



Constitutional Modernization Initiative

*Verbatim Transcript
of*

**Public Consultation Meeting
Held on**

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Mary Miller Hall

**Grand Cayman
Cayman Islands**

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WEDNESDAY
30 JANUARY 2008
CONSTITUTIONAL MODERNIZATION MEETING
MARY MILLER HALL
GRAND CAYMAN

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): You should have a copy of a survey tool. If you do not have a copy of it please put up your hand so one of our staff members can be sure to give it to you. If you do not have a copy of a survey, please put up your hand so that we can provide one to you.

Also in the package is the 2003 Draft Constitution. That is a very small square document. That is really for your information. That was the last Draft Constitution that was agreed and drafted for the Cayman Islands. However it was not put into force. The relevance of that paper is especially relating to the issue of eligibility to vote and we will be directing you to a particular section there that is discussed in the *Summary of Proposals*.

Also, there is a Companion Guide to our existing Constitution. That is really for your benefit. I don't think we actually have a question and answer guide to our current Constitution. So, that is really for your personal edification if you actually want to know about the state of affairs of our Constitution as of today that will be a useful document for you to read.

The format for the meeting is going to be, I will be giving a presentation. I have scheduled it for an hour, but I do hope it will not be an hour. And during that time I will be bringing to your attention particular questions on the survey tool so that as we move through the issue you will have an opportunity to fill out those particular sections because the information will be fresh in your mind.

The second hour will be preparation, will be question time actually. I am asking that right now everyone either turn off their cell phones or put them on vibrate because this meeting is being recorded by Radio Cayman. It is not being played live, but it is being recorded so that we can play it on air at a later date.

Sources of information, just for your knowledge . . . what I am going to do tonight is to break down the issues that have been presented in the *Summary of Proposals* and really put into context these Constitutional issues. Some of you have been asking, Well, where did they get this from? Where did this come from? Where did this idea come from? And what we will find in this speech tonight is that a lot of these ideas are not new. A lot of these positions have been positions taken either from the recommendations of the Constitutional Commissioners in 2003, in their report, or they are Position Paper positions of the current Gov-

ernment, or some of them may have been positions that were raised by the then government, the UDP Government, based upon either similar or [?] some of the issues that are raised here today.

Also in your possession is the *Official Hansard [Report]*, July 24, 2004, a statement by the Hon. McKeeva Bush. That was provided to my office on January 21. That will form part of the package of information that will be discussed in today's meeting.

So the first issue is the Cayman Islands remaining an Overseas Territory.

CONTINUING AS AN OVERSEAS TERRITORY OF THE UNITED KINGDOM

Mrs. Suzanne Bothwell: The Constitutional Commissioners' Report of 2003 recommended that the Cayman Islands remain an Overseas Territory of the United Kingdom based on public feedback. Both political parties believe that the Cayman Islands should remain an Overseas Territory and that is the position that we have taken. However, that does not affect their decision to encourage the Cayman Islands to move towards greater internal responsibility, more specifically, the local Government because that deals with the issue of good governance and our ability as elected representatives to properly function in the Cayman Islands.

So, just to . . . or in the survey, question 1 (which is found on page 1) Do you believe the Cayman Islands should remain an Overseas Territory. Can you [inaudible] that question, say yes. Or, if you feel that we should go towards independence, if that is your opinion, please put down what your opinion is. This is about really finding out how you, the public, feel and I think that the way for us to be able to say in positive terms what it is the public want, is to use surveys and other medium.

ONE PERSON, ONE VOTE

Mrs. Suzanne Bothwell: Now the issue of One Person, One Vote, is one that is a Constitutional issue. And you may ask, Well why is this a Constitutional issue?

Well, in 2003 the Constitutional Commissioners recommended that there be 17 constituencies of with an equal number of electors. This provision was actually put in place in our current Constitution. An amendment was made to our Constitution after the report to establish 17 electoral districts. Now, what has to be done after that is that the boundaries for those districts needed to be set. And some of you remember when the Electoral Boundaries was established a Commission was established and when they had public meetings in the different districts around all three Islands.

So the boundaries need to be set. And once the boundaries were set and once the necessary Constitutional changes were made, then our Islands would be allowed to continue in the electoral system of one man, one vote and single-member constituencies.

The situation now is that we do not exist in that type of electoral system. Why? Because one, the 17 electoral district constituencies would require an increase in the number in the Legislative Assembly. Currently our Constitution has not increased that number of Members that sit in the LA. So that is the first reason why we do not have single-member constituencies, or one man, one vote.

Secondly, because the 2003 Draft Constitution, which actually encapsulated those relevant provision that would allow us to function in that way has not been put in place, has not come into force. We are still operating under our old Constitution.

Now the recommendation of the PPM Government is for the implementation of the one person, one vote system. However, they recommend that Cayman Brac and Little Cayman remain one constituency because of the small voter population which was, as of 2003, 840 persons. There were concerns over dividing the Cayman Brac constituency over party lines which would result in the representative from each party being elected to the LA. And, therefore, they recommended that Cayman Brac and Little Cayman be one electoral constituency returning two Members to the Legislative Assembly. However, each elector would only have one vote.

I'll just repeat that: The recommendation in the *Summary of Proposals* currently is that the Cayman Islands move to a one person, one vote electoral system and single-member constituencies. And within that system, when it comes to Cayman Brac and Little Cayman the recommendation is that they have a one person, one vote system; however, they will remain one electoral constituency as opposed to two. And even though they return two Members to the LA, as they currently do, each elector in Cayman Brac would only be allowed to vote for one person. So that would mean that the candidates with the two highest votes would get into the LA and become Members of the LA.

Now, in 2003, this information came from the Position Papers of the United Democratic Party. In 2003, their official statement regarding one person, one vote, was that they supported the concept of modernizing the electoral system; however, dividing the Cayman Islands into 17 electoral districts was mooted as premature. And they supported not the full implementation of one person, one vote, but, rather, the gradual phasing in of this concept.

As I indicated earlier, the current state of affairs is that our current Constitution does not allow us to move forward with a system of one person, one vote because of the obvious deficiencies and the necessary changes in our Constitution have not been made. The Draft Constitution,

which you have in your possession, should have put in place all the necessary provisions, but that too is not in place.

So, if you wish to register your views on one person, one vote, I would invite you to turn to page 5 of the survey, and I am asking those persons who are sitting next to someone the person to your left, the person on your right. Please ask your neighbor if they need assistance. We are one community. We are all here for a common purpose, so if you need assistance, or you think someone needs assistance please offer your assistance to them. Explain to them the sections 46–49, and if you can help them fill it out.

For example, on page 5, question 46 . . . I'm sorry, it should be 48. I have a different version. I have to correct mine, thanks. My apologies, it is 48–51, would be “Should there the Cayman Islands adopt a one person, one vote electoral system? Yes or No.”

The second question is, “If the Cayman Islands adopt a one person, one vote electoral system, should this system be introduced fully or gradually?” And then you can indicate your opinion.

Question 50 speaks about the type of electoral system you think Cayman Brac and Little Cayman should have. You can read those sections and indicate your answer.

Actually, section 51 also has a question about representation of Cayman.

Okay. It is up to members in attendance, if you wish to fill out the form at the end of the meeting you can do so, but the format of this program is really to accommodate you when the information is fresh.

FULL MINISTERIAL GOVERNMENT

Mrs. Suzanne Bothwell: Now, the issue of full ministerial government, and I would like to refer members to page 5 of *the Summary of Proposals*, the blue document. In that statement under heading D, “The Executive”, the Government has outlined its views on why they think we should be moving towards a full ministerial government. Basically, they have said that it is a question of democracy. They have raised their concerns about the fact that there are civil servants, basically—the Chief Secretary, the Financial Secretary and the Attorney Generally—who sit as voting members in both the Legislative Assembly and the Cabinet. They feel that these officers should not be members of the Cabinet, in particular. So the position, for example that of the Chief Secretary, should be changed to Deputy Governor. The Financial Secretary, there have been some proposals historically regarding that position being changed to a Minister of Finance, and that the Minister of Finance would be the person who sits in Cabinet, as opposed to a Financial Secretary.

This issue of full ministerial government was raised and mentioned by the Constitutional Commissioners in their report in 2003. They stated

that they recognized that there was a desire by the elected government . . . the outcomes of public discussions were to advance to a full ministerial system and there was support for a Chief Minister to advise the Governor of the formal appointment of other elected Ministers who would form Cabinet; that there should be replacement of the Financial Secretary for the responsibility of the Portfolio of Finance, and that would be assumed by an elected Minister; and that there should be a replacement for the position of Chief Secretary and that should also be assumed by an elected Minister.

Now, since that time some developments have been made especially in the *Summary of Proposals*. There are two distinct issues that we look at for ministerial government and greater responsibilities for the elected representatives.

The first one is that to move to a full ministerial government it requires examination of the relationship between the Cayman Islands and the United Kingdom. This should require examination of the relationship between:

- 1) the United Kingdom and the Cayman Islands regarding External Affairs concerning the Cayman Islands; and
- 2) the local UK representative, which is the Governor, and the local elected government.

So, there are two scenarios here. The first view: How does Cayman relate to the UK—those individuals who act on our behalf in the United Kingdom, who reside in the Foreign and Commonwealth Office, who, for example, like Mrs. Meg Munn who just came here who has responsibility for the Overseas Territories, who has responsibility for having extended to the Cayman Islands treaties, obligations that the UK has? So that is the first issue. What is our relationship with those offices and what is our relationship with these individuals? How do we ensure that they consult with us when they are discussing our affairs overseas?

The second issue, of course as I said, is that with the Governor who is their local representative who is here who we have access to on a day to day basis. Dealing with the relationship between the Cayman Islands Government and those in the Foreign and Commonwealth Office through the United Kingdom, the recommendations are at present that the Governor should consult with Cabinet on all international agreements which are extended to the Cayman Islands that would affect internal policy or require implementation into local legislation.

At present, Cayman has had extended to it many, many international treaties. Some of them I don't know about and I am sure most of them you are not aware of. But the way that we obtain or have international obligation is kind of like this: The United Kingdom is usually a member country of an international organization. Let us say, for example, the United Nations. Everybody knows that name. Let us say, for ex-

ample, there are international concerns about terrorism. They will take a convention amongst themselves and their member States would sign onto it. And the UK, being a member State, may agree to sign on to this convention.

Now, because we are at territory of the United Kingdom, the UK has the choice to say, *Well, should I make these obligations extend to my Overseas Territories?* One of which is Cayman. The UK can say yes, or no—and then we won't have these extended to us, we won't have those obligations. Or they may say yes in some instances. That means that either automatically or through these conventions being endorsed by local legislation, Cayman will have the obligations in the international arena.

What is missing from this element is our involvement. Discussions with us, or our ability to discuss with the UK about a) whether we feel it is important that we should be signed onto these conventions. And, separately, what are the risks to the Cayman Islands? What are the costs to the Cayman Islands? Because a lot of these obligations are not free.

For example, I work in the area of child abduction. You will have instances where individuals coming from abroad seek haven here with the abducted child. And under the Convention, our legal aid system needs to be accessible to them. And it is a financial cost to our government. So that is only one example. The issue is that there are other examples. There are other sort of larger responsibilities that the Cayman Islands will have to take on board when being signed on to these conventions. So, what we are asking for under External Affairs is, firstly, for the UK, if they are going to be extending or they intend to sign us on to these conventions, that they should dialogue with us first—hear our views and let us discuss the issue to ensure that at the end of the day that the Cayman Islands is protected.

And that covers point 2, which is that the UK and the Governor should do that.

Secondly, in relation to External Affairs, it is now being proposed that Cabinet should be allowed to negotiate international, which would include regional agreements that will not affect the interests of the United Kingdom. At present, if, for example, the Cayman Islands wanted to negotiate with any island in the Caribbean or any country abroad, they actually (as far as I am aware) are not able to do so without I think written authority from the United Kingdom.

In some instances, if any document has to be signed, an agreement has to be signed, any treaty or memorandum of understanding, normally that would be signed by the United Kingdom with that country on behalf of the Cayman Islands. So what we are asking for also is that if there are instances where entering into treaty arrangements with another country would either benefit us economically, benefit us socially or otherwise, that the Cayman Islands should be able to do that as long as it does not interfere with the interests of the United Kingdom. Does it impact them in any way? If it is not one of these contingent liabilities that they speak

about then what is being advocated here is that Cayman, our Cabinet, should be allowed to do that. So that is something for you to think about.

