, not to the Overseas Territories or any place else in the world as a matter of fact.

They will be in a different position when they get into the EU fully. They have members in the EU, I'm sure you're aware of that. But nobody will look after Cayman like Caymanians, so don't let us lose sight of that fact and think that Joe Brown or Harry got the Cayman Islands' interests at heart before their own.

I could touch on some other things, but I'll give someone else a chance. Thank you.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Thank you, Eugene, and your point is well taken, and we will do our own little investigation, as you suggested, to give all of us that sort of comfort so that we don't find ourselves with someone brand new staring us in the face to put us in a rolling up and down situation again. Thank you for those comments.

I see people slowly but surely leaving, and I'm not suggesting we should close the meeting, but I wouldn't like to — for us to drag on and on and on and find out that by the time we finish we don't have an audience. So, perhaps if there are any more comments or questions we could get them now. If there's anything else, any other point at this point in time that people would like for us to discuss if we could hear that now, please.

One thing about this church, it got good air conditioning.

### **Official Members of the Legislative Assembly**

**Member of the public:** Mr. Tibbetts.

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

**Member of the public:** In your slide “Official Members in the Legislative Assembly”.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** *Summary of Proposals* or in the slide?

**Member of the public:** Well, it’s — sorry, it’s the slide you had up just before you switched the machine off.

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

**Member of the public:** That’s it. That’s right, yes.

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

**Member of the public:** The proposal which you’re saying in connection with no Official Members —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Um-hmm.

**Member of the public:** — is really that the Chief Secretary and the Financial Secretary are going to be replaced by elected Members or Ministers? One would be a minister of finance —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Minister of finance, but —

**Member of the public:** — and the —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Go ahead.

**Member of the public:** And the —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** We would probably have a minister of home affairs, but the minister of home affairs would still not be responsible for the civil service.

**Member of the public:** Right. Okay. So —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** The Governor would be — in other words, the Deputy Governor would be a post replacing the Chief Secretary’s post.

**Member of the public:** But he will not be a member of —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But he will not be a member of the Legislative Assembly.

**Member of the public:** Okay. Will he be a member of Cabinet?

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

**Member of the public:** Okay.

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

**Member of the public:** No problem.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No. Again, just to reiterate, from the principle of democracy because neither one of those posts are accountable to the people of the country, if it's going to be a proper and mature democracy, not withstanding the fact that we are a British Overseas Territory, then we hold the view, and we believe that most people hold the view, that if you are not accountable to the people, then you should not be voting in the Legislative Assembly or voting in the Cabinet.

But their roles will not be diminished insofar as the performance of their duties. The Financial Secretary, as I said, would be — would still be performing the tasks that he performs now, only he would be advising the minister with regards to actually bringing legislation, bringing the budget and all of those duties that he performs now. And the — the Attorney General would be the chief legal advisor to the Cabinet and to the Legislative Assembly, and the Deputy Governor would still be responsible for the civil service by devolution of authority from His Excellency the Governor. Okay?

Yes, sir.

### **All Cabinet Members at Constitutional Review Meetings**

**Member of the public:** I apologize, ladies and gentlemen, for interrupting a census speaking, but, Mr. Tibbetts, I personally would like to thank you all for coming.

I have one suggestion in this process. I believe good PR is very good, and personally I would like to see all of you all that's in Cabinet out to these meetings. If that could be arranged, I'm sure that, you know, people could feel like a little bit upbeat in the sense of speaking, you know. You all are behind this thing, you know.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** We try as hard as we can, Eugene. And just for instance, let me explain to you tonight. You might know that Dr. Corbin is here, the gentleman from the United Nations, and they were having a meeting up at the Family Life Centre at 7.30 while he's here, so a contingent is at that meeting and then we have one or two who are off Island I believe, so we try as hard as we can. And — and as far as is possible, we try to make that happen, it's just difficult with everything that everybody is doing.

**Member of the public:** You gotta try harder.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Okay. Okay [laughter] I won't argue that. I won't argue that. But I'm just explaining to you that — that most times when you don't see everybody here — and the other thing about it that we thought, too, and I just have to say this to you, we didn't want the process to appear like the Government was dragging it to make our points and to try to tell everybody — I'm just telling you — to try to tell everybody what we think should happen. That's why the Secretariat makes the presentation. Of course we are here to answer the questions on the political side of it, but we certainly want people to feel comfortable that we're here to hear from them rather than just them hear from us.

