

Formal Negotiations on a New Cayman Islands Constitution

First Round

Between

The Cayman Islands Delegation

- and -

The United Kingdom Delegation

Monday, 29 September 2008 – Thursday, 2 October 2008

Held at

The Ritz-Carlton, Grand Cayman

The United Kingdom's Delegation

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The Cayman Islands Delegation

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and a National Negotiating Team comprising representatives of: <u>The Elected Government</u>

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Hon. Alden M. McLaughlin, Jr. JP – Minister of Education, Training, Employment, Youth, Sports & Culture

Hon. Anthony S. Eden, OBE, JP - Minister of Health & Human Services

Hon. Charles E. Clifford, JP - Minister of Tourism, Environment, Development & Commerce

Hon. V. Arden McLean, JP - Minister of Communications, Works & Infrastructure

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The Cayman Islands Conference of Seventh Day Adventists - Pastor Shian O'Connor

The Chamber of Commerce

Mr. Will Pineau – CEO Chamber of Commerce Mr. Eddie Thompson, President Elect Mr. Stuart Bostock, Vice President

The Human Rights Committee

Ms. Melanie McLaughlin, Chairperson HRC Constitutional Working Group Mrs. Sara Collins, Partner and Head of Specialist Trust Disputes Group

i

Table of Contents

| PROPOSAL 9 – MORE CHECKS AND BALANCES ON EXECUTIVE | | | |
|--|--|--|--|
| POWER | | | |
| HON. D. KURT TIBBETTS | | | |
| MR. ROLSTON M. ANGLIN | | | |
| HON. D. KURT TIBBETTS | | | |
| MR. ROLSTON M. ANGLIN | | | |
| HON. D. KURT TIBBETTS | | | |
| HON. W. MCKEEVA BUSH | | | |
| MR. WILL PINEAU | | | |
| MR. ROLSTON M. ANGLIN | | | |
| MR. WILL PINEAU | | | |
| HON. D. KURT TIBBETTS | | | |
| HON. W. MCKEEVA BUSH | | | |
| HON. D. KURT TIBBETTS | | | |
| HON. W. MCKEEVA BUSH | | | |
| HON. ALDEN M. MCLAUGHLIN, JR | | | |
| HIS EXCELLENCY THE GOVERNOR | | | |
| HON. W. MCKEEVA BUSH | | | |
| HON. ALDEN M. MCLAUGHLIN, JR | | | |
| HON. ALDEN M. MCLAUGHLIN, JR | | | |
| MR. ROLSTON M. ANGLIN | 21 | | |
| | | | |
| DDODOGAL 10 NO CHANCE WITH DECADD TO THE CO | VEDNOD'S | | |
| | | | |
| PROPOSAL 12 – NO CHANGE WITH REGARD TO THE GO RESPONSIBILITY FOR THE CIVIL SERVICE | | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE HIS EXCELLENCY THE GOVERNOR | | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE HIS EXCELLENCY THE GOVERNOR HON. W. MCKEEVA BUSH | 26 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE HIS EXCELLENCY THE GOVERNOR HON. W. MCKEEVA BUSH HON. D. KURT TIBBETTS | 26 27 28 28 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 28 29 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE HIS EXCELLENCY THE GOVERNOR HON. W. MCKEEVA BUSH HON. D. KURT TIBBETTS MR. ROLSTON M. ANGLIN HON. D. KURT TIBBETTS | 26 27 28 28 28 29 29 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 28 29 29 29 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 28 29 29 29 29 29 31 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 28 29 29 29 29 29 31 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 29 31 33 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 31 33 RVICES | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 31 33 RVICES 34 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 29 31 33 33 RVICES 34 35 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 31 33 RVICES 34 35 35 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 31 33 RVICES 34 35 35 35 35 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 33 RVICES 34 35 35 36 36 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 31 33 RVICES 34 35 35 35 36 36 36 37 | | |
| RESPONSIBILITY FOR THE CIVIL SERVICE | 26 27 28 28 29 29 29 29 31 33 RVICES RVICES 34 35 35 35 35 35 35 35 37 | | |