Now, in a 2004 *Hansard* Report, that is the report of the LA, the debate in the LA, which you have a copy of. This is by Mr. McKeeva Bush. He indicated at that time:

¹“ . . . the Cayman Islands Government . . . should take a greater role in foreign affairs. [It is] important in relation to various international organisations whose standards impinge directly on the Cayman Islands. [S]enior members of the Cabinet should engage in those international bodies . . . [and that] to protect our interests [the Cayman Islands must] maintain a strong presence in all organisations and groups that could potentially implement policies which could have a direct impact on our economy.”

So you will see that the proposals being made now by the present Government are really not far removed from the proposals that have been made by the previous government in relation to Cayman’s ability to have more control over its external affairs and to be consulted. Again, what was stated in the *Hansard* is that:

²“[t]here must . . . be greater consultation and consent between the United Kingdom Government and the Cayman [Government] on diplomatic issues.”

There again, we are still on the topic of external affairs, Cayman’s ability to be consulted with, the ability to enter into negotiations directly with a third country. All of these issues are, at least as far as my understanding, pretty similar.

So we can see that there has been a trend from 2003 to now and what is being proposed in the present *Summary of Proposals* is that Cayman, number 1, should be consulted by the UK when the UK wants to sign us on to treaties in the future and impose international obligations on us; and, secondly, if we wish to negotiate directly with a third party country, and there is no adverse impact on that with the United Kingdom, that we should be able to do so.

Now, the second major point that was raised before regarding moving to a full ministerial government is revisiting and examining the relationship between the local UK representative, which is His Excellency the Governor, under our present Constitution. We also have His Excellency is the Queen’s representative here. So we need to examine the relationship between the local UK representative and the local government.

Now, what is being proposed, of course, is that there should be constitutional responsibilities assigned to the Leader of Government

¹ 2004/5 *Official Hansard Report*, pp. 286-287

² *Ibid.*

Business. If you take a look at our present Constitution when you have time, you will see that there is in our Constitution the position of Leader of Government Business, which the Hon. Kurt Tibbetts now holds. There is the position of Leader of the Opposition, which Hon. McKeeva Bush now holds. But when you look in our present Constitution, we say, *Well, what can they do? What is their role? What is this title?*

They are officially the head of the Legislative Assembly. They have been identified as the head because they have been chosen by a majority of the members of their party in the LA to be in that position. What responsibilities do they have?

Well, under our present Constitution, I first and foremost say that they really do not have any Constitutional responsibility. There is nothing there that says that he can do this or he can do that. However, like every other Minister, the Leader of Government Business is assigned ministerial subjects. So, for example the Hon. Mr. Tibbetts is responsible for District Administration, Planning, Agriculture. And when we look at the Electoral Boundary Commission section of the Constitution, the Leader of Government Business is able to recommend a person to sit on that commission to the Governor. So, it is pretty much restricted to that.

Now, in 2003, the PPM Government recommended there should be a head of government, which is the Leader of Government Business, a Chief Minister. What they are advocating now is for it to be called "Premier" (and I will go through that later on), and to have established Constitutional responsibilities. And this position was pretty much the position of both parties, both governments.

So, in 2003 overall everyone agreed that there should be a position of Leader of Government Business and Leader of the Opposition, that was mooted in the Constitution to accommodate those positions. However, what were lacking were responsibilities to the positions.

And also, what is presently being advocated by the Government is that there should be official positions for deputy leaders. For example if (and I hope this doesn't happen) something happened to any of our leaders, there is not a person who is automatically identified as his deputy. Right now, I believe our Constitution I believe it is the Governor can assign persons to temporarily hold position as Ministers. I believe that that is correct. But there is no deputy leader of government business, deputy premier, or deputy leader of the opposition. So what is being asked at this time by the Government is that we put in that position in the Constitution to ensure that we are protected so that if anything happens to any of our leaders that they may be able to . . . the Government can continue to run smoothly and that person can take up the responsibilities immediately.

Now, we are examining the relationship between the Governor and the elected representatives. What is the role of Cabinet?

Cabinet sits, but do we know what the Cabinet does? Do we know what the responsibilities of Cabinet is?

One of the things that the *Summary of Proposals* highlighted that they believe that in the Constitution it should say that the Cabinet should have responsibility for directing and implementing government policies, except those areas which are the Governor's special responsibilities.

Now, what this means is that we as electors vote in persons to sit in the Legislative Assembly. Some of these Members are selected amongst their own to sit as Ministers of Government. Now Ministers of Government form part of the executive body, the Cabinet—Ministers, the Leader of Government and the Governor.

Every Tuesday they meet and they decide what are issues of the Government, how is the Government going to implement their promises that they made to you when you voted them in. So, the reason why they say that the Cabinet should have the responsibility of directing government policies, directing the implementation of that policy because it means that they have gone on the platform with a vision; they have been voted in because of that vision; therefore, in order for them to carry out that vision there should be at least a constitutional backing that will indicate not only to the electorate, not only to them as Members of Cabinet, but ultimately to the civil servants that it is Cabinet who will formulate these policies and you, as civil servants, are being asked to implement it.

And the reason for this is to remove any circumstances whereby policies are being implemented in government that do not form part of the directive of Cabinet, because there are not two governments operating in Government. There is one Government. So that is the rationale.

The second proposal that was made towards full ministerial government in examining the relationship between the Governor and the Cabinet is that under the present Constitution the Governor chairs the Cabinet and sets the agenda. Informally, right now the Governor and the Leader of Government Business agree the agenda of Cabinet.

Mr. Tibbetts, is that correct?

[inaudible]

Mrs. Suzanne Bothwell: No?

[inaudible]

Mrs. Suzanne Bothwell: Oh, then we don't know.

So, at present, and I beg to make that correction, the Leader of Government Business has no involvement in what is on the Cabinet agenda. So, what that means is that every Tuesday, when they meet, our Ministers and the Governor and the Leader of Government Business, that it doesn't necessarily mean that the Leader has any input or involvement in what is going to be discussed on that particular day.

Hon. Alden M. McLaughlin, Jr. (Minister of Education, Training, Employment, Youth, Sports and Culture): I just needed to clarify that a little bit.

Mrs. Suzanne Bothwell: Okay, thank you.

Hon. Alden M. McLaughlin, Jr.: It's not that we don't have any input; we submit what are called papers—

Mrs. Suzanne Bothwell: Okay.

Hon. Alden M. McLaughlin, Jr.: —on matters that we want considered by Cabinet. But we don't have any ability to insist that the paper is on the agenda. The Governor decides what is on the agenda. So he can reject the papers. I just want to make that point.

Mrs. Suzanne Bothwell: Okay. Thank you for that correction. We will discuss that at future meetings.

So, what is being proposed is that the Leader of Government Business should set the agenda for Cabinet; and that the Leader of Government Business should chair the Cabinet (at present, the Governor chairs Cabinet), and he should also be responsible for setting the agenda.

Now, at present what is being asked for is that all of the ex-officio, the Official Members (meaning the Attorney General, the Financial Secretary and the Chief Secretary) no longer be able to sit as Members of the Legislative Assembly and Cabinet; that the office of the Chief Secretary be replaced with the office of Deputy Governor, who will be Caymanian. So, as we all know, in everyday life if the Governor has to go off Island, or if the Governor is sick, or if the Governor is changing over, we know Mr. McCarthy, who is our present Chief Secretary, will be asked by the Governor to sit as either Deputy Governor or Acting Governor. What is being asked is that that should not be a temporary position in these particular instances; but that there should be a constitutional office, a permanent office of Deputy Governor whereby this particular individual is chosen, selected, to hold that constitutional office and that that person must be a Caymanian.

The natural indication is that the Deputy Governor will assume some of the responsibilities of the Governor and that of the Chief Secretary currently. So, what is being asked is that there be a replacement of the position.

Secondly, there is being asked for the creation of a Minister of Finance. Now, this was originally put forward in the recommendation of the Constitutional Commissioners. I believe that if we do look at the position papers of those dates that there [recommendations] that we move towards a Minister of Finance. So it is a position that is currently elected in a number of other Overseas Territories.

So, the 2004 *Hansard* Report, on this kind of the relationship between the Governor and the local government, the Report indicated that the Chief Minister should preside as chair of Cabinet in place of the Governor, and that Governor's role in Cabinet should be advisory and non-voting. This was the position of the Government at the time in 2004 when they were debating the constitutional reform.

At present what we are advocating for, what the Government is advocating for in relation to Cabinet, is that: 1) the Official Members are removed and that they be replaced with a full ministerial government; 2) that the Cabinet should be chaired by the Premier as opposed to the Governor. The Premier should set the agenda of Cabinet and the Governor should be able to attend those meetings if he chooses to do so.

Now, the second part of examining the relationship between the Governor and the local government is examining the special responsibilities and powers of the Governor. Under our present Constitution, the Governor actually has set out "special responsibilities." That is what they are called. And they are: Defence, meaning if we have an invasion; Internal security, so issues of immigration and boarder control, threat, prison and so forth; Police, falls directly under the Governor; the Appointment of Civil Servants; and the Appointment of the Judiciary.

What is being proposed in the present *Summary of Proposals* (the blue document) is that the Constitution should allow the Governor, if he so chooses, to delegate some of these responsibilities, with the exception, of course, of Civil Service because we want this to maintain the independent of the Civil Service from political interference or influence, and defence because that involves the United Kingdom's ability to assist the Cayman Islands in time of war or time of threat.

Some of the recommendations are that there should be a national security council to advise the Governor on matters of internal security and police. This council is a body that would consist of the Governor, the Commissioner of Police, the Attorney General, some Ministers of Government and they would be able to discuss policy decisions on internal security and the police.

Now there is (in the red document here, at the very back, Appendix 2) an extract from the United Kingdom Audit Office. And it's called "Recognising the optimum allocation of risks between the UK and Overseas Territories." If you look at page 18, item number 2 "Internal security", it is recommended that this issue, this area, should be shared because "Approach to increased local participation in law enforcement issues are most likely to be effective."

So what this Audit Office, this main document, is is an audit on the Foreign and Commonwealth Office. What is happening in the Foreign and Commonwealth Office? How are they managing? How are they protecting the United Kingdom's interests? How can they do it better?

One of the recommendations that came out of this . . . this was actually released in last year, July. It was very late last year. In the area

of internal security, which is in our Constitution a special responsibility of Governor, there should be a move towards including local government in that decision-making process, with direction of the policy in those areas. And that is why there is a recommendation now that there should be a national security council established which would include the local government in the policy-making decisions when it comes to Cayman's internal security issues and, to a limited extent, police.

What is not being asked is we are not asking for the council to micromanage how the police operate. But, for example, every year they are allocated a budget. There should be a means of auditing whether or not they are wisely spending public funds, whether or not they are implementing proper programs to ensure that crime is reduced in the Islands. There were also recommendations that at a particular time the local police should be audited by the United Kingdom body (and I don't have the exact details) to ensure that their operating at the correct standards. So that would really form part and parcel of a recommendation for a national security council and why it is being recommended that this special responsibility of the Governor, which is solely the control of the Governor—it really involves no one else but him and the police, or him and immigration, or him and the prison—that this will allow for greater involvement for our elected representatives to know what's going on and have a say in what goes on.

Other areas where they feel that the relationship between the Governor and local government could improve particular undertakings that could be made. One is it that the Governor exercise powers in a way that is justified and appropriate? And I put in brackets here especially in those areas where he is not Constitutionally required to consult with Cabinet. What this recommendation does is it is asking for a constitutional undertaking by the Governor to commit to the people of the Cayman Islands that with the exercise of his powers that he will do so in a justified and appropriate manner.

Secondly, there is being asked at present that the Governor should be required to communicate to the Premier the reasons for his actions, especially those areas where he does not consult with Cabinet. So, if he takes certain decisions and takes certain actions, and Cabinet is unaware of these actions, what is being asked for is that he at least, either before or after the fact, provide very clear reasons to the local head of government.

The third item that is being asked for is that the Governor's actions should be open for judicial review, which means scrutiny by the local court. Under our present Constitution the courts are not allowed to inquire into the actions and decisions of the Governor, especially those decisions where he is operating constitutionally. What is being asked for here is that the court be allowed constitutionally to inquire into his decisions if there is an allegation of wrongdoing, maladministration, or so forth. And this is a common practice that we have locally. I mean, we see

it a lot in different immigration appeals. I am going to use that as an example because there is one that I know of.