**Member of the public:** Well, point well taken, but I still think you all are the Government so therefore the drive is coming from you all.

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

**Member of the public:** And there's nothing wrong with reflecting that.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No, no. I appreciate what you're saying. We just don't want the overkill effect, that's all.

**Member of the public:** I don't think there should be any overkill. The Government is the driving force behind it. Show up.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Let me just accept what you're saying and say we'll try harder, okay? [laughter] Thank you.

Do we have any other comments? Mickey, I can't believe that you're gonna leave it like this.

Yes, Mr. Benson.

**Question #8 - Member of the public:** [missing portion] and that is if any consideration has been given to the referendum being held after you

come back from England with a document that you know is possible as our Constitution rather than having the referendum before you go —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Please forgive me, Mr. Benson.

**Member of the public:** — to England.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But I had to answer that call.

**Member of the public:** I'm asking if any consideration was given to having the referendum after you return from the UK, or after you finish your negotiations with the UK rather than at this point.

At that time I — my view is you would have a document that has been agreed by all parties and the public would know what they are voting for as opposed to what they might be getting.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** All right. Okay. We've talked about that and we have mulled it over. We have listened to what people have suggested, and let me just tell you our thoughts on it, sir.

First of all, from the 1999 White Paper, which was entitled Partnership for Progress and Prosperity, there was a checklist that the UK government set out with regards what they suggested that needed to be ticked off during the constitutional modernization process of any one of the Overseas Territories.

And one of the items on the checklist — I'm only going by memory now, but I think it was No. 10 — No. 10 of our checklist of some 17 different points — and that was that there was clear evidence that what was being negotiated reflected the wishes and aspirations of the majority. That, in itself, speaks to before the fact, not after the fact.

**Member of the public:** But not by means of referendum?

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

**Member of the public:** Not necessarily by means of referendum?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No. No. This is just one of the — this is the tool that we have chosen and we gave a commitment to do that before the elections, okay? So that was the tool that we chose notwithstanding the possible difficulties of it, but we thought that it was the most open method that we could use. Fine. Now —

**Member of the public:** It just seems to me that you — in fact, you and your colleagues could be more comfortable, you know —

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

**Member of the public:** — going —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** You are correct, sir.

**Member of the public:** — an alternative route.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** No, sir. You are perfectly right and we recognize that, but we were prepared to go through the process as difficult as it was because we wanted people to understand clearly we are not wanting to go to negotiate what we wish, we want to make sure you have an opportunity. And this is the best way we can allow you the opportunity and have it open for all, so that — and I understand exactly what you're saying.

But nevertheless we anticipated the difficulties but we made a conscious and clear decision that we had given that commitment to the public. They had showed us the support in a general election and we were not going to change that course. So that is the — that is the answer from the beginning for that.

Plus — yes, sir. Plus it accomplishes the task of being able to say to London we had this referendum and we are — we are hoping and praying that the people will participate in it so that we can go and say, well, that the majority of the people wish this. And the referendum itself will not be in the form of a one-question thing anymore, and the few issues that are a little bit touchy and thorny, people will have an opportunity to vote yes or no on certain of those issues so that, at the end of the day, what we anticipate we'll be able to say to London is this number of the electorate voted, and in this issue this is how many — how many — what percentage voted this way and what percentage voted that way. So, I'm just saying.

Now, with regards to having a referendum after a Constitution is drafted, we have not ruled that out, but I have said privately and publicly that what I would not like for us as a country to have to do is to be boxed in that there is a commitment to do a referendum at that point because, *simply because*, if we — not if, but pray to God and hopefully — and I think the way that it's going now we will get to the point where what we negotiate will be reflective of the wishes and aspirations of the majority that once we get a satisfactory result from those negotiations, we certainly are going to — then the draft comes back — have public discussions on it.

And once everybody's happy with it why then — and I'm not suggesting that you're saying that we should do this. I know that you asked the question and I thank you for allowing the opportunity, but we don't want to have to do a referendum if nobody says we need one is all I'm saying.

So, it is not that we rule that possibility out, but I wouldn't like for us to say yes we will do so if it's totally unnecessary.