| HIS EXCELLENCY THE GOVERNOR | 40 |
|---|----|
| HON. ALDEN M. MCLAUGHLIN, JR | 41 |
| HON. W. MCKEEVA BUSH | 42 |
| HON. W. MCKEEVA BUSH | |
| PASTOR AL EBANKS | 45 |
| HON. SAMUEL W. BULGIN, QC, JP | 47 |
| HON. ALDEN M. MCLAUGHLIN, JR. | |
| , | |
| PROPOSAL 14 – LIMIT THE ROLE OF THE ATTORNEY GENER | AL |
| AND CHANGE THE RULES FOR HIS APPOINTMENT | 48 |
| PROFESSOR JEFFREY JOWELL, QC | 48 |
| HON. SAMUEL W. BULGIN, QC, JP | 50 |
| HON. ALDEN M. MCLAUGHLIN, JR | 50 |
| PROFESSOR JEFFREY JOWELL, QC | 51 |
| HON. SAMUEL W. BULGIN, QC, JP | 51 |
| | |
| PROPOSAL 16 – CREATE THE OFFICE OF CABINET SECRETA | |
| HON. W. MCKEEVA BUSH | |
| HON. ALDEN M. MCLAUGHLIN, JR | 53 |
| | |
| PROPOSAL 17 – ESTABLISH A HUMAN RIGHTS COMMISSION | |
| HON. ALDEN M. MCLAUGHLIN, JR | |
| MS. MELANIE MCLAUGHLIN | |
| PROFESSOR JEFFREY JOWELL, QC | |
| MS. MELANIE MCLAUGHLIN | |
| PASTOR AL EBANKS | |
| MS. MELANIE MCLAUGHLIN | |
| PASTOR AL EBANKS | |
| MS. MELANIE MCLAUGHLIN | |
| HON. SAMUEL W. BULGIN, QC, JP | |
| MS. MELANIE MCLAUGHLIN | |
| PASTOR SHIAN O'CONNOR | |
| UDP LEGAL ADVISER | |
| HON. W. MCKEEVA BUSH | |
| MS. MELANIE MCLAUGHLIN | |
| HON. W. MCKEEVA BUSH | |
| MS. MELANIE MCLAUGHLIN | |
| PASTOR AL EBANKS | |
| MS. MELANIE MCLAUGHLIN | |
| PROFESSOR JEFFREY JOWELL, QC | |
| HON. ALDEN M. MCLAUGHLIN, JR. | |
| HON. W. MCKEEVA BUSH | |
| HON. D. KURT TIBBETTS | |
| MS. MELANIE MCLAUGHLIN | |
| UDP LEGAL ADVISER | 68 |
| PROFESSOR JEFFREY JOWELL, QC | 69 |

| HON. W. MCKEEVA BUSH | 69 |
|--|-----|
| HON. D. KURT TIBBETTS | 69 |
| HON. W. MCKEEVA BUSH | |
| HON. D. KURT TIBBETTS | |
| HON. W. MCKEEVA BUSH | 70 |
| MS. MELANIE MCLAUGHLIN | 72 |
| HON. W. MCKEEVA BUSH | 72 |
| MS. MELANIE MCLAUGHLIN | |
| HON. W. MCKEEVA BUSH | 73 |
| MS. MELANIE MCLAUGHLIN | 73 |
| HON. W. MCKEEVA BUSH | 73 |
| | |
| PROPOSAL 18 – ESTABLISH A COMMISSION FOR STANDAR | |
| PUBLIC LIFE | |
| HON. SAMUEL W. BULGIN | |
| HON. ALDEN M. MCLAUGHLIN, JR. | |
| HON. D. KURT TIBBETTS | |
| HON. SAMUEL W. BULGIN, QC, JP | |
| HON. ALDEN M. MCLAUGHLIN, JR. | |
| HON. SAMUEL W. BULGIN, QC, JP | |
| HON. D. KURT TIBBETTS | |
| HON. SAMUEL W. BULGIN, QC, JP | |
| HON. ALDEN M. MCLAUGHLIN, JR. | |
| PROFESSOR JEFFREY JOWELL, QC | |
| HON. ALDEN M. MCLAUGHLIN, JR. | |
| HIS EXCELLENCY THE GOVERNOR | |
| HON. D. KURT TIBBETTS | |
| HIS EXCELLENCY THE GOVERNOR | |
| HON. D. KURT TIBBETTS | |
| HIS EXCELLENCY THE GOVERNOR | |
| HON. D. KURT TIBBETTS | |
| PROFESSOR JEFFREY JOWELL, QC | 81 |
| PROPOSAL 19 – OUTLINE THE RESPONSIBILTIES OF THE | |
| GENERAL | |
| HON. W. MCKEEVA BUSH, OBE, JP | |
| HOW, W. MCREEVA DUSH, ODE, JF | 02 |
| PROPOSAL 20 – HARMONISE THE RESPONSIBILITIES OF 1 | THE |
| VARIOUS OVERSIGHT BODIES | |
| MR. ROLSTON M. ANGLIN | |