If a person makes an application before the Board for a permit or permanent residence or something, and it is refused, and you feel that the reasons they provided are not justified, or they were not lawful, then you can either appeal through the court system, or you could ask for a judicial review which really goes into the reasons why the law, as to whether they applied the law correctly. And the court can actually make its own decision or they can send it back to that body.

So, that is what is being asked. It is being asked to allow a court to scrutinise the decisions of the Governor if there are any allocations of him not acting in the spirit of the Constitution.

We spoke about a national security council and so forth. And the 2004 *Hansard* Report indicated that the Governor should:

³“ . . . maintain powers in relation to law enforcement including the maintenance of domestic order and the role of the police, the Governor would have powers of appointment over the police.” Further that there should be an “ . . . advisory council chaired by the Governor, comprising the Chief Minister, the Finance Minister, the Chief Secretary and the Attorney General . . . ” and that they should be able to be involved in specific policies.

Now, the recommendation at that time was broader than just the police. But it did include among the Governor’s special responsibilities that are really in his sole jurisdiction.

Again we see here that part of the discussion is about the Governor, of course, maintaining his role, his purpose with the Public Service Commission, appointments of the Attorney General, Auditor General; maintaining his special responsibilities. However, it says that the Governor should through channels continue an internal communication to the Cayman Islands and the UK and should maintain his role in monitoring government and providing advice. The course here is a recognition of authority, that the Governor has an important role to play in that he is that mediator between Cayman and the UK but also that he should be there for good governance for the Cayman Islands in particular.

That 2004 *Hansard* Report also, similar to the recommendations here today, asked that the Chief Minister should preside over Cabinet. So back in 2004 the position of the government of the day was that the head of government should preside in the Cabinet and not the Governor. So we see that similar terms are being asked for and what is being asked for in this draft of recommendations is not new; it is something that we have seen before and something that we are now asking you to reconsider.

³ 2004/5 *Official Hansard Report* p. 287

Also stated in the 2004 *Hansard* debate by the Hon. McKeeva Bush was that the Governor's role in Cabinet should be advisory and not voting. That is something that I will seek clarification from the Ministers to confirm whether or not either the Governor sits in Cabinet or whether or not he should be a voting member.

Minister McLaughlin?

[pause]

Mrs. Suzanne Bothwell: I do think that he should sit; but I do not think that he actually is being asked to be a voting member or not.

[pause]

Mrs. Suzanne Bothwell: In addition to that, what was being said is that the Governor should not be able to override democratically elected leaders or retain total . . .

Pardon?

[Inaudible]

Mrs. Suzanne Bothwell: The question was, in our present proposal, we are asking that all the Official Members not be members of Cabinet. But the Governor may continue sit in Cabinet. Does this include him being a voting member of Cabinet or non-voting member?

Hon. D. Kurt Tibbetts: Non-voting.

Mrs. Suzanne Bothwell: Non-voting?

Hon. D. Kurt Tibbetts: Non-voting.

Mrs. Suzanne Bothwell: Thank you for the confirmation.

So we see here that the proposals that are being made now by the present Government in relation to the position of the Governor in Cabinet is the same that was being made in 2004 by the now Leader of Opposition in the *Hansard* Report—that the Governor's role in Cabinet should be advisory and non-voting.

So we see that these issues are not new; they may have been surprising to us when we read the *Summary of Proposals* on the 12th of January, but they are not new. They have been raised before and they have been debated before. What we are asking of you today is whether or not you agree or disagree with this position.

CHECKS AND BALANCES ON EXECUTIVE POWER

Mrs. Suzanne Bothwell: What is also being spoken about in full ministerial government is establishing constitutional responsibilities to the Cabinet and especially the Leader of Government Business. One of the major concerns that have been raised by people is that, *Oh, we are giving them too much power.*

Now, the question is, yes, their constitutional responsibilities will be increased. But that is for a particular reason or reasons. However, recognizing the concerns that people may have about increasing powers, one of the measures that the current Government, in the *Summary of Proposals*, has recommended is that a way of balancing the Constitution to make sure that there is a balance that a term limit should be imposed especially on that person who would hold the position of the head of government—Premier, Chief Minister, Leader of Government Business, whatever you want to call it.

And the PPM position that was outlined in 2003, at first, was that since there were widespread concerns perceived in an all powerful Chief Minister, the PPM proposed time limits to be imposed on the post. They recommended that the person who holds the position of head of government could only hold it for two consecutive terms. This should or will mitigate the creation of an autocratic and dynastic type of leader, which is also perceived fair.

So what is being proposed is, on the one hand you get the Leader of Government Business, increase his responsibilities in the Constitution in Cabinet and so forth; but, secondly, to limit that responsibility so that the person can't get too comfortable in that position and that we only allow him to sit for a maximum of eight years if successful in the LA. So that will mean, for example, if this provision was in our current Constitution and Mr. Tibbetts was successful in the next election as Leader of Government Business, that after that even if he ran again the most he can be is a Minister. He would not be able to be elected or selected to that position of Leader of Government Business or Premier.

So, that is one of the checks, one of the ways in which we can ensure that there is balance of power.

Now, in 2004 this particular issue was debated. The position of the present Government is widely spread. And it continues to be that position today. Now the position before, by the now Leader of the Opposition, in a document provided to me on January 21st is that there should be no term limits restricting the number of times that any Member of the LA could serve as Chief Minister. Through this report, the political party the electorate should have a right to choose the number of times that any one individual may serve as Chief Minister, very much like the situation in Bermuda.

What is being asked of you today is to consider, first, the issue itself: Should there be term limits on the position of Premier? Second, you either agree with it or you don't. So we see here one position and the oth-

er position so, what we are asking for today is what are your views? How do you feel about this?

Other accountabilities that are areas that the present Government feels could be used to keep power in check and which are outlined in the *Summary of Proposals* (particularly page 6 of the blue book, page 6 of the *Summary of Proposals*) one of the things that they said to keep power in check, to make sure our government is more accountable, is that there should be Constitutional backing for limit of public debt.

Currently, the United Kingdom limits the amount of borrowing the Cayman Islands can do. I do believe that our Finance Law may also contain some provisions dealing with that. What is being forwarded here is that is not enough to just have a law, because this goes to the heart of Cayman's success, its liability, its ability to compete in the economic market. We are putting forward an additional check that there should be constitutional backing for this position that is formed with the UK and their UK policy position of Overseas Territories and any statement that is currently being in the finance laws of our country. So we are asking for constitutional backing on that.

Secondly, they are asking that there be constitutional backing for freedom of information, is it through a Bill of Rights or otherwise? Now, at present our laws do not say anything about freedom of information. We do know that in January of next year there are plans to put into force the Freedom of Information Law. But, as you know, this is a law that has been put forward by Parliament, by the Legislative Assembly. So they create that law and they are the ultimate body to amend that law or to revoke it.

So, what is being put forward here is the public's ability to access information of the government freely. It is one of those things that have a very, very high standard; it is very important and should in some way have constitutional backing. What that means is that if it is in there local legislators would not be able to water down the law. What it does is set the parameters for the public's ability to access government information in a constitution.

Thirdly, what is being asked for is that the constitution states that Ministers and public officials should exercise their powers in the interest of the country and not for their private interests or benefit. This, of course, goes to the heart of good governance; it goes to the heart of undertaking to the country by those who are in charge of our public funds, those who are in charge of our affairs that they will act in our best interests.

And lastly, what is being ultimately asked is to make sure with a balance of power that particular oversight bodies be put in place. One is the Human Rights Commission. We currently have a Human Rights Committee, but as some of you may or may not know, this committee is a body that has been created by a particular ministry or minister. What it means is that independent outside of government to be able to func-

tion. The reason that is being recommended is because the basis of human rights is that their protection of the individual against the government. So that is part of the constitution whereby you as the individual in this room can seek protection from the government.

For example, the right to privacy. You all have your homes so the courts can protect you against invasion of your homes by the government for whatever reason. Also the right to form a family. We know we have a Marriage Law. Suppose we never had a Marriage Law. Suppose there was a law preventing people in these islands from actually forming a union.

When I was studying my West Indian history, parts of that involved the practices during slavery whereby slaves were not encouraged to be families. So one parent was always removed from the family. So that is one of the things that even in modern times it seems a non-issue, in historical times it was very relevant. But it may have some relevance today and it probably still has some relevancy around the world.

The second body that is being proposed is ensuring that the government or the ministers and senior public officials act in the best interests of this country, act in a transparent manner and accordance with the rules and laws of the country is to establish a commission for the standards of public life. In some countries it is called an Anti-Corruption Commission. But it was felt that maybe we wouldn't say "anti-corruption" we would say "Standards of Public Life" because ministers and civil servants are public officials.

So, this body will be an independent body responsible for monitoring corruption in government, to investigate corruption in government, inquiring into areas where there are conflicts of interest, and also this is specifically related to ministers and senior public officials.

What is being asked of you is whether or not you feel that the proposals to create these checks and balances are a) appropriate, are they appropriate?; and b) are they sufficient? Are they enough? So those are the two things that you will be asked as a citizen when you are asked about checks and balances and balance of power.

Now, if you wish to fill out this survey, you will see a number of items on your survey sheet. So pages 2, 3, and 4, are where the main questions are.

I will very quickly (because I know time is of the essence, and we do want to move forward with question time) . . . is that of the position of Attorney General is now being raised as a constitutional issue.

THE ATTORNEY GENERAL

Mrs. Suzanne Bothwell: Now, in the 2003 Commissioners' report, the Commission said there was a vision an opinion as to the role of the At-

torney General. They said that there was some support for the AG to be chosen from elected Members of the LA. They said at the time that there was some in support of the AG, as the chief legal advisor, should be an Official Member. And the final recommendation of the Commission was that if the AG was an elected Member that some of his responsibilities should fall to the Solicitor General.

So here we are in 2008, and this is still an issue that is being discussed. What is proposed here today in the *Summary of Proposals*, on page 8, is that the Attorney General should, 1) his role should be the chief legal advisor to Cabinet.

At present the Attorney General is constitutionally the chief legal advisor to Government. Now, "Government" is not defined in our Constitution. So does that mean the Governor alone? Does it mean the Ministers alone? Does it mean all of them?

What is being raised here is that there appears to be the view of the Government is that there is a conflict of interests in the role of the Attorney General. He plays a number of roles and some of those roles are potentially conflicting. One of the clarifications we would like to make constitutionally is to know exactly who does the Attorney General advise.

For example, in situations where there is a need for advice to Ministers of Government, and the Governor, because there may be a conflict between both Cayman and them. Who should the Attorney General advise? Should he advise one? Or should he advise both? Or, if he advises both, is that a problem?

So this is one of the issues that we are asking you to consider. We are asking you at this point in time that the Attorney General should be required to advise Cabinet—Cabinet meaning, those persons who sit in Cabinet. So he should be required to advise those persons sitting in Cabinet, not necessarily individuals who are not sitting in Cabinet or who at the time are not in Cabinet, their position of Cabinet. So that is what we are asking you to consider, number one.

Secondly, they are proposing that the Attorney General should not be a member of Cabinet or the Legislative Assembly. Primarily because he is a civil servant, so the question is should a civil servant participate in voting in directing or formulating government policy? Also, his constitutional role is as legal advisor. So the question is, Should a legal advisor advise alone, or should he also vote in these bodies, be a voting member? So, should he advise Cabinet and vote as a member of Cabinet?

They are proposing that he should not sit on this body and that he should only be there as a legal advisor. And he will attend the session, but not sit as a member.

The final recommendation in relation to the Attorney General is that the Governor is to make an appointment on the advice of the Premier. So if an Attorney General is to be appointed, that it should be done upon the advice of the Premier.

Now, at present, under our Constitution, the appointment of the Attorney General is the sole jurisdiction of the Governor. So the question is, If this individual is supposed to be advising Cabinet, should they at least have a say in who that person is to ensure that he is dutiful, to ensure that he has appropriate qualification, to ensure that he is a person who is independent. What they are also asking for is that this person also be indorsed by a Judicial and Legal Services Commission who would be the body whereby judges will be appointed, disciplined or removed.

They are also finally asking that the role of Attorney General as the person in the Constitution who is in charge of criminal proceedings be transferred to another separate office holder, namely, a Director of Public Prosecution.

Now, this is being recommended because there is a perception that it is a conflicting role because if the Attorney General advises the Government, the political arm of Government, should is also be in charge of prosecuting citizens of the country? It is not being said that there is any foul practice or maladministration, but in law we always tend to say that if there is appearance of it, then you must remove that appearance; you must not let it be said that that appears to look bad.