**Member of the public:** I certainly didn't [inaudible]

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But — no, no, I know, but I'm only saying to you there are some people who keep saying have a referendum after the Constitution.

The truth is, by the time we get through this process I anticipate it being close to year end by the time we get to the point where the UK will be preparing a draft for us. And we'll be looking in a few months to a general election. So none of us would negotiate a constitution and agree to it if we know that the people are not going to be satisfied and happy with it, because if we were to make that mistake then we can go home before the elections. I'm just being practical when I say that.

So I don't think people need to have any fear, whatsoever, of the end result once we are clear what we go to seek. The only thing that we cannot guarantee at this point in time is that everything that we go to ask for that we will get it in a constitution the way we would like it simply because we have to negotiate. But I believe and I feel confident that we will not have tremendous difficulty with the negotiations.

In fact, I was saying in a meeting that we had yesterday that I don't know if everybody else feels like I do and perhaps they don't, but I am just chomping at the bits to get to the point to negotiate because I believe that it's going to be a lot easier than a lot of people think.

The scenario is totally different now from — than it was last time. I mean, we have the benefit of three constitutions that they have agreed to with the Overseas Territories — BVI, TCI and Gibraltar — and many of the things that we are going to be asking for have already been agreed by the UK with these Territories, so it's not even gonna take an hour to go through each of those points because they've already done it and there's absolutely no reason why they won't do it for us.

I mean, in my view, it will only be a handful of issues that we will actually have to fine tune with them that they might say, well, we really can't quite do it the way you're asking. Let's see how we can make it work that everybody's happy. That's the way I anticipate it. I'm not trying to oversimplify it, but I — I honestly believe that that's how it's going to be. As I said yesterday, our biggest problem is ourselves, not them.

[inaudible interjection]

**Hon. D. Kurt Tibbetts (Leader of Government Business):** But I really — that's really the way that I see it. And regardless of whether when we have these meetings we have 500 or we have 50 people, it helps us gain perspective and that's what we need to have at the end of the day. We need to have perspective so that we can feel confident that what we're going to negotiate that's what the people want.

Yes, ma'am.

**Member of the public:** Mr. Tibbetts, it's good to see you in West Bay again.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** You don't see me sometimes but I travel the roads in West Bay, you know.

**Member of the public:** Okay.

[laughter]

**Question #9 - Member of the public:** You mentioned that the referendum, you know, could have more than, you know, one question.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yes, ma'am.

**Member of the public:** What I recall some years ago — and I don't know if I'm correct on this but you can correct me if I'm wrong — when Mr. Truman Bodden was in the House in his group —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Um-hmm.

**Member of the public:** — they brought a referendum law. And as far as I recall, that law only permitted one question in time of referendum. So has anybody looked into that because —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yeah, I don't think that's a referendum law, I think that's in the Constitution. I'm just saying to you —

**Member of the public:** Okay.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I don't — I think what you're saying is in the Constitution.

**Member of the public:** Constitution. So is —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** The Constitution allows for a referendum to — a referendum law to be brought to the Legislative Assembly.

**Member of the public:** But does it limit the amount of questions?

**Hon. D. Kurt Tibbetts (Leader of Government Business):** See, it's all to do with interpretation. When you — when you read the Constitution and the Constitution speaks to — on a question, you have to interpret the spirit of what was intended and we have looked at that and we have had long discussions on that. And we are satisfied, although we're going to get clearance and make sure that we have the proper legal advice on it, that there may be one question but several parts to the one question. So, we are very conscious of what you've said and that's — that's a very good observation that you've made.

**Member of the public:** Okay, because the key word there is “question”.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Yes, and we are going to make sure that — that what we do is not something that will be challenged and then we get another huff up again because we do know that there are people out there who will be looking just to do that.

So, that's a very good observation, but I just want you to know that up until yesterday we spent hours talking about it.

**Member of the public:** Okay.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yeah. Miss Ezmie, I'd just like to say that as Mr. Tibbetts indicated we are very mindful of the constitutional provision. It was something that we flagged very early on, as a matter of fact, before we entered into public consultation. That was one of the reasons why we were recommending one question for the referendum. However, because of the tremendous, I should say . . .

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

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Input by people that they would not agree to any changes if it could only answer one question.

We have now had to revisit the original position in terms of the referendum question, and since additional issues are going to be outlined in the referendum itself, in the ballots itself, we do have to be that much more careful to ensure that the referendum law is, in fact, constitutional.