| MR. ROLSION M. ANGLIN | 82 |
|-----------------------------|----|
| HON. D. KURT TIBBETTS, JP | 83 |
| HIS EXCELLENCY THE GOVERNOR | |
| HON. D. KURT TIBBETTS | |
| HIS EXCELLENCY THE GOVERNOR | |
| HON. D. KURT TIBBETTS | |
| HIS EXCELLENCY THE GOVERNOR | |
| | |

| HON. D. KURT TIBBETTS | 85 |
|-------------------------------|-----|
| HIS EXCELLENCY THE GOVERNOR | .85 |
| HON. D. KURT TIBBETTS | .85 |
| HIS EXCELLENCY THE GOVERNOR | .86 |
| PROFESSOR JEFFREY JOWELL, QC | .86 |
| HON. D. KURT TIBBETTS, JP. | .86 |
| PROFESSOR JEFFREY JOWELL, QC | .86 |
| HON. D. KURT TIBBETTS, JP. | .88 |
| HON. ALDEN M. MCLAUGHLIN, JR. | .88 |
| | |

PROPOSAL 21 – SIMPLIFY THE RULES ON ELIGIBILITY TO VOTE. NO CHANGE TO THE RULES ON ELIGIBILITY TO STAND FOR

| ELECTION | 89 |
|------------------------------|----|
| HON. D. KURT TIBBETTS | 90 |
| MR. ROLSTON M. ANGLIN | 90 |
| HON. D. KURT TIBBETTS | 91 |
| MR. CLINE A. GLIDDEN, JR | 91 |
| HIS EXCELLENCY THE GOVERNOR | 92 |
| HON. V. ARDEN MCLEAN | 92 |
| UDP LEGAL ADVISER | 93 |
| HON. V. ARDEN MCLEAN | 94 |
| HIS EXCELLENCY THE GOVERNOR | 94 |
| MR. ROLSTON M. ANGLIN | 94 |
| MR. CLINE A. GLIDDEN, JR | 95 |
| HON. ALDEN M. MCLAUGHLIN, JR | 96 |
| | |

WEDNESDAY, 1 OCTOBER, 2008 2008 CONSTITUTIONAL NEGOTIATIONS HELD BETWEEN CAYMAN ISLANDS DELEGATION AND THE FOREIGN AND COMMONWEALTH OFFICE

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Good morning, everybody.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, before you begin I'd like the recording man in the back there to play something, just before we begin, two bars of it.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Sets the mood for the day.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Mr. Chairman, I wonder if we could start with a prayer. Would that be appropriate?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Of course.

PRAYER

Let us pray. Come before us, oh, Lord, in these and all Thy doings, and further us to Thy continual help that in all our works began, continued and ended in Thee, we may glorify Thy holy name, and finally by Thy mercy obtain everlasting life, through Jesus Christ our Lord. Amen.

[music played]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Thank you, Mr. Chairman, for allowing that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Very nice. Everyone is now in a serene mood except me.

[laughter]

1

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Mr. Chairman, if I might on another matter, I'd like to introduce someone that's here with us this morning for the first time, Mr. Richard Coles, who is an attorney — former Attorney General, who has been assisting us with some of the efforts that we have been making, and we're pleased that — he's been off Island, and we're pleased that he's able to be here, and we thank again the Government for allowing him to be a part of our delegation. On maybe a little lighter note, I've instructed him that he's probably the cheapest attorney here this morning because we're not paying him for his advice and services. Thank you, sir.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman good morning. Just to let the Chair know that our Minister of Health, Minister Eden, was also off Island. He's here with us today also. Thank you.

PROPOSAL 9 – MORE CHECKS AND BALANCES ON EXECUTIVE POWER

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay, well, welcome to Mr. Eden, Mr. Coles. He must certainly be the cheapest lawyer here, I should think.

I would like to start, if it's agreeable to you all, with the next proposal, Proposal 9: More Checks and Balances on Executive Power. And I ... to make things easier and cut to the chase, all of these — all of the elements of this proposal are, in principle, acceptable to the UK, subject to checking the drafting of one or two of them. And I — I noticed that the reference to the Freedom of Information Law, which is point 3 in the Working Draft circulated you yesterday is picked up on page 71 and it's draft section 112, and I think that looks all right from our point of view. I know that there has been enacted a Freedom of Information Law here, and it's due to come into force the beginning of next year, something like that.