So that is what is being raised here, that we feel that this responsibility of criminal prosecution should be removed from the Attorney General because it should be held by a separate person who really has no other connection with the government. And that falls under the base principles of democracy, meaning that the administrative arm of government, the judicial arm of government, and the political arm of government. So separating those aspects of democracy.

A lot of countries actually have them separate. I am not sure which ones do actually allow their Attorney General to continue prosecution. But I do know it is common practice and form for that to be held by a separate person, a separate office. And that is what is being recommended here.

DEPUTY GOVERNOR

Mrs. Suzanne Bothwell: We see here the 2003 recommendations of the UK, and you can look at their position paper which is online, where we had the last review. I will go through very briefly what was the position of Deputy Governor. I did mention that before, that there was recommendation for a Deputy Governor to be created. And this is endorsed again in 2003 by the Constitutional Commissioners and both political parties.

We see here that there was previous endorsement for this position to be further responsibly to be other Cabinet elected representative. What is being proposed here is not that; what is being proposed right now, because it should be a person appointed and that person be a Caymanian.

ELIGIBILITY TO VOTE AND TO STAND FOR ELECTION

Mrs. Suzanne Bothwell: I am going to very quickly move to the issue of eligibility to vote and to stand for election in the Constitution. That is on page 10 of the *Summary of Proposals*.

Now, this is where the 2003 Draft Constitution come in. And at this juncture, because we are nearing the end of my presentation, I would just say that at this juncture if there are any questions relating specifically to the eligibility to vote and stand for election, if you would put your hand up, because I would like for us to deal with this part here now. But after I do the presentation. I hope my [inaudible] to the gentleman who wishes to ask a question.

So, eligibility to vote.

Now, this issue first came up in 2002. Who should be a voter? The Constitutional Commissioners presented the category of persons they thought should be a voter. Now this was in 2003 when the issue was being debated among the various sections of government, elected representatives, both felt that that the definition was too narrow.

As a result of discussions, negotiations, and ultimately the negotiation with the UK and the forming of the 2003 Draft Constitution . . . if you look at section 73 (which is found on page 59 of this document), you will see that the qualifications for elector are laid out here. So in this section of the *Summary of Proposals* begins by saying, "We propose the compromise reflected in the 2003 draft of the Constitution. This would make several adjustments to the existing rules. Because of changes in the United Kingdom rules, the existing requirements of Caymanian Status and British Overseas Territories Citizenship by virtue of a connection with the Cayman Islands needs to be extended to include those with Caymanian Status who have British citizenship by virtue of a connection with the Cayman Islands."

What we said here, "As regards the right to be registered as an elector [meaning a voter], the existing requirements concerning residence, domicile and parentage would be replaced by a single residence requirement, for 2 out of the 4 years preceding registration. Of course, those who now have the right to be registered would not be affected."

Now I am made to understand there seems to be some confusion as to what this means. So that is why at this point in time I was pained to explain the section and to also ask the Hon. Ministers here to interject at any time.

So, I think a helpful dialogue with you would be look at [?] and if you look at page 6, and you see a title "Eligibility to Stand for Election", you will see there that all of the requirements under our present Constitution or the current requirements and you will see what is now being proposed.

Now, you have to have Cayman Status and be 21 years old, right? And you have to domicile or be resident in the Cayman Islands [inaudible] nomination for election. And if you are qualified, it goes into whether or not you have any claim of citizenship, your residence, the number of days, the number of years you lived here.

Now the new provision, section 73 of the 2003 Draft, says that “subject to section 73 of the Constitution, a person shall be entitled to be registered as an elector in one electoral constituency only, but he shall not be entitled to registered as an elector for elections to the Legislative Assembly unless . . .” and it lists the qualifications for electors. It says under (a) he was immediately preceding the appointed day, entitled to be registered as an elector.”

So, for those persons in this Draft Constitution if you were planning to run for election you would have to satisfy all the criteria to be a voter first.

Then it goes on to say “or he is a Caymanian . . .” So what it says, if he is a Caymanian, so obviously there has to be particular criteria for that and the criteria will include anyone who is either a Caymanian by birth, or a Caymanian who holds Cayman status, or the right to be Caymanian I believe it is called in the Immigration Law.

He has to be 18, “the age of eighteen years”. So under the new proposal which is in the 2003 Draft, that person has to be 18 years. A Caymanian, 18 year old . . . “resident in the Cayman Islands at the date of registration.” So what does that mean?

That means that he has to at the time of registering to be an elector with the Elections Office, he has to be ordinarily resident in the Islands. And lastly, “he has to be resident in the Cayman Islands for a period or periods amounting to not less than two years out of the four years immediately preceding the date of registration.”

Now, this is very different from the current rule, because the current rule speaks about being resident in Cayman for 7 years, being in the country for more than 400 days of it; being out of the country for more than 400 days of the 7 years. If you were born outside the Islands, you have at least one parent or grandparent who is in the Islands with Caymanian status and it goes on and on and on. You can read the section.

What it does is that this section here opens up the qualifications for a person who is an elector. It allows more people, or reduces the requirements I should say, and this is the compromise which was post negotiations at the last round of the Constitutional negotiations. This is a condition that was the outcome of private consultation, debate in the House, different parties going to the United Kingdom to discuss constitutional reform, and this is what the outcome was.

So what is being proposed here is that we need to do this.

What you are being asked is do you agree, or do you not agree. What is your position?

Secondly, in the *Summary of Proposals* what is being asked is that we also [inaudible] that the qualifications for the right to stand for elections . . . what is proposed here is the domicile requirements would remain, but the parentage/residence rules would be adjusted. So for those with a Caymanian parent the residence requirement would be residency of 5 years out of 7 years before you were nominated. For those without a Caymanian parent, the requirement would be Caymanian Status for at least 25 years, and resident for 20 years out of the 25 years preceding nomination.

So what this is saying is that if you are of Caymanian lineage, then the only residency requirement you would need to have in order to stand for election is if you have been living in Cayman for 5 out of 7 years then you can be nominated to run in the elections. It is also saying that if you are a Cayman Status holder, which is without a Caymanian parent, so they are not citizens with Caymanian lineage, then they would first have to satisfy 25 years of residency and then 20 years out of that 25 years, they would have to prove they were resident . . . sorry, they would have to have Cayman Status for at least 25 years. So, of course, they would have to put in the years before that to obtain Cayman Status. The day they have Cayman Status in order to stand for election they are to possess Cayman Status for 25 years and then 20 years out of the 25 years they hold Cayman Status they must be resident in the Islands in order to be nominated to stand for election. So that is the proposal.

The gentleman in the cap has a question on . . . can we have a microphone for the gentleman in the cap?

A Member of the public [Comment]: If I could just make a comment.

Mrs. Suzanne Bothwell: Sure.

A Member of the public: You alluded to the second qualification of holding Caymanian Status 25 years, and you spoke about the [inaudible] period of acquired Status.

Mrs. Suzanne Bothwell: Yes.

A Member of the public: That is what . . . if you compare the Immigration Law now, for a person to acquire Caymanian Status [inaudible] 10 years in the Islands.

Under normal circumstances what the Law calls for is 8 years of residence to be eligible for permanent residence, 8 years of ordinary residence to be eligible for permanent residence. And then after acquiring permanent residence a 5 year period. Am I correct?

But then the whole process [inaudible] a 5 year period after acquiring to be able to be eligible for Caymanian Status. So, for that section to actually work, someone would have to be ordinarily resident on the Isl-

and for a minimum of about 15 years before they would be eligible for Status, then they would have to have been holding that Caymanian Status for another 25 years. So that's 40 years. We're not considering the age when they came to the Cayman either.

I just want to make sure that we get it into perspective.

Mrs. Suzanne Bothwell: Okay. Thank you.

And, gentleman in the cap, just regarding this issue, right?

I will just continue my presentation. We are almost finished and then we will move on to the full question time. Thank you.

A Member of the public [Question #1]: The only thing I can ask is why even suggest change if it's all a matter of requirements? But my concern is that none of his parents are Caymanian.

Mrs. Suzanne Bothwell: Yes.

A Member of the public: That just stands out. Maybe we could do a compromise where the Deputy Premier and Premier have to have . . . their parents have to be Caymanian before a person could get to that position. Because this is a small Island. Every other culture and every other clan of people, groups of people, they protect their culture.

Mrs. Suzanne Bothwell: Yes.

A Member of the public: And when you go to England, the Prime Minister is English, his parents are English. You go to America, the President is American, his parents are American. You go to Australia . . . you know? You go to New Zealand; you go to Canada, and I'm just picking the best countries out there. There is a reason for that—it is so the economy doesn't get raped by [inaudible—talk over on the tape] politicians.

It, to me, opens the door; it puts my mind in fear that that's a possibility. Maybe the timeframe will eliminate that or whatever, but why even take the chance? Like I said, make a compromise, the Premier and the Deputy Premier, their parents have to have a connection.

Mrs. Suzanne Bothwell: Well, thank you very much.

[applause]

Hon. Alden M. McLaughlin, Jr.: Let me just try to explain how this proposal came about in the first place.

Mr. Mario, that just outlined this possibility, is a concern everybody has.

But this proposal came about as a result of the discussions we had in 2003 when we were doing this same round of meetings. This was de-

veloped to try to give an opportunity to what I shall call first generation Caymanians to be able to stand for office. Because the way our Immigration legislation is, you can have a person born in Cayman who at the time they were born they are not Caymanian because their parents are not Caymanian, but their parents subsequently get Caymanian Status. So that young person would have been born in Cayman, grew up in Cayman, but because he or she didn't get status because his parents didn't have status at the time of his birth he would be forever excluded from taking part in the electoral process because he did not have Caymanian parents, even though in all other respects he is Caymanian—he speaks like us, he was born here he grew up here, he went to school here. So, we are not trying to say that this is cast in stone or is perfect and that we couldn't make adjustments. That is not the purpose of this meeting.

I am just trying to explain to you that we were aiming based on the feedback we had to try to find a provision that did not exclude people who all of us would regard as Caymanian because we wouldn't be able to tell whether they were Caymanian or not because they were born here, they grew up here, they speak like us, they are culturally Caymanian. They have gone to school here. The only difference would be that their parents were not Caymanian at the time they were born. What I call the first generation Caymanians. We are attempting to include them in the process.

Now, if the view of the majority of people is that they don't want first generation Caymanians to participate then that is a matter we will obviously have to consider. But I just wanted to try to explain how we got to where we are.

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mrs. Suzanne Bothwell: Thank you.

Now moving on to Speaker of the Legislative Assembly.

In 2003, the Constitutional Commissioners recommended that that office should not come from membership of the LA. However, the person should be a person who meets the qualifications of an elected representative.

Now, in 2008, this continues the position of the present Government. And in 2004 . . . I actually don't have the notes for that. I have to stay where I am at that point.

Now moving on to People-initiated Referendum.

PEOPLE-INITIATED REFERENDUM

Mrs. Suzanne Bothwell: A new proposal has been made that in our Constitution we should have provision for a people-initiated referendum. This means that it will allow citizens of the country, the electorate, if they

see an issue of national importance that needs to be addressed by the government that they can petition them to do so. However, there will be certain procedural requirements. For example, you will need to have a number trigger to invoke that.

The recommendation on page 11 of the *Summary of Proposals* says, “The revised Constitution should provide for people-initiated referendums. This should require a petition signed by not less than 20% of the electorate. It would then be the duty of the Parliament to settle the wording of the referendum question(s) and cause the referendum to be held within a reasonable period.”

“The decision of the referendum should be binding (provided that there is no inconsistency with human rights or other parts of the Constitution) if passed by more than 50% of the electorate . . .” and if passed by less than 50% of the electorate it would be advisory referendum.

Now what I will ask you to do in the survey is decide whether or not you feel there should be a people-initiated referendum provision in our Constitution to allow that.

Secondly, it is asked whether you agree with the recommendation as to the trigger percentage. Do you think it is low? Do you think it is too high? Do you think it is fair?

And then lastly, we ask you to look at the whole issue of a binding referendum.

AMENDMENTS TO THE CONSTITUTION

Mrs. Suzanne Bothwell: It is also being recommended that future changes to our Constitution should be carried out in a particular way. At present . . . How many of you know when we have constitutional changes? And how many of you know how these changes take place.

