

Understanding Your Constitutional Rights

Part III The Executive (b.)

("The Executive" (part a.) was in the Friday, 3rd April paper)



CABINET MEETINGS

The 1972 Constitution gives the Governor extensive power in and over the Cabinet. The Governor is the presiding member during Cabinet meetings and has the sole authority to set the meeting agenda. If the Governor is unable to preside, then the Chief Secretary is customarily appointed to act in his, or her place. The Governor also uses his discretion to decide when the Cabinet will hold meetings, unless a majority of Ministers request that the Governor call a Cabinet meeting.

Under the Draft 2009 Constitution the Governor would remain the presiding member in Cabinet meetings, however, the Premier would preside during the Governor's absence. The Governor and the Premier would collectively set the agenda for Cabinet meetings. Cabinet would have the ability to determine its own procedures, which would include determining when meetings are held. The Draft 2009 Constitution would also secure the membership of the Deputy Governor and the Attorney General, however, they would sit in an advisory capacity and would not have the right to vote in the Cabinet.

Another new feature of the Draft 2009 Constitution is the attendance of persons at Cabinet meetings. In the event that an electoral district does not have representation in the Cabinet, the MLAs representing that district would be allowed to attend a special Cabinet meeting to be held every three (3) months. This would provide an opportunity for those MLAs to discuss matters affecting their districts; and to make budgetary proposals when the Government's budget is being developed.

CABINET SECRETARY

In 2003 the Executive Council was officially renamed the Cabinet by a Statutory Instrument and the post of Cabinet Secretary was created. However, the post is not a constitutionally established office. Under the Draft 2009 Constitution this office would be constitutionally recognized. The Cabinet Secretary must be Caymanian and appointed by the Governor in consultation with the Premier.

The Cabinet Secretary would be primarily responsible for:

- providing frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy;
- coordinating the development and implementation of policy between departments and ministerial portfolios and across the wider government sector;
- providing administrative and secretarial support for the Cabinet and the Premier;
- arranging the business for, and keeping the minutes of, the meetings of the Cabinet, or any cabinet committee, and conveying the conclusions reached at the meetings to the appropriate persons or authority.

SPECIAL RESPONSIBILITIES OF THE GOVERNOR

The special responsibilities that the Governor has the sole authority to exercise under the current Constitution are matters relating to :

- defence
- external affairs;
- internal security;
- the police;
- the appointment, dismissal and discipline of public officials (which he, or she delegates to the Chief Secretary).

Under the Draft 2009 Constitution the Governor would still be responsible for all previously mentioned matters, however, the Governor would be constitutionally required to delegate, or assign some areas of external affairs to Ministers and to consult the National Security Council in matters related to internal security and policing.

Some of the areas under external affairs for which the Governor would be able to assign or delegate responsibility would be :

- tourism-related matters;
- taxation and regulation of finance and financial services;
- European Union matters that directly affect the Cayman Islands; and
- the Caribbean Community, the Association of Caribbean States, the UN Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organization or institution.

The Draft 2009 Constitution would also require the Governor, unless instructed by the UK Secretary of State to do otherwise, to obtain the agreement of the Cabinet before entering, agreeing, or giving final approval to any international agreement, treaty, or instrument that would affect internal policy in the Cayman Islands.

THE ATTORNEY GENERAL AND THE DIRECTOR OF PUBLIC PROSECUTIONS

The current Constitution gives the Attorney General many different roles and responsibilities, some of which are considered to be conflicting. The Attorney General is currently the principal legal advisor to the government while also being responsible for undertaking criminal proceedings against persons accused of breaking the law.

The Draft 2009 Constitution would eliminate this conflict of interest by placing the Attorney General's responsibility for public prosecutions under a new position. The Attorney General would remain as the principal legal advisor to the government and the LA. Public prosecutions would be the responsibility of a newly created office of Director of Public Prosecutions.

NATIONAL SECURITY COUNCIL

The 1972 Constitution gives the Governor sole responsibility for national security in the Cayman Islands. The Draft 2009 Constitution would not remove this special responsibility of the Governor, but would provide for a body that would advise the Governor on policy matters related to national security.

The National Security Council would comprise:

- the Governor (Chairman);
- the Premier;
- two (2) other Ministers, appointed by the Governor, acting in accordance with the recommendations of the Premier;
- the Leader of the Opposition, or his, or her designate;
- two (2) civilians appointed by the Governor, after consultation with the Premier and the Leader of the Opposition;
- the Deputy Governor;
- the Attorney General;
- the Commissioner of Police.

The Governor would be required to follow the advice of the Council, unless the Governor considered that following the advice would negatively affect Her Majesty's interest. The operational and staffing aspects of the RCIPS would not be under the remit of the Council, and would remain the responsibility of the Commissioner of Police.

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