I wanted to ask a question about point 6, if I could, which says: **Constitutional backing for the limits on public debt contained in the Public Management and Finance Law...** and I scoured the Working Draft and I couldn't find anything corresponding to that, but perhaps you could point it out to me if it is there or if — please don't misunderstand me, I have no objection to saying something about this, but I just couldn't find where it was reflected. HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman, this point is a point that the Government wishes to promote in a new Constitution. When we met with the Opposition and the other NGOs last week Thursday, the Opposition themselves seemed to have some difficulty with it. We certainly would wish for it to be in a constitution.

Now, you have said to us that you don't have a problem with it. I don't know what the Opposition's position is today, but even if you don't see it in the Working Draft, we certainly would like for a section to include that. And I think it's self-explanatory. It is in a law now, the Public Management and Finance Law, our own legislation, we just would like for it to be enshrined in a new constitution.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. I think the only qualification I would suggest — and, again, it always is subject to how it is worded, is that it might be useful to include wording which would allow the limits to be acceded in case of emergency, and we would suggest "with the consent of the Secretary of State" or something like that to make sure it is, you know — for example, if you have something like hurricane damage or something and one needs to borrow in an emergency —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Above the limits it wouldn't be possible.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah. Mr. Chairman, that is fine, and I suspect the Opposition would accept that and perhaps we might come to agreement with that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. Very good.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman, that was our principal objection, sir, and so with that sort of caveat, as a commitment, we would have no difficulties accepting that proposal.

3

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Excellent. Excellent. What a good start. The playing of the music was inspiring, McKeeva.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Yes, sir, with some other things, but never mind.

[laughter]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): You know, one time in a campaign meeting, the Leader got up to pray and me and Mr. Benson was on the platform together, and he got up to speak afterwards, after the opposition had spoke and he said: My God, they hadn't played two minutes when they throwed God out the window.

[laughter]

HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): So ...

[inaudible comment]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Now, the next one I'd just like to ask a question on, but I think it — I was — I think it looks okay in the Working Draft, and that's point 7 on the Public Accounts Committee; the Public Accounts Committee is, of course, a very important body. And I was a bit curious about the way that this proposal was expressed in terms of what appeared to be two Public Accounts Committees operating at the same time, but then I looked at the Working Paper, and all my bafflement disappeared because it said that ... where is the one? Where's the provision? Yes, it's on page —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Fortynine.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — 49, section 80, And I think the way that this is formulated looks, in principle, fine. And paragraph 4 says: **The Committee shall be reelected after every dissolution of Parliament**. I assume that means once — obviously once a new — after the elections, once a new legislative body is in session one of the first things they do is to elect a new Public Accounts Committee. One might inject "as soon as possible" or something like that in there, but anyway.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah, Mr. Chair. This was one of the revised proposals, but subsequent to the publication of this document, when we met last week Thursday, the Opposition had some points, and we contemplated and had a rethink. And hence the draft reflects more what the position is subsequent to that meeting.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman, I — we appreciate the rethink; however, there is one important principal feature of a Public Accounts Committee that we believe should still be in the Constitution, and that is that the Chairman should be the Leader of the Opposition or his designate.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, that is the normal situation in the UK, I think. Is it the normal situation here too?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): No. You get them [inaudible] thinking there, sir.

[inaudible comments]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Do you have a reaction to that on the Government side?

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman, I'm sure we can sort that out and have it included in the wording.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. Thank you very much.

Well, that exhausts my questions on these parts — all of these parts of Proposal number 9. Is there anything else anyone else would like to raise?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yep.

HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Proposal number 9, More Checks and Balances on the Executive Power, we have found that this was not fully supported amongst the people and we have discussed with them some of it. But I'd like to read into the records because I have that — our position: We have found support for some aspects of this proposed change to the Constitution. The elements of the proposed revisions which are supported are as follows:

- A clear role that Ministers and public officials must exercise their powers and responsibilities in the interest of the country, not for their private interests or benefit. [No problem with that, sir.]
- Constitutional backing for the Freedom of Information Law so that its key features, including the whistle-blower provisions cannot simply be changed by the government of the day. [We have no problem with that.] and;
- **People initiated referendums.** [We have no problems with that.]

We do have a problem in our small Island, group of Islands, with the sub-proposal number 8, where it calls for term limits of the Premier. I firstly would like to say, sir, there is no such creature as a Premier, but, nevertheless, we are not supportive of term limits where there are clear checks and balances, where clear checks and balances are put in place in the Constitution. We have no problem supporting — with our proposal which is that we don't support these term limits.