What this recommendation is to provide clarity and transparency to the issue and we need to formally recognise in our Constitution, the importance of our Constitution a physical document that should be changed without the permission of the citizens. And it suggested that it should be changed only by referendum unless it is agreed by both the Leader of the Government, by the Leader of the Opposition, the Constitutional change is one that is minor and uncontroversial.

So the principle will be that any future changes to the Constitution will be done by referendum, unless the two leaders of the Assembly, the Leader of the Opposition and the Leader of Government agree—they will have to agree—that the change itself to the Constitution is minor and that the change is uncontroversial. So what we are asking you to consider is whether or not you first of all agree that there should be some regulation as to how our Constitution is changed in the future; and whether or not you agree with the recommendation as has been made. If you have an opinion, that you can put those down.

Finally (or, almost finally), we recommended that there be a Judiciary —

Hon. D. Kurt Tibbetts: Sorry, sorry, forgive me.

Mrs. Suzanne Bothwell: Sorry.

Hon. D. Kurt Tibbetts: Just before you go on to that point, I remember in the past when you spoke about Constitutional change by referendum unless it was minor. A lot of people wondered what could be minor that would be considered, you know, that it really didn't matter too much. But the reason why that is included in the process is very simple (and I just want to make sure people are getting [inaudible]). It doesn't matter who is doing it and, with the best of intentions and perhaps with the best of abilities, you can create a document and it go through an entire process and it has, even a draft of it. It is possible.

If you go through that entire process and you have enshrined in your Constitution that every change has to be done by referendum, then you would have to go through almost what you would consider to be a full election by way of that referendum just to get that minor change done. I just want to make sure that you appreciate the reason why there is that little thing tagged on. You just never know the kind of minor changes that may need.

That is not the only example, but I just thought that I might explain that point. I just want to make sure that people appreciate that.

Thank you.

JUDICIARY—JUDICIAL AND LEGAL SERVICES COMMISSION

Mrs. Suzanne Bothwell: Thank you.

Now, we spoke of the Judiciary. I will just reiterate that the recommendation in the *Summary of Proposals* regarding the creation of a Judicial and Legal Services Commission. Now, the explanatory document goes into a bit more detail, but the recommendation is made because at present the appointment of judges is the sole jurisdiction of the Governor. And the removal of a judge actually . . . our present Constitution requires that a tribunal be established; that the tribunal make recommendations to the Governor. And once the recommendations have been made, that those recommendations, the Governor should forward those recommendations to England for them to decide whether or not a judge should be removed.

The present recommendation is to ensure that we can localize everything here. So when it comes to the appointment of judges to the removal of judges that that can take place in the Cayman Islands, and dis-

cipline of judges, and making sure that the judiciary operates with the roles to accommodate society and the recommendation that there should be a creation of a Judicial and Legal Services Commission.

So I ask you to when you have time to look at that provision and to also decide whether or not you think this is a good idea. I believe that the explanatory notes go into some detail as to the proposed composition of the Commission. And a lot of those recommendations have been borrowed from other Overseas Territories who have some similar commissions in place.

SYSTEM OF GOVERNMENT

Mrs. Suzanne Bothwell: Now the last item, second to last item on the agenda, is whether or not we should maintain the current style of Government or whether or not we should move to a bicameral system which includes a Senate.

In 2003 this issue was raised. The Constitutional Commissioners in their report did not support this system. They were concerned about cost. The present *Summary of Proposals* does not support this system, however, the 2004 *Hansard* note that you have here provided by the Honourable Leader of Government Business (sic), sets out on the front page his views as to why he believes the system would be a useful system in the Cayman Islands. I would like you to take the time to read it when you are thinking about this because this is a Constitutional issue that has been raised and you will be asked to look into it.

I don't know whether or not the Minister for Education would like to comment on the position in the *Summary of Proposals* because it says in the very introduction (on page 2) under "Westminster System" section, it goes on to explain what is the need; that we should keep our present system and why you think we should keep our present system of Government for some edification of our guests.

Hon. Alden M. McLaughlin, Jr.: Thank you Suzanne.

I just think you need to correct something you said when you were speaking awhile ago about the proposal by the Leader of Government Business or . . .

Mrs. Suzanne Bothwell: Oh, sorry—Opposition.
Leader of Government Business, at the time.
Sorry. Yes.

Hon. Alden M. McLaughlin, Jr.: Just wanted to make that clear!

[laughter]

Hon. Alden M. McLaughlin, Jr.: No, our fundamental objection or objections to a bicameral system in Cayman with a population of 60,000 people are really two things: 1) we believe that the proposal is undemocratic, because we are talking about the elected government appointing people to a position, or to a Senate, where they would actually have considerable authority and influence over the government of government policies. But those would not be people who were elected.

There are places, like the United States of America, with a different system of Government altogether. They do have a Senate, but it's an assembly of elected persons.

What will happen in Cayman, as has happened in some of the other jurisdictions around the region, is it will wind up with an appointed Senate, which are appointed by the Government and by the Opposition. But the people that are put there are little more than political pawns to give a rubberstamp to whatever it is the government at the time wants. They are positions which are paid which will increase overall expense with the business of running government.

To the extent that we need and do have, or do get advice from the broader community, that is something that all governments in Cayman have done through the years. We engage with the representatives of the Bar Association, Cayman plumbers, the accountants, the merchants, whoever. It is an informal system which has been around for a long, long time. It gives numerous vehicles use the Private Sector Consultative Committee, now the Financial Services Council, as well, where we get advice and guidance and suggestions from the broader community. The system has worked well. We see no reason why it ought to be changed.

So there the two points, one being the expense; and two, that what is being proposed is undemocratic; and the third that the current system works quite well. I don't see the point really of us trying to get civil servants out of Parliament and out of Cabinet for us to now go create another system made up entirely of unelected persons who would be able to influence government policy.

[applause]

Mrs. Suzanne Bothwell: Thank you.

Now, as this is an issue that will be raised throughout the public consultation period, may I ask you to consider exactly what has just been said? Look at the recommendations that have been outlined, the *Hansard* Report, the first and second pages which set out the scope and position for the Senate. At the end of the day, you the citizens are being asked to decide what would be the most appropriate position.

HUMAN RIGHTS

Mrs. Suzanne Bothwell: Now, human rights will just close off this presentation. It has been proposed in the *Summary of Proposals*, on page 3, that the Cayman Islands should contain with its Constitution a Bill of Rights.

The recommendation for this is multifold: First is that this is a desire that has been expressed by the Foreign and Commonwealth Office in 2001. Secondly, because Cayman has already been subscribed to a number of Human Rights conventions which we have international obligations. And we already have extended to us the right to petition to the European Court of Human Rights if there are any human rights breaches in Cayman.

Now, one of the most relevant reasons why we see is because right now because we do subscribe to the international conventions what is missing in the Cayman Islands is the fact that there is nothing tailoring the human rights to suit the Cayman Islands. That is part of the assumption of human rights, the International Convention on Human Rights.

The ultimate purpose of the Convention is to see the local countries create in their own jurisdictions a Bill of Rights which tailors it to their needs. Now, this can be done in some areas of human rights, but of course not in all because some human rights are considered fundamental.

Now, for those of you who have particular questions about human rights, because I am not a human rights expert, but I would like you to raise them tonight, but also if I can find the answers for you, but also I would like on behalf of the Human Rights Committee to attend the lecture we are having tomorrow evening at the South Sound Community Centre at 6.00, where there will be [?] there to discuss the issue of human rights. This is a series of lectures that they will be doing to help give our community a greater understanding of human rights and also for us as the Constitutional Review Secretariat, and the Human Rights Committee, to have a sense of what your concerns are.

One of the things being proposed is a Bill of Rights in the Constitution. Now, there are issues regarding remedies for citizens and ordinary residents? What is being proposed is that if it is found, if we do have a Bill of Rights, and if it is found that there is a breach and the court rules that there is a breach in any particular law, that the court would not be allowed to change that law itself; but that the court should transfer, or make a declaration of the wrongdoing but allow the legislature to amend the law accordingly. This follows the principle that under our Constitution it is the legislature that has the power to make and amend laws.

So, in maintaining this it is recommended that any breach of a law that that remedy or that change will be made by the legislature as opposed to the judiciary.

Also, in relation to damages, it is recommended that if a Bill of Rights is put in place in our Constitution, that it is done so, it is the very

last provision to come into force because it is something that we will have to prepare for as a country, especially Government. Because many human rights protections are against the Government, the Government would have to make sure that it is compliant in all of these areas.

Now I would like to (this is the end of the presentation) thank you very much for spending all of this time at this meeting. But I will open the floor now to questions. I will just ask that if you have any questions, please raise your hand, asking one question per person, because we do have approximately 60 or 70 people here tonight and we do want to maximize the number of persons who want to ask a question. However, if you have other questions you would like to ask, please put them in our question box because I will be publishing my newsletter and supplementing my website. Part of that will be trying to answer questions that you, the members of the public, have raised in these public meetings so that I can put my answers in the public domain.

Okay. Do we have any questions about anything?

The gentleman at the back. Please stand up.

A Member of the public (Mr. Whittaker) [Question #2]: Thank you for a very interesting presentation.

My question, [inaudible] but I first want to draw attention to a small document—

Question: Protection of Right to Life/National Security Council

Mrs. Suzanne Bothwell: The 2003 Draft, yes.

Mr. Whittaker: At page 12. The section on the Right to Life.

Mrs. Suzanne Bothwell: Yes.

Mr. Whittaker: Part 2, subsection (2) says, “(2) A person shall not be regarded as having been deprived of his life in contravention of this section . . .” and it refers to subsection (b), which says, “(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained . . .”

Subsection (c) “For the purpose of suppressing a riot . . .”

And subsection (d) “in order to prevent the commission by that person of a criminal offence.”

Mrs. Suzanne Bothwell: Yes.

Mr. Whittaker: So what that says to me is that essentially that sets out the terms and conditions under which the Government has a right to take my life.

Mrs. Suzanne Bothwell: Yes it does limit the right to life.

Mr. Whittaker: And it sets out the parameters under which the Government has a right to take my life.

Now, I would like to take us to the composition of the National Security Council.

Mrs. Suzanne Bothwell: Page 7 in the *Summary of Proposals*?

Mr. Whittaker: In the *Summary of Proposals*.

Mr. Whittaker: Now, if you look at the composition of the National Security Council, and you juxtapose that alongside this section that I have just read, “. . . the National Security Council should comprise the Governor . . . [who would essentially have more power], the [Leader of Government], the Attorney General [who would be appointed under consultation with the Premier, the Leader, whatever], the Commissioner of Police [who would be appointed under consultation with the Premier or whatever] . . .”

Mrs. Suzanne Bothwell: Yes.

Mr. Whittaker: . . . “and two other Ministers . . .” who also hold their seat at the behest of the Premier or Leader of Government Business, whatever.

So what we have is a situation here where the National Security Council is heavily controlled by the Government. And that same Government has the right to come in and kill me. I am not very comfortable with that.

Mrs. Suzanne Bothwell: Well, thank you Mr. Whittaker. Thank you.

I just would like to make some clarification on that issue.

The purpose of the National Security Council is not to get involved with day to day operations of the police. Those limitation of rights outlined in the Bill of Rights is basically the daily operation of the police. So, what I would ask members of the public to consider is not necessarily to look at these issues in relation to undo influence by the government or the police on the day to day operations because that is not the intention of the National Security Council. The National Security Council is to help formulate policy regarding the internal security of a country which goes far beyond that of the police in the sense of border control, et cetera.

However, Mr. Whittaker, you have raised an important point in relation to the human right to life itself. The question is, if in protection of life should there be these limits? Should it be deemed that protection of life is not fundamental because at times the police should be allowed to

shoot to kill in some instances to effect lawful arrest or to prevent the escape of a person lawfully detained?

Should there be [inaudible] protection of right to life for the purpose of suppressing a riot, insurrection or mutiny? Or (d), in order to prevent the commission by that person of a criminal offence?

At present in the Cayman Islands trained members of the police services are allowed to carry weapons. The question is that if our law enforcement arm of government is faced, for example, with a situation of suppressing a riot, insurrection or mutiny, should they not be able to shoot to kill in the protection of the local interests of the community? I am just raising the issue here.

Secondly, if the police are carrying out their duties whilst they are in pursuit of a person who has committed a crime, should they be prevented from shooting to kill?

Now at present, I am aware, and I do know that of course there are limitations on the level of force the police can use in particular circumstances. So, when we look at this issue of protection of right to life, we cannot look at it in a vacuum; we have to look at it in the rules and regulations that govern police. I do think that we are aware of many important occasions overseas whereby police are investigated because they have gone too far. So the starting position is not that in any circumstance a police can take a person's life; but it is within limited circumstances. And they are also heavily regulated by I believe they have their case laws in the UK which have to be human rights compliant and so forth.

