



Hon W McKeeva Bush, OBE, JP
Leader of the Opposition
PO Box 321, West Bay
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CAYMAN ISLANDS

Via Email: wbm1a@candw.ky

24 November, 2014

Dear Sir,

Re: Response to Proposed Review of the Cayman Islands Constitution

Thank you for your correspondence of 27 October 2014 which the Constitutional Commission has now been able to consider.

The review in question was conducted by the Commission under its own authority vested in it by the Constitution. Whilst we understand some of your concerns it appears necessary to take this opportunity to reiterate that the review was not exhaustive, hence our recommendation that both the Premier and yourself establish a Committee to consider those sections identified by us in further detail as well as to carry out a more exhaustive review, should you both feel that is timely and warranted in the circumstances.

Once the Committee completes its own examination of the issues raised, we believe that the further information you seek would be available for consideration. In addition, your recommendation to hire a constitutional expert is one which the Commission feels would be for the Committee to make, should it feel it appropriate to do so. A decision to follow this recommendation and fund the cost thereof would ultimately be for the Government to make. Indeed, engaging an expert at the preliminary review stage carried out by the Commission may well have been a significant waste of funds in the event the exercise went no further, funds which the Commission does not, in any event, have at its disposal.

The Commission agrees with your stance on fiscal prudence and as such it indicated in its correspondence of 14 October 2014 that "the sections detailed on the attached table are those the Commission believes are capable of being dealt with without the need for a referendum".

In the context of the issues raised it is for the Premier and yourself to determine the extent to which you consider any of the issues to be major or controversial, if at all. The Commission is well aware that you may not agree on the classification of each identified section and therefore consideration of some may be discarded by you on this basis. However, the Commission is also of the view that there are numerous sections which affect a wide range of persons, including legislators, and thus consensus by the House as a whole should be able to be gained.

Two such examples are:

1. s.49(3) - Appointment of the Premier and other Ministers

49(3) If no political party gains such a majority or if no recommendation is made under subsection (2), the Speaker shall cause a ballot to be held among the elected members of the Legislative Assembly to determine which elected member commands the support of the majority of such members, and shall record the vote of each member voting; and, where such a ballot is held, the Governor shall appoint as Premier the elected member who obtains a majority of the votes of the elected members.

Constitutional Commission's comment:

It should be made clear that where the Speaker is elected from within and there is a vote to decide the matter, the Speaker is still included for the purposes of determining a majority notwithstanding the Speaker having only a casting vote.

2. s.85- Recalling dissolved Legislative Assembly

If, between a dissolution of the Legislative Assembly and the date on which the next ensuing general election is held, a matter arises of a nature and urgency which in the opinion of the Governor makes it necessary for the Assembly to be recalled, the Governor may, acting after consultation with the Premier, summon the Assembly that has been dissolved and that Assembly shall thereupon be deemed (except for the purposes of section 86(1)) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

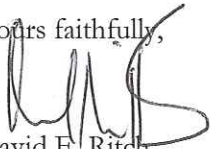
Constitutional Commission's comment:

- a. This section provides a mechanism to extend the life of the House where it has been dissolved but there is no provision in the Constitution to allow for an extension of the House if it has not been dissolved prior to an emergency occurring. This would require a Constitutional Amendment as was the case in 2004. There is perhaps the need to add a mechanism which allows for extension through consultation and agreement between the Governor, the Legislative Assembly and the Foreign and Commonwealth Office in appropriate circumstances where this other situation prevails; and
- b. In utilising the powers in this section the Governor is able to recall the House after it has been dissolved but does not provide a "long-stop" date as to when the general elections would then be held to trigger the subsequent dissolution.

The Commission hopes that the above explanations have been useful. The Commission is prepared to meet with you at your convenience to discuss your concerns and hopefully find a way to move the review forward constructively.

In closing the Commission wishes to indicate that as your initial response to the Commission of 27 October 2014 was forwarded by yourself to the Cayman Compass, the Commission will publish this letter, as well as your initial response, on our website within seven days of transmission to you.

Yours faithfully,



David E. Ritch

Chairman

Constitutional Commission

cc: Her Excellency the Governor
Honourable Premier
Joint Team Leader, Overseas Territory Directorate, Foreign and Commonwealth Office