We believe that democracy, as they're all talking about, speaks for itself; and in our small Island, where we don't have a lot of people that wants to get into electoral politics and confrontational politics, we believe that the status quo should remain, that people should elect who they want as long as they want. That is pure democracy. When you're cutting off a people's right to elect someone who they believe who in our party system it would say up front is going to be the leader of government, then you're taking away a right from the people. And here we're talking about Bill of Rights and all sorts of rights and new democracy and democratic proposals and what needs to obtain in this modern day. Well, why are we taking away rights from anyone?

I know that I can speak for myself and that is that I wouldn't want to be there no longer than two years if that were given to me — two terms. But I can't — I cannot put something in place that prohibits the public from getting the person that they want. That must be a fundamental part of democracy; that people put in place the leaders that they want.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I vividly remember this point from 2002. I must say personally — my personal point of view is that I find a lot of what the Leader of the Opposition said quite difficult to argue against in terms of democratic principle and, of

course, the notion of this element for the proposal is alien to our traditions in the UK, our law in the UK. But I think — I think it's true to say that we could go with either solution, and it's really a matter for you to try to come to some consensus on.

The way it's drafted — and I remember drafting it, and the drafting I did is reflected in the Working Paper — is that there would be ... someone could serve as Premier for two terms, two parliamentary terms, then there would have to be at least a gap of one parliamentary term before that same person could be appointed again. And I remember as I was actually writing it thinking, well, this is a bit funny because there might be no other person who wants to, or is suitable to be, Premier or Chief Minister or Leader of Government Business, and you could then be stuck, or the Governor could be in a difficult situation and somebody might have to be dragged kicking and screaming to do it. Anyway, these are perhaps extreme hypotheses. But anyway, are there any other comments on this point? Yes, Will.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Yes, Mr. Chairman, thank you. Since the 1990s the Chamber has been polling its membership on this subject in specific as one of the topics, and overwhelmingly, for the most part, for most surveys that we do there is a call for term limits. Our members have gone — they are asked the question about whether term limits should be extended to all — all members of the Legislative Assembly. They came back in support of that, but they also —

[inaudible comment]

[laughter]

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): They also supported the proposal put forward by the Government in this provision for the Premier to be limited to two successive terms. So, I just have to go on the record expressing their views.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): It makes no sense.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Could I -

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Sorry, Rolston, yeah.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): — proffer a potential solution that perhaps if the Government are genuine in their position they would want to take on board. Since the Government believes in this point and believes that this enjoys wide public support, perhaps they ought to look at it in their party's constitution and go to the public and say that in their party they will not allow anyone to be the leader of their party and the political head of government for any longer than two terms and just deal with it internally. But at the end of the day, to say that you are espousing democratic principles and the people's right to choice ought to be limited, and limited in such a cute way that, oh well, we — you can be Premier two terms, skip a term — well, we believe it's a term, we're not sure if it's a day and then the person could resign and then come back and be Premier, or another person gets challenged midterm, all sorts of funny games seem to be still left exposed in this.

The one thing that I would say is at the end of the day what Mr. Pineau has — the points that he has brought forward I think, in general, is — drives to the whole heart of in most societies most people these days, when they look at the US model of governance —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): United States —

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): — tend to believe that there is a lot of virtues in that system, and have been guided by that system when that system is so completely different than ours.

At the end of the day, I would venture to say nine out of ten Caymanians that go to university go to the United States and study; nine out of ten TV programmes are out of the United States. We are a very United States-based society, plain and simple, but, unfortunately, we don't have — haven't had that type of educational campaign to really inculcate in the people how our system works, ought to work, and its sorts of checks and balances that ought to be put in place as the Leader of the Opposition has said, that allays some of the fears that the people have.

At the end of the day, any political party who is going to contest an election now or in the future are going to look hard at themselves to ensure that they put — that they put up for a leader the person that they believe is going to have the public support. If this is about the Cayman Islands, it should be about all the people, it should be about people's wishes, desires and aspirations. The greatest desire and aspiration in any democracy is the day of election. That's the day you go and you make your choice. How it is, how it is, that any government and any elected member with a good conscience can say that they're going to go the public and try to say to the public, you ought to give your choice up, you ought not to have your choice because you're not wise enough to exercise your choice in a responsible manner, I find that to be really insulting.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): That's all it is.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Mr. Chairman, I'd just like to put this in perspective as well. I think the membership looked at this More Checks and Balances in Executive Power, and now that the UK has found them — the proposals acceptable, that's refreshing in terms of their views overall. The issue of term limits has always been a sensitive one in our community, and it has nothing, I think, to do with anything about foreign culture. I think it's more on the checks and balances in place in our system of governance, with all due respect.