But, as I said, it is for you to consider whether or not a National Security Council is appropriate considering what the parameters and responsibilities of that council would be. The reason for a National Security Council is to ensure that the Cayman Islands Government is involved in the policies that are made regarding our internal security. At present this is a responsibility of the Governor alone. So that means that the Governor alone as the person, or the employee of Government who has responsibility for that function, they are in direct dialogue with each other. That includes the fact that members of the community are not privy to what policy they are setting and they are also not privy to Cabinet, the elected representatives are also not privy to the policies that are being set.

Now, I do know that after the [inaudible] report regarding the discussions the present Government had with the Governor on their being informed about issues of internal security that he did give an undertaking subsequent to their request in their statement to have them briefed. But the issue should be continued on an informal basis and should we have to depend on a Governor that comes every couple of years? Or should this position be established constitutionally?

Thank you.

[applause]

Mrs. Suzanne Bothwell: Yes, thank you, Mr. McField.
Sorry, okay, Mr. McLaughlin.

Hon. Alden M. McLaughlin, Jr.: It would help on this end if Mr. Whittaker could say whether his problem or his issue is with the provision in the Bill of Rights; or whether the creation or perhaps composition or the proposal for a National Security Council? And whichever it is if you would explain to us what his proposal would be relating to how we should deal with these two important issues, that is, the section with the Right to Life and also the matter of who should be able to influence and guide policy relating to internal security.

I think we would all benefit from what his alternative proposals are in relation to that.

Mr. Whittaker: Well, I didn't have the benefit of extensive time to research it the way the Secretariat has, but I can say that my discomfort has to do with the relevant sections of the Rights that expressly give the Government a right to kill. Here we have actually put the death penalty in there as well.

I have a difficulty with my Government putting into its Constitution the parameters and the criteria under which it can take my life. I have great difficulty with that. And whilst I have great faith in you learned gentlemen—this has nothing to do with you—what happens 10 years down the line? Twenty years down the line when you have some crazy premier who is controlling a Security Council? We don't know what that person will do, and that is where my discomfort lies.

The makeup of the National Security Council is heavily weighted in favour of the person who is in charge as it stands right now. When you put both of those together, right now we are a very peace-loving country; but 10 or 20 years down the line it sets up the potential for anarchy.

Mrs. Suzanne Bothwell: Mr. McField has a question.

Mr. Steve McField: It's not really a question. A suggestion and also a confirmation of what he said.

First of all, let me congratulate your great performance and your great presentation.

Mrs. Suzanne Bothwell: Thank you.

Comment/Question: Attorney General/Definition of “domiciled” and “Caymanian” in Constitution

Mr. Steve McField [Comment]: Some 45 years ago people were asking the same question that I am asked every day, and that is the question of executive, ministerial government and the fact that today we have three people who are not elected by the people of this country sitting in Cabinet making decisions and voting on things that the elected executive brings forward on behalf of the people.

Now 45 years ago this was also a grave concern of Caymanian people. In fact, people of Savannah wrote a letter in the form of a petition to two visiting MPs that were visiting here at the time. I think one of the Ministers of the now Cabinet, Mr. Eden, was a signor of that petition letter too. They were concerned and they wanted, back in 1963, they alluded to the fact that they did not wish three ex-officio members to sit in Executive Council as it was then.

It seems to me that this whole question raises a great dilemma and I agree with the proposals that are made because we saw that in what I would call the Chucky debacle when the Governor called a Commission of Enquiry and the Government advisor, the Attorney General . . . under the Constitution it says that he is the advisor to the Government and then he went off and advised the Governor—who is the AG’s boss—because in fact he is really a civil servant. He is not elected by the Caymanian people and, therefore, it seems to me that his first loyalty was to the person who pays him his salary. And that has to be debated and that has to be defined.

And the other thing I would like to bring to your attention is the fact of the qualifications to vote and to sit in the Assembly. I notice that in the definitions, I noticed that in one section you said something about the qualification of being domiciled. Well, I can see now that that would lead to a floodgate of litigation if that is not defined. There is no definition of what “domiciled” is.

I think that we ought to try to get a good definition of what domiciled is because a lot of people are going to try to say that they qualify.

Also, the definition of what a Caymanian is, I don’t think it’s broad. I don’t think it’s defined. Perhaps if we went back to the Caymanian Bar Association and I think it was some 8 years or 10 years ago, they had a good definition of what a Caymanian is because the way it is now it is not really defined and it is going to lead to a lot of litigation if it is not defined exactly who is a Caymanian, what a Caymanian is. And we should not leave the definition to be brought in some other law it should be in the Constitution itself.

Thank you.

[applause]

Mrs. Suzanne Bothwell: Thank you, sir.

Panel Member or a Member of the Public [?]: Suzanne, if I may, I would like to comment on the Right to Life.

Mrs. Suzanne Bothwell: Thank you.

Comment: Right to Life

Panel Member or a Member of the Public [?]: I hope this will inform Mr. Whittaker, because I believe you are reading that section and saying that it is the Government that can [inaudible]. That isn't what it's saying.

What it is saying is that, "(1) No person shall be deprived intentionally of his life."

"(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use [and here are the important words], to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable . . ." for the following purposes.

In other words, the police, the Government, or anybody else will be subject to the law just as they are now. There is no way that this reduces your protection or gives the Government or anybody else a right that they don't presently have to take your life.

What it is saying is that the Government may not introduce laws which go beyond a certain a point. This is a [?] on the Government's part to change the system, but it is not taking away your existing rights that you have here that we all [inaudible].

[applause]

Mrs. Suzanne Bothwell: Thank you.

I would just like to state that this is something that we have noted in relation to concerns over the Right to Life, and it will be something that the Secretariat will, of course consider. And we encourage open dialogue on these issues.

Do we have any other questions please?

A Member of the public (Mr. Christian): Yes, just a short question.

Mrs. Suzanne Bothwell: Thank you Mr. Christian.

Question: Caymanian Born/Eligibility to stand for Election

Mr. Christian [Question # 3]: To continue on from Mr. McField's point as far as the definition of Caymanian.

In one of the surveys, page 6, regarding the ability to stand for elections, the proposal removed one significant word there from the original. It is the word “born.”

So I think in number 1, one of the areas is “Caymanian born” I think that would satisfy a lot of people, including myself.

I have a question, if you can answer this, if a person or a family was granted status in 2003 (whenever that was given) and a young person in that family was 16 or 17 years old, the family who acquired status would that 16 year old be eligible to stand next year?

By law his entire family is Caymanian.

Maybe someone could explain it then.

Mrs. Suzanne Bothwell: Can someone from the panel please clarify?

Mrs. Suzanne Bothwell: Yes, I think Mr. McLaughlin . . . yes, I think one of the issues that was raised before is that if there is no parentage, Caymanian parentage, for example, for election that the person would first have to have acquired status, that after they acquired status they have to hold the status for 25 years and then they must also fulfill the requirement of being resident in the Islands for 20 out of the 25 years that they hold status. That is for standing for election.

Mr. Christian: Right. But if his parents have status they are Caymanian.

Mrs. Suzanne Bothwell: Yes, but . . . was it they themselves . . . well, the parents did obtain status, so of course, that is true. That does go back to parentage. Caymanian parentage.

Mr. Christian: But it doesn't say Caymanian born.

Mrs. Suzanne Bothwell: No, it doesn't say Caymanian born. But I have made a note of your recommendation, that that wording is perhaps something that should be considered.

Mr. Christian: Thank you.

Hon. Alden M. McLaughlin, Jr.: Can I just ask a question?

Because the concern that was raised and now, Leonard, has heard it around . . . rather than us trying to justify what is there or try to tweak what's there I think what would really be helpful to us is if we could get a better feel for what people think about whether or not the right to stand for election should be available to first generation Caymanians, or whether we should retain the current provision which is the second generation Caymanian because that is what this issue is about. How do you get there in a technical manner, whether we need to make a few changes or whether it is possible.

But the bigger question is whether or not first generation Caymanians should have the right to stand for election, or whether essentially you have to have a Caymanian born parent for that to be possible.

We shouldn't think about where the person was born. That is, the person who is going to stand. Because there are many, many Caymanians who were born somewhere other than Grand Cayman. And no one would ever question whether they are Caymanian or not. The Leader of Government Business to start with. So, let's not think about where an individual was born, but, rather, the nationality of their parents at the time that they were born, because that's the issue.

Mrs. Suzanne Bothwell: Thank you.

A Member of the public [Question # 4]: I am hoping I am not being [?] but this is my future, so I need to voice this.

This is not what I want to talk about, but this touches on what you are saying: Every other country lets time gradually put it to the right. They don't alter the document that allows you to come through the door quicker. They allow time to do it. It's the perfect filter and it's been proven.

Hon. Alden M. McLaughlin, Jr.: Can I take you up on that?

A Member of the public: Yeah.

Hon. Alden M. McLaughlin, Jr.: Let's take the great United States.

A Member of the public: Right.

Hon. Alden M. McLaughlin, Jr.: Regardless of where your parents came from, if you were born in the United States, you can run for President of the United States.

Now, we have a very different system. So, I am saying that you have to be careful how you compare these things, because it's not apples with apples.

A Member of the public: That's why they have the caucuses. And when you run for office those people who pick who the candidate for president is, they have their criteria. It's a built in filter. England has it, Canada has it, they all have it.

All I'm saying is let's not throw open the door too fast; let time . . . when the parents pass on, the children are going to be fully into the Cayman system. So, naturally, eventually they are going to be into it. Time will do it.

Hon. Alden M. McLaughlin, Jr.: Sorry. I'm afraid I don't follow that kind of line.

But this is an important question. It is one that people have, and that is what affects [inaudible].

A Member of the public: It's all about loyalty. It boils down to loyalty. Where are you going to put your loyalty? When you become ExCo, MLA, when you make your decision where is your loyalty going to lie? Is it going to lie with your roots—wherever those roots are? That's the question. That's what people are sitting thinking about: where is the loyalty? What's going to guarantee that they are going to make a decision for this Island, for this country, for this people for their interests?

That's the concern.

Hon. Alden M. McLaughlin, Jr.: Absolutely.

But, if a person is born here, grows up here, goes to school here, all of those things, he is culturally Caymanian.

A Member of the public: Right.

Hon. Alden M. McLaughlin, Jr.: The only impediment is that their parents were not Caymanian born. Should that individual be excluded from the ability to stand for election? That is the question we are trying to answer.

Say everything you have to say.

A Member of the public: Time. It still comes down to time. Time will be the factor. They might get left out. They will have to make the ultimate sacrifice and don't go and run for politics. But their children will have that opportunity. By the time their children have that opportunity their loyalties cannot be questioned. They will go through the system.

Hon. Alden M. McLaughlin, Jr.: Okay.

But can I ask you then, why do you think that a person born here who grew up in those circumstances would be any less loyal to Cayman than you or I would be?

A Member of the public: Let's put it this way: you have an agenda. And that is to keep your pay prosperous. That is your agenda. That is all of our agendas. Right?

Now, when you determine where your home lies, then you determine where that agenda goes. All I can say, this makes me nervous. This makes me very nervous.

We are trying to open the doors [inaudible] I understand that. People going overseas in the 60s and 70s having children in other hospitals, some type of clause can be put in there that doesn't open the door

for any and all because believe it or not, we have had advisors from all over the world that input their advice into these matters. You guys get those advice and those advice that you might get might not necessarily reflect the feelings of us all. There could be ulterior motives why they are giving this advice.

All I am saying is think about your country, look at other countries, find out why they have protection in their system. Why do they have a caucus? Why do they go through nominations the way they do. And it's a built-in system to make sure that the loyalty of the person who is being nominated will look out for the interests of the country and the people. That is all at stake here.

I mean it makes me jittery thinking about it, that the door is going to open and the opportunities . . . I have to compete with the whole Caribbean for my job. The children of this Island are already competing for scholarships with the other Caribbean children that might be here. Now, in the future I am going to have to compete for the highest political seat in the House with everybody else too?

All I am saying is don't open the doors too fast.

But that's not what I wanted to talk about. The question I had was based on human rights . . . and I'm sorry for going on so long, but this is my future and I have to ask the question.

If anything goes bad, I don't want to look for it. I know who to trust. I know [inaudible] okay? So . . . but my question is, at the beginning of the ceremony the gentleman said prayers.