So that is something that we have taken on board; that is something that we have sought legal advice on and any modifications

that — we are in the process of preparing the ballot itself, this is something that we are going to continue to have at the forefront of our mind, and I believe that we have made certain commitments to ourselves to ensure that we seek the — all the legal advice we can get, especially from our own legal advisor in the government, to assist us so that by the time this matter is brought before the LA we have our t's crossed and our i's dotted. So that is something we are very, very, very mindful of.

**Member of the public:** Okay.

**Question #10 - Member of the public:** The next thing that I would like to say, as you know, we are a growing society, but how many of us are growing as the local or if you want to say the indigenous persons?

I feel that in the Constitution we should specify what our language is. And I'm going to give you a little incident that happened.

I was in the bank a few weeks ago — maybe months — and they said: next, next, next. But it was a guy, I don't know who he is, from town and he touched me and he said: just wait, next, next, next. Anyway everybody shouts it, you need to go. So that's an example of the people that are coming here and we should not have to change our language for them.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** He didn't understand what the word "next" was.

**Member of the public:** He did not know. So I cannot understand how he got by Immigration because you're supposed to have the English test.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Please don't expect me to answer that. Please.

**Member of the public:** But I'm only saying.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Okay, I take your point —

**Member of the public:** I don't expect —

[laughter]

**Member of the public:** I don't expect an answer —

**Hon. D. Kurt Tibbetts (Leader of Government Business):** [laughter] I couldn't answer you that one.

**Member of the public:** — but —

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

**Member of the public:** I'm just, you know . . .

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

**Member of the public:** Giving a . . .

**Hon. D. Kurt Tibbetts (Leader of Government Business):** — especially nowadays that they are very mindful of it because the Chief Immigration Officer has spoken to us. Because the truth is they come to the MLAs and say can you speak to them because so and so is here and they can't get through. And I say I can't — I — what can — you can't expect me to go tell them not to give the person the test, so I know that they are very careful. But of course I guess things like that might happen offhand.

But I do take your point and Suzanne was whispering to me that — that that is in the South African constitution so it is something that we — we'd be happy to take onboard and look at.

**Member of the public:** And it's in the Fiji constitution also.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** Sorry, it's in the Fiji constitution?

**Member of the public:** As far as I can recall —

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

**Member of the public:** — it is in the Fiji constitution.

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

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** And I know, Miss Ezmie, that you have made some recommendations and we are looking at some of those. And just today I was flagging that again for us to look at now that we are nearing the end of our consultation period and we now have to bring to our minds what the feedback has been and the things that we now need to consider in moving forward.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** And Miss Ezmie, it's really good to know that you've taken the time out to do that.

**Member of the public:** And I — I'm planning on giving you some more.

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

**Member of the public:** Before it's all over.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** That's cool, too.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** I would say that we are moving forward, so the sooner the better.

**Member of the public:** Okay, thank you.

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

**Hon. D. Kurt Tibbetts (Leader of Government Business):** All right, folks. It's just about ten minutes past ten so I suspect —  
Oh, sorry.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Last question [laughter] —

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

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** — for the night.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I'm sorry. I'm sorry. I'm sorry. I'm sorry. Sorry. Sorry.

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

### **One Man, One Vote Included in the Questions**

**Member of the public:** I just want to make sure that the one man, one vote is included in the questions.

**Hon. D. Kurt Tibbetts (Leader of Government Business):** I am pretty certain that it will be.

**Member of the public:** Okay, very good.

**Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat):** Yeah, we are definitely looking at that.

Well, I think we've had a very, I think, interactive meeting and very good discussion. I think that the Secretariat has quite a bit to take back based on the contributions that have been made.

I'd like to thank everyone who has taken the time tonight to come here and to have your say on the issues, to contribute to them. And also for those who are listening tonight on Radio Cayman that you have — hopefully have benefitted from the discussion and will place you in a better position to participate in the referendum.

I'd just like to say thank you again to the John Gray Memorial Community for allowing the Secretariat to hold the meeting in your sanctuary, in your church, and we hope that with God's blessings we may continue this exercise for the country's benefit and we may go to the — the United Kingdom may come here and negotiate with us on a position that the country feels comfortable with.

So good night and God bless and thank you very much.

[applause]