The other question I have is the issue of people-initiated referendums. You didn't have any issue with that, sir, right?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No -

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mister

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Before we move on —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mister

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): — to another one —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): — let's finish this one first, please. Mr. Chairman, I've asked you not to allow people to raise other issues.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah. No, I'm going to come back to that.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Too much confusion has already existed in that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah, we'll have an opportunity to come back to that point, that specific proposal later.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): But I just note as we're passing that, the UK position is open to the idea of people-initiated referendums, but —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah, Mr. Chair, that's why I was intervening there just, so that we could finish that one point.

Just so that the Chair will understand, this proposal is based on the public input that we had during our consultation process. It is not a position that we have desired to put forth because that is our own firm position from within, but based on the public feedback that we have had, and it didn't start now.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): And that's the reason why you will remember vividly drafting it in the 2003 Draft. So, I only want to make it very clear that that position that we have put forward, some have come with extreme thoughts, and you have to rationalize, and at points in time you realise that they really haven't thought it all the way through. But at the same point in time, it was difficult for us not to put this as one of the proposals, when so many individuals spoke to the issue and some were adamant that it be contained in a constitution. So, I just want to give the flavour of the background of this —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman?

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): — of this proposal.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, those of us that have been around a long time in politics quite know full well how the public can get in a situation such as we had when the 2002 Constitution was drafted. And the people — and the government — the opposition of the day, they went to town on those proposals, against those proposals up to 2004, when we stopped the process, and the big hype that got people riled up. And we know how irrational people can think, especially when you're throwing all sorts of things into the debate, as was done, to derail the process at that time.

Our feedback also comes from the people that this does not go, and these are voters, these are not just business people and the Chamber of Commerce sitting around a table and talking amongst themselves, and those members being led by those people, being led by those people. This was from voters throughout this country. I think if the UK is not going to take a position either one way, and the Government is not going to relent, then, Mr. Chairman, this is one good one to put to the vote. Put it to the referendum and see what people say. That'll cure it.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Kurt, please.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman, just so that we can regain, or retain — depending on which of us it is — perspective, what we're doing now is articulating the positions. We will move to the stage of where there's give and where there's take —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

(MEMBER HON. D. KURT TIBBETTS OF PPM, LEADER OF BUSINESS. OF GOVERNMENT MINISTER DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING): after this.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): But, certainly, I think we're just hearing positions now.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Sure. I was going to suggest that we move on. We will obviously have to come back to this, it's an unresolved issue of some importance, but for the time being we note the various points of view which have been expressed.

All right —

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Mr. Chairman, if I could just respond to the Leader of the Opposition's statement —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): No. No. Don't respond.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — about how our position was formed. Again, it wasn't about a group of individuals sitting around a table, we were very clear in the opening statement that — as to how we reached our position on these matters, and we take these constitutional discussions very seriously. It's not about any individual's opinion in this; it's the collective body of the Chamber of Commerce.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay, noted.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, I don't got no argument with the Chamber of Commerce, I've had many of them and I know the backlash I can get off it. But I am not scared here, and I'm not scared from hereon in to tell you how biased they can be. So, let's not get into any argument today.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Because I'll role out the facts too.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay, let's avoid getting into an argument about it and move on to Proposal 10; this is external affairs. And, again, to save — unless you would like to say anything by way of introduction of your proposal, I think it's pretty clear.

But unless you want to say anything, I'll give you our first reaction to this.

The UK is quite open to shared — some sort of shared responsibility for the conduct of external relations, especially external relations in the region. That is against the backdrop that while the Cayman Islands remains an Overseas Territory, the UK must retain responsibility for external relations and the final word, and I think you accept that, having read your paper.

There is a well established practice of delegation or entrustments for Territories to negotiate international agreements in their own name or — provided it's expressly authorised by a Secretary of State, or in the name of the Secretary of State, and I know from my own experience that such things have happened with the Cayman Islands, negotiated various agreements with the US and others.

So, against that backdrop, as I say, we're quite open to providing in a new constitution for some sharing of responsibility, and we — as you know, we spent quite a lot of time in the negotiations with the BVI and working out quite elaborate provisions to reflect that idea of sharing, and I see from your Working Paper that you have drawn on that precedent, which is in principle fine by us. So, that structure of a delegation by the Governor to elected Ministers to carry out external relations on certain defined matters, which are listed in the paper, subject to stated terms and conditions — that's the structure of the BVI precedent, and you followed that in this Working Paper — that is generally fine. There is one point, and there's one sort of qualification I would make on that particular issue, and that is that we think that there ought to be —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah, sorry, McKeeva, I thought you asked...