Mrs. Suzanne Bothwell: Yes.

Question—Bill of Rights—Freedom of Religion

A Member of the public [Question # 5]: I love that about Cayman.

Now, with the Bill of Rights enshrined in the Constitution or in the form of a domestic law, which one of those prohibits that from continuing? Because I really want to know if it goes into the Constitution and is enshrined would that allow for somebody to say 'you have offended my rights, you can no longer do that', and the judge jumped up and says 'Yes that's a violation of Human Rights'?

Mrs. Suzanne Bothwell: I think that is a policy of Government. I mean what the Bill of Rights provision on Freedom of Religion is supposed to be is exactly that—Freedom of Religion.

A Member of the public: Exactly.

Mrs. Suzanne Bothwell: Therefore, it is not that I can force any of you to pray to my God. You know, I am not saying you must pray to my God,

but at the same time it does not permit you to prevent me from praying to my God.

So, I think it's a matter of policy.

I do know that in some countries, for example the United States, they have very serious issues regarding prayer, but I do want to highlight that [inaudible] do not have a Bill of Rights. They do not have a Bill of Rights, and they do not subscribe to any Human Rights convention.

A Male: UK.

Mrs. Suzanne Bothwell: No, the United States.

It has a Declaration of Independence, but [talk-over/inaudible] a Bill of Rights, or signed on to a Human Rights convention.

So, I think it is something for more dialogue, but that is why we said that in having a Bill of Rights that allows us to tailor what we consider to be values, morals in our country.

For example, I know there was an issue regarding marriage that was discussed last year, whether or not a Bill of Rights would allow the marriage to open up to same sex. Now that is not the case, because as we have seen . . . if you do more research we invite you to visit our website and look at what's happening in other Overseas Territories. The British Virgin Islands, for example—a very small territory, like us, probably even smaller. This is an issue they face. And their Bill of Rights provision says that marriage should be determined by the domestic law in that country.

If you look at the 2003 Draft Constitution that you have there, you will see the Bill of Rights section there. And I believe I can say that when looking at the document it says “marriage is between a man and a woman.”

But it affords us an important opportunity to really tailor human rights for our country and that some rights will not be absolute, but what it does is definitely allow us to tailor our rights in relation to internal control, border control and so forth.

So I think it is a matter of policy. It is something that has been discussed. It is something that we should continue to discuss and I encourage you to go to human rights meetings and ask them these questions because they do have persons who work very closely with human rights and they are doing their bit too to help us during this constitutional project with the specific issues of a Bill of Rights. I would invite you to do that.

But, no, I think the issue of human rights is one about the rights of the individual. So, for example right now, there is nothing in our law which says that the State cannot tell you to close down your churches and stop practicing your religion. There is nothing, unless I can be corrected, I don't think there is anything in any law in the Cayman Islands, or anything in our Constitution which actually gives us the guarantee to practice our faith. What we have been doing is doing so on the good faith

that our Government would not go there; but should we be operating on that continued good faith for the next 40, 60, 100, 200 years. And that is why there is a provision for freedom of religion.

When I first started my office, this is something that also troubled me. I had to do quite a bit of research on it. And one of the surprising things that when I went on the Human Rights website, was that there were many Christians around the world who were advocating for human rights in the countries they lived in. Yeah, because part of being a Christian is to evangelize.

If you go out into the world and evangelize that means that you are operating on the premise that you can do so freely. But a lot of countries do not allow you to evangelize in particular freely. So we see that it is about allowing individuals, no matter who they are, where they are, whether they are Christian, whether they are another denomination, whether they are Muslims, whether they are Hindus, allowing them to practice their faith because practicing your faith is something that is fundamental to your core as a human being. And the question we have to ask is whether or not we feel freedom to allow people to practice their faith, including Christians, including Muslims, is something you want to put in it.

Is it Christian of us or faith-based of us to restrict another person from practicing something that makes them who they are as a human being? So those are some of the questions that I would like you to consider. I also invite questions you have on human rights—email me. We are going to have a talk show where you can call in. And we are having 16 more public meetings. We will try to do specific shows dealing with Human Rights so I would like you to keep abreast of what is really happening over the next couple of months.

Do you own research, you know, constitutional work is a lot of issues. But we have to get through them one by one as a country so that at the end of the day if we are going to move forward we move forward with absolute clarity on the issues.

A Member of the public: Thank you.

So I would like to add my vote to those congratulations—

Mrs. Suzanne Bothwell: Thank you.

A Member of the public: —I am quite sure I am not [inaudible] needs to be sorted out. I think it was very informative and very useful.

Mrs. Suzanne Bothwell: I just hope my voice will keep up!

[laughter]

A Member of the public [Question # 5]: I have a quick comment and I have a question.

I found it very interesting reading through the *Hansards* from the last time this was discussed in the House, and I was hoping that members of the press here tonight will have noticed that my good friend, Mr. Bush, certainly seems to have had a different [?] last time around. I quote. He said:

“We believe that [the Governor], should continue as an important channel of communication between the Cayman Islands and the United Kingdom, and should maintain a role in monitoring governance and providing advice. However, the Governor’s role in Cabinet should be advisory and non-voting.”

So when one hears the sort of stuff we are hearing these days about the current proposed suggestions in the current constitutional [?] the last time around. So I am hoping the press will take note of that and realise that a lot of it was nonsense.

A question for your please: In terms of a Bill of Rights, is the Bill of Rights contained in this document, what’s being proposed to put forward? If not where is the proposed Bill of Rights coming from?

Mrs. Suzanne Bothwell: The Bill of Rights proposed in the 2003 Draft is something that had obviously been agreed post negotiations in 2003. What we are asking for at this stage is that yes, we put in a Bill of Rights in some particular form in our Constitution, whether it is mirrored to this or if it goes beyond that.

What has been suggested particularly is that we expand our Bill of Rights, not only to really cover civil and political rights but other rights that feature in other more modern constitutions. For example, the right of disabled persons, those who are vulnerable in our society, the aged, the disabled, the young. These are specific groups in our society who for some reason do not seem to be equal members of our society. Sometimes they are forgotten, sometimes they cannot access services. I do know that in Ireland and in South Africa and other places there has been a move towards defending the rights of the child, in particular in the constitution.

I just want to put this into context. There is an International Convention Rights of the Child, which the Cayman Islands already subscribes to, right? And that is endorsed through domestic law. It would actually be endorsed through the Children Law that is passed but not yet enforced. So we already have to operate within international principles for the protection of the child.

⁴ 2004/5 *Official Hansard Report*, p. 285

However, the children are our future. Whilst most of these rights almost relate to the individual but they almost relate to the adult individual; they do not pay specific attention to those young persons who you have to actually look at in the context of who they are. So there are recommendations and we do include in a Bill of Rights special protection to children which would be the endorsement of our international obligations already.

Secondly, because of what the Cayman Islands are, there have been other recommendations that we also include specific environmental protection in our Bill of Rights because whilst after World War II the focus was on the rights of the individual, so they don't harm me physically immediately, right? We have now seen expansion of the understanding of what is a human right. A part of that right is your environment around you.

Now, we have the benefit of not being an industrialized country. So, for example the issue of the right to clean air is an environmental right. It is very important to law throughout the world. But it brings us to think about, what about Cayman? We depend very heavily on our environment for a number of reasons. Our mangroves act as a buffer; our marine life is a food source, it keeps our reefs healthy. Our reefs are also buffers to hurricanes. It is part of our major industry in our Islands. It directly goes towards how does protection of our rights measure the development of our country?

So those are some of the additional rights that we are advocating for in any Bill of Rights that Cayman has. And that is part and parcel of looking at a Bill of Rights and trying to tailor it. Of course, at the end of the day this is something that we are going to have to negotiate very heavily with the United Kingdom FCO if you give the Government the endorsement to negotiate constitutional reform.

Member of the Public: [Inaudible comment]

Mrs. Suzanne Bothwell: Well, I think that is a logical starting point because it is something that our country has agreed already, it just has not been put into force. But I don't think it's the end point. I think it is up to us now to start looking at it, scrutinizing it, and building upon it if necessary. What is being asked here is to ultimately build upon it.

Thank you.

I just want to ask everyone to please fill out your survey, if you can do so, tonight. This is going to be part of the measuring tool for the Secretariat to monitor, really, what are your views regarding particular specific issues. This will be very relevant at the conclusion of the public consultation period when there is going to be debate in the Legislative Assembly and a post consultation document for the referendum. If we are to have a post consultation document we really need to know to measure and gauge what it is you are thinking. What are the issues? Do you see

positively where your concerns should be discussed tonight? So that could ultimately even moved to referendum.

It is now 10.30 and I would like to go on perhaps for another 15 minutes. I don't want to keep you here until midnight!

Yes, Madam.

Question: Right to vote

A Member of the public [Question #6]: I just had a quick question about the right to vote.

According to this a person has to have Caymanian status, be 18 years old, be a British Territory Citizen, be resident in Cayman at the time he registered, and also have been resident for 2 years out of the 4 years prior to being registered.

Mrs. Suzanne Bothwell: Uh-huh.

A Member of the public: Now, you said something earlier about that having been changed from 7 years down to 2 years. That seems like a drastic jump—from having to be resident for 7 years to only having to be resident for 2 years in order to be able to vote.

And also the fact that Mr. McField alluded to earlier, about the definition of someone who is Caymanian or has Caymanian status.

We were doing the math earlier and, going through the correct channels, of being resident for 8 years and then you apply for permanent residence and then you have [inaudible] for 4 years. So you should have been resident for 13 years before you actually get status.

But, as we know, there are members of the community who currently hold Caymanian status who will not have gone through those channels and are you now saying that they only have to be resident for 2 years since holding Caymanian status before they are able to vote?

Mrs. Suzanne Bothwell: Thank you.

[applause]

A male voice: And it's a human rights issue that you are not going to get around.

[inaudible]

Mrs. Suzanne Bothwell: Under the 2003 Draft Constitution, once you are Caymanian the residency requirement is only 2 years out of the 4 years immediately before you do make an application to become an elector. This goes to the very heart of, I think Minister McLaughlin's recom-

mendation or proposal, is that the question that we are asked to look at is whether or not first generation Caymanians—because this is all tied together—should be able to either stand for election after a particular period of time, or . . . as a matter of fact, for the residency for the eligibility to vote, this does not just go to first generation Caymanians, it goes to *any* Caymanian.

So, the question is—any Caymanian—should you be prevented from voting if you have not been living here for 7 years? So that is a question that we have to ask. Should there be just a 2 year requirement for any Caymanian to apply to vote? And that means Caymanians who are at school. Well, I think there was an exemption for education purposes. Yes. But say for example who have migrated abroad 30 years ago and have now come back to retire, should they be allowed to register after 2 years of returning home? Or should they be allowed to register after 7 years of being home?

So it goes beyond the issue of first generation Caymanians, but any Caymanian.

I think the standing for election qualification is where the Minister is asking people to look at the issue of whether or not you feel that the requirement, the long periods of time you are asking people to be here, whether or not it is fair and appropriate to prevent them from fully participating in our electoral system.

But as it stands to electors, the question is should they be here for more than 2 years or not? Two out of the 4 years.

Hon. Alden M. McLaughlin, Jr.: I don't think that that is entirely right.

Mrs. Suzanne Bothwell: Okay.

Hon. Alden M. McLaughlin, Jr.: Your sister put it correctly. The current situation is we've got two categories again: One relates to those who do not have a Caymanian connection, and that is a parent or grandparent; and one relating to those who do.

So, in relation to those who have an historical connection, the residency requirement is 2 out of 3 years before the time they are registering to vote. And in the other instance it is 7 out of 9 years.

Now, Mr. Gilbert McLean is here, and he was at the roundtable in London so he will probably remember. If I make a mistake in my recollections, he can say so. But we spent quite a bit of time debating this issue in the negotiations in London in December of 2002. I can tell you that the UK were not at all happy with the proposal, which is the one that is set out here, because they thought that (that is, the new proposal) was too restrictive. The basis for that was this: They said more than roughly 50% of your population is not Caymanian. Really, the right to vote should be limited to persons who are nationals of a country, because you are living

in a country for any length of time, decisions made in the country affect you as they do persons who are nationals of the country.