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, in spite of the Government's big push on this matter, we haven't found support for it, in particular, the composition, and in addition to that, we believe the — that there exists channels already via the Commissioner of Police and then other relevant authority making representation to the Cabinet at the request of the Cabinet, and therefore the elected Members who are accountable to the people are already involved in matters of national security. We have heard you already say that we're really not going to have a say on national security, England is not going — or the UK is not going to give up that responsibility.

As it stands now, when there is a problem the Cabinet says to His Excellency the Governor: Bring the Commissioner in and let him explain to us what — why this problem exists and what is going on. We had a spade of murders. The police could come in on strict — or came in, I'm giving you a prime example, came in and explained to the Cabinet, in strict Cabinet confidentiality, and this existed from the old days of Executive Council: Look, we know who the kingpin is. We know why these people were murdered. It's a drug war. This is what we're doing about it. And they rattled it off, A, B, C, D, actions taken by high police command and we are told about it. And while all this was done in strict Cabinet confidentiality — I know it existed, it still goes on, if it not going on then it should be going on — in strict Cabinet confidentiality but, of course, there would be finer details of manoeuvering by the police that would not be exposed.

And I — I cannot agree to taking out this new creature of the Premier — and there is none yet, and we hope that it will move to the Chief Minister — and one, even two Ministers and pulling them out and telling them some great national security secret that you already say is not going to happen. Why are we creating another bureaucracy and a division, because which Cabinet in this small Territory, Minister, is going to sit back with the Premier and one other, if it comes down to that, to go and hear things that they are responsible for as well because they are Cabinet Ministers and they can't be told? Because if they can be told, then, leave it the way it is. Make the Governor come in and brief the Cabinet.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): You mean the Commissioner of Police?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well, yeah, and the Governor too, where the Governor is necessary —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. Yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): — can do it and ensure it happens. But bring the Commissioner of Police in and any other person he needs to bring in, and if there is a matter (as I tried to get across the other day about the frigates and the battleships) then, bring in that person when they come near us to give us a briefing as well.

But in this small Island, no matter how much they gonna tell you that they have it all in hand and they have such control over their Cabinet, that there is not going to be division because one knows something and the next one gone away and say, well, I don't know yet I am responsible, I think that we are creating something that is unnecessary because if we can't hear the greater details of national security, then, what we having this for? Everyone now is briefed. **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Kurt, would you like to take the floor?

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF BUSINESS. MINISTER OF DISTRICT GOVERNMENT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Thank you. Mr. Chairman, we have articulated this position on many, many occasions and I will do so again. The scenarios that the Leader of the Opposition has just pointed to are not scenarios which are snared into the National Security Council. The National Security Council that we are proposing to be enshrined in the Constitution would be a proactive body, not a reactive body, not a body that waits to hear from whatever source or avenue what is happening and where certain threats are. If you read from the Working Document, (3) of section 54, Mr. Chairman, it says the: The National Security Council shall advise the Governor on matters relating to internal security [and what that refers to is policy], and the Governor shall be obliged to act in accordance with the advice of the council unless he or she considers that giving effect to the advice would adversely affect the interests of the UK and where the Governor has acted otherwise... Blah, blah, blah, blah, blah.

So, what has been said about the National Security Council being unnecessary, because whatever obtains now will be the same thing, is certainly not the case. What obtains now, we know His Excellency the Governor has authority to deal with certain matters, and that authority rests with him and him alone. And I do believe — and I will not try to put His Excellency in a position by asking him to comment personally on how he finds it as Governor today, but I do believe that all concerned would prefer the situation to be as we propose it rather than what exists now, for many reasons. So, the proposal is not one to shift power, it is simply one to create a National Security Council, with the relevant organs being represented on that Security Council, chaired by the Governor, to ensure that proper policy advice is given, and that where the decisions have to be made they are made — they are made with proper perspective and with a pool of thought that would bring about better results. That's the whole idea of it; it's nothing more than that.

I don't know if any one of my colleagues wish to add to what I've said, but that, sir, is the thought process behind the whole affair.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, the Leader of Government Business in what he just said just confirms to me that he not doing nothing new or nothing that cannot be done or should rightly be done by Cabinet. If — and he says for many reasons it should exist, but he's not saying what those reasons are. Now, I've given one aspect of it of how it can.

When something needs to be done for the police, to do with anything for the police, anything, the Governor doesn't bring a paper himself. Maybe he will come in and brief us, but a paper is brought by one of his officials, any to Cabinet and we all discuss it.