We battled with them over this issue and they conceded to this extent. If you look in the 2003 Draft Constitution which came back what is included in there (which the UK did agree) is what we are proposing here. They agreed with that only on the basis that we gave them both Government and Opposition the assurance that there would be a new Immigration Law passed shortly, which would clarify this whole situation in relation to permanent residence and Caymanian status. Because we had a moratorium in place for years and years on the grant of Caymanian status and they were concerned about that, that we had people in the country who had been here for long periods of time who did not have Caymanian status and who were, despite being here 15, 20 years, excluded from the electoral process because they could not vote.

I tell you all about that background to say to you and to remind all of us that what we are trying to get, we the Government are trying to get from you, are indications of the basis on which we can negotiate for a new Constitution which accords with generally what most people want. But we have to bear in mind that we do not have the right to decide all by ourselves what precisely the Constitution is going to say. We have to negotiate with the United Kingdom for that document. So their views are going to weigh in on what the document finally looks like. So, no one should go away with the feeling that whatever you decide is a guarantee of what we can get as a Constitution.

So that in deciding what the proposals were that we were going to make as a Government for you the people, we bore all of that in mind. And we still bear all of that in mind. It is not only what we want, but we also have to cognizant of the attitude of the United Kingdom in what we are proposing because if you set unreasonable expectations, you are going to walk away from this process disappointed.

Part of the reason for the length of time it has taken to get these proposals to you is because we have spent along, long time thinking, talking, being advised about a range of things including the attitude of the United Kingdom to all of this.

So, I am not suggesting that when we not put forward other views and that we shouldn't change things. Not at all. But I am just saying that one of the reasons why we have left this [inaudible] is because we know that we would getting [inaudible]. And if we propose something else we are going to have battle about that, that's fine. But I am just explaining to you the basis of what [inaudible] at the moment.

[Female]: If we have no more questions from the floor then I will [inaudible] to Mr. Billy Adam.

Mrs. Suzanne Bothwell: I just wanted to say thanks [?] last question for the night. We have reached about 10.40, and we would like to wrap

up shortly. But if you have any other questions, please write them down and put them in our question box. Thank you.

Mr. Billy Adam: Again, I would just like to add my congratulations to the program tonight. I think you did a good job.

Mrs. Suzanne Bothwell: Thank you.

Mr. Billy Adam: First off, Mr. McLaughlin, [inaudible] frozen in the seats! I see them standing.

[laughter]

Question—UN Process

Mr. Billy Adam [Question # 7]: If you could ask them to fix the thermostat, they are frozen in their seats.

I have heard a lot about negotiations with our administering power, the United Kingdom. I have not heard anything though in the presentation that you have made as to what rights we have when we go into these negotiations with the United Kingdom.

I am going to bring into the discussion here something that has been discussed many times by People for Referendum and that is our inalienable right to self-determination under the UN Decolonization, which is the rules that were written by the United Kingdom when they drafted the United Nations Charter in 1945 specifically set the conditions out in 1960 in September to the three options of integration, free association or independence in our quest for self-determination. Free association being the option that the United Kingdom was very used to doing and they did with countries such as Australia, New Zealand and Canada, and to a large extent might have been tricked into it, but the Bermuda situation as they work their way through those larger countries for their independence.

I would just read from a short thing here at the conference in St. Vincent of the Decolonization Committee. Secretary General Kofi Anan from the UN made the statement regarding the declaration regarding colonial countries. He said, "It is essential that they understand the options regarding their political status and their right to choose their future freely."

As we have gone into the negotiations, we seem to be largely ignoring the rights that we have as a non self-governing territory administered by a member of the United Nations and the rights that we have to negotiate not from [?] but for the options that are there and available to us. And also, they call on a public awareness campaign to foster under-

standing amongst the people of the United Nations or the non self-governing territories of the self-determination option included in the relevant United Nations resolution on decolonization.

I would ask, Ma'am, if those options that are available to us and the right that you have when you go to the United Kingdom to discuss with them is fully discussed. I know you have a few things on your website, but it is really lacking in the extent and breadth of the documentation that is there.

We need to look at all of these so that the United Kingdom, which largely goes unchallenged by their Overseas Territories—and is getting away with it—and we are not bringing this to the attention of the people, what the United Kingdom is doing . . . they do not want the seminars to be held here in their Overseas Territories. It has only been in one. It was supposed to be in the Cayman Islands last year, but it ended up in Granada because the United Kingdom is frustrating the process and being uncooperative. Unlike countries like New Zealand, which is the favorite of their self-governing territories, we need to pay attention to the activities of the United Kingdom to get us taken off the list and to de-list us. And people need to understand that extent that will have.

Roy Osbourne and the different people in the FCO have made several statements to that extent. I would like to find out if anybody on the panel . . . where are we in that process? Is Professor Jowell looking at that?

And also, the other question is, What new constitutional things did we hear from Professor Jowell? I know he had one quick meeting on the Human Rights aspect. But is there anything else that he is going to tell us that is going to move checks and balances separation of powers in the new constitution? Where is that going to be? And what new democratic provisions are we going to have in there?

We've talked about referendum, but [inaudible]on that. But if you can just give us an overview on that plan and then tell us where are we with the UN process?

Mrs. Suzanne Bothwell: Well, just to answer your last question regarding Professor Jowell, his role is particularly as advisor and in helping the Government look at some of the options and so forth. So, it is not expected that he would be coming to our circuit of meetings simply because this is about us. He is there as a person who has been involved in negotiating constitutions for Overseas Territories with the UK, but we believe that he is not there to tell us what to do. At the end of the day we have put forward the documents and it is for us to decide amongst ourselves.

With respect to the decolonization, I would perhaps have to defer to the Government because my office has no, or cannot have any dialogue with the United Kingdom on this issue directly. That is a diplomatic issue. I have spoken about this and I have invited the organization to participate in our shows to continue towards public education. My invitation

is still open. So whenever you are ready to work with my office since you all have been involved with this for a very long time to help inform people about these issues.

[**Female**]: The final question of the night.

Mrs. Suzanne Bothwell: Minister McLaughlin you wanted to say something?

Hon. Alden M. McLaughlin, Jr.: Thank you Suzanne. Thank you [inaudible].

I think it is a misconception and misleading, really, to suggest that we have options. The fact that the United Kingdom however many years ago, in the 60s, agreed . . . well, they didn't agree. They didn't vote in favour of a resolution of the United Nations which provided these options of self-determination.

The United Kingdom has disavowed the resolution. They have said publically more than once and as recently as the Chamber of Commerce meeting when Minister Meg Munns was here that they would not countenance an arrangement approaching what is free association which essentially allow one of their territories to do whatever they want.

That is the reality that we have to deal with. This process has gone on now for more than six years trying to develop a constitution which the country wants. A question which I have never been able to get a satisfactory answer to from you or any of the proponents of this free association concept is what is it going to give us? Is it independence? Is it something approaching independence?

This Government has taken a pragmatic approach to this matter. And unless the electorate tell us through a referendum that they do not want the process to continue, or they do not agree with what is being proposed, we intend to deliver to this country a Constitution which accords with the majority will in advance of the next election. That is the basis under which we are operating.

What we have to do, and this is what we have been advised by Professor Jowell and everybody else, we have to negotiate for the best possible administrative arrangement we can get short of independence because no one on this side and not many people in the community that we have heard are advocating independence. So, once we accept and acknowledge that we will remain a British Overseas Territory, we also have to acknowledge and accept that there are going to be constraints on what the local government can do. You cannot have your cake and eat it too; you can't expect us to remain a British Overseas Territory, for which the United Kingdom still remains ultimately responsible internationally, and for them to say, *yes that's so, but we are also going to give up ultimate control and responsibility for what happens in your jurisdiction.*

What we are negotiating for, what we are proposing to negotiate for, is increased autonomy, increased control by the local government, increased involvement in matters such as those relating to national security and police and international agreements which affect us locally. That is what we believe as a result of six years now of discussions over this with the community and the United Kingdom and that is the feedback we are getting even now. That is what most people in this community are looking to get. The details of that are what we are trying to hammer out.

If we go down the road of trying to invoke or invite [inaudible] to get into a big battle with the UK over whether we should get free association, I suspect that all of us here who now want to retain [inaudible] play itself out. Or, the UK will do what they have a right to [inaudible] but we too would have had little to no opportunity for input.

We think that would be irresponsible, we think that would be the wrong way to go. Our indications are that the UK is anxious for us to reach an arrangement with them that is acceptable and which they are prepared to accept. The Turks & Caicos have gone that route, BVI has gone that route and Gibraltar has gone that route. All of them have constitutions with which the majority of their people are happy.

Somewhat ironically, I went to the meeting in Granada and there was the Gibraltar delegation hammering at the C24 Committee saying, "We want to be de-listed." And the C24 people are saying, "Well, we don't think that you have sufficient autonomy to be de-listed."

So, the C24 have their issues about self-determination as well because they have their own definition of what self-determination is, and it is not necessarily what a particular country believes we need. We would rather steer clear of all those political and diplomatic things and try to get the Cayman Islands a constitution which people would view as the right thing, that we will continue to progress, continue our economic growth and prosperity, protect human rights, give us that degree of autonomy that we feel is appropriate at this stage of our development and continue to be a model and the envy of the rest of the world. That is what we are after.

We really don't want to get engaged in these diplomatic or international battles with the United Nations and the UK. That is, I believe in many ways, a red herring. And we ought not to be going down that road and that is why we have taken the view that we have, that let's negotiate with the UK with the people's permission for the best constitution we can get. Forget about all the other things that are just going to delay the process again for God knows how many years. And that would be doing the country a disservice.

[applause]

Mrs. Suzanne Bothwell: Final question for the night.

Question—Constitutional Reform

A Member of the public [Question # 8]: Suzanne [inaudible] would this document then be a new statutory instrument?

Mrs. Suzanne Bothwell: No, this would be a package of Constitutional Reform that people will be asked to vote on in the referendum. What we have now is a summary. So after that we would not need like a draft constitution. I think Minister McLaughlin said that we have to negotiate first before we can sit down and actually start drafting new sections.

A Member of the public: Okay, so what I really wanted to know is if the referendum vote comes back yes that we want to change [inaudible] what is our assurance that the UK won't automatically . . . because the current document, this statutory instrument already in place won't automatically say, well this will be the new constitution without those changes.

Mrs. Suzanne Bothwell: I think I will ask the Government to answer that.

Hon. D. Kurt Tibbetts: Revoke any changes?

A Member of the public: Yes.

Hon. D. Kurt Tibbetts: I can tell you this because I [inaudible].

In two visits to London I personally had informal discussions with those people that mattered. They are anxious for us to come to the table and know we have the benefit of the new Gibraltar Constitution, the new TCI Constitution, the new BVI Constitution. And they know that there are things in those Constitutions that are different from that 2003 document.

They also know that there are some other concerns that are not in those constitutions that we need to talk about, and they are quite willing to talk without giving any commitments as to the end result.

But I can tell you, and I made the decision that I am totally confident that they are not about to try to thwart any of the process and that they are quite willing to talk about anything. But there are a couple of areas that they simply said they cannot let go if we are going to allow us to remain a British Overseas Territory. There are some responsibilities that they still have to oversee as a matter of course.

But I honestly believe that there are ways. . . as time goes on. Just like we did the negotiations in 2002, 2003, and got that document, the time has gone on from then until now allows for more discussion.

Okay?

Mrs. Suzanne Bothwell: I would just like to take this opportunity to thank everyone for coming out to the first Constitutional public meeting. I would just like to thank you for staying so late. It is a very important issue. Your being here, really establishes your commitment to the process and the fact that we see this as important.

I would encourage you throughout the month of January to really read the material. You don't have to read everything, but those areas that you are interested in and you have . . . in fact, it is a nice resource material. Visit our website.

We were talking about the BVI Constitution, the Gibraltar Constitution, if you need to access them I believe copies are at the public library and also on our website. If you have any questions, please contact our office, call us, we will take your calls, we will discuss them with you. We really want to make sure that as you move through this process there is open dialogue and that people have an understanding. That is what the focus of our meetings are about—understanding the issues and encouraging dialogue on them so that we as Caymanians can move forward in an intelligent and informed way so that at the end of the day it is your opinion becomes part of the proposals, part of the issues, and it is now for you to decide upon your destiny.

So thank you very much for coming.

Surveys please.

I am begging you. This is something vital to the Secretariat at the end of the process to really have a good pulse of how you feel about certain things. So please complete your surveys, hand them in. If you don't have it tonight, please I beg you, please make sure you get them to me. But I would prefer if you just take a couple of minutes and fill them out, write down your queries and just leave them here so we can process them and digest them.

Thank you very much.

[applause]