Now, as I said, unless the UK changes its position that the finer details of national security — and I'm saying finer details for the want of another word — then — then I can't see how this National Security Council, just another name to make us look like we're going places, boy, I can't see how it's gonna be different because they're not telling us and I wish that they could tell us something because they might get some sympathy, we might agree with them — of some of the things that they're talking about. And I think they need to do that so that we can understand what we're getting into, but they're not saying this.

[inaudible comment]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): You haven't said nothing in there, son. You read it.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Alden.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, if I might try to assist. Mr. Chairman, the present — this is for the benefit of the Leader of the Opposition.

[inaudible comments]

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): The present Constitution places complete responsibility for internal security in the hands of the Governor, a matter on which he — of which he has reminded us more than once since I've been in Cabinet. The elected government has absolutely no authority, no responsibility, and no — at least constitutionally, no right to give input into policy matters affecting the operations of the police or any matter relating to internal security.

The present Governor takes the position, and he's entitled to do that, that that is his constitutional responsibility. He is only entitled to give such information relating to what transpires in relation to internal security as he thinks he can properly do, without breaching that constitutional provision.

What is being proposed here, what is recommended by the UK's audit report of December last year, what is established in the Turks and Caicos Islands and the British Virgin Islands, and in the form of a police authority in Gibraltar are all very clear examples of why it is beneficial to the Territory for its elected government to have some insight, some input into the development of policy in relation to internal security and police matters.

Why the Leader of the Opposition opposes the shared responsibility and having the elected government involved in these matters is something that he has not yet explained to anyone and, quite frankly, is a position which defies logic as best as we can see. It — we are not talking about some nice sounding entity to give comfort to people, we're talking about a constitutional creature whose responsibility is to advise the Governor on matters affecting internal security, and save where it might adversely affect the UK's interest, the Governor's bound to accept the commission's advice. This is a pretty powerful creature which for the first time will give the elected government of the Cayman Islands some involvement in matters affecting internal security.

[inaudible comment]

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Policy matters, not the operational issues relating to the police.

Now, Mr. Chairman, I suppose the divide between us is that — is that Mr. Bush doesn't seem to think that the Cayman Islands is at a point where we have sufficient maturity to be able to manage these matters. Now, that is his view, he's entitled to it, but I can assure you, sir, that is not the view of the majority of the people in this country.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I was — thanks, Alden. I was under the impression that he was objecting more to the — to this additional body, and that his argument was that these matters could be — could and should be dealt with by the Cabinet, or the Governor coming to — the Cabinet are getting the Commissioner of Police in on a regular basis to discuss these things, and so on and so forth. But I wondered if I could just ask the Governor to comment, if he would like to.

HIS EXCELLENCY THE GOVERNOR: Well, rather than comment, I would like to just ask for some clarification of the meaning of the proposal. I'm particularly referring to the Working Document, which only talks, in general terms, about advising on matters relating to internal security and the Governor being obliged to act in accordance with the advice of the council, presumably, on those matters, whatever they are. What sort of matters — what is the scope of those matters? Would that include — you've mentioned policy. Policy again is another vague word,

but it's not in this text. Would that include having anything to do with individual operations or individual cases? Would it have anything to do with personnel matters? Would this council, and therefore by extension the political members of this council, have any influence or power of decision over those sort of matters?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, I listened to the Government's explanation, but I am not satisfied because this is — it's too wide. And what he's calling a very powerful entity, he says that it's to give insight/input on policy, not on operations, but policy. Policy directs operations and policy results as operations, so one is the next.

I can't understand if — what he's talking about, because those things must come through Cabinet, and so what they're creating is — I don't want to hear about the Turks, I don't want to hear about the BVI. They have nothing in common with us, except they are trying to build a finance international business centre, and all power to them, and I support that, and wherever they can feed the people let them do so. But we are not alike, and my scare here, sir, is this: that you're going to create this, you're going to take those matters out of Cabinet...

[inaudible comment]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): If they're not in Cabinet, then, you're not doing your job. And I believe that what is happening, what the Government has tried to do was to create this view in the public so that they can say the Governor is doing all this stuff on his own and accuse him and beat him over the head with a mortar and pestle, and then go to the public and say: See, we were right. We told you that we should have this, that we must have this. And what I am scared of, Mr. Chairman, is this, what I'm scared of is this: that you're going to create this council, and nothing more than what obtains in council now and Cabinet now will happen, that is, those things that can be told to us will be told to us. But the division is going to creep in there.

And then when they're not satisfied they're going to come back to the people of this country and say: We — see? We were right. We told you that the English — that the Foreign Office, that the UK don't — that they want to have full sway over us and that they're not allowing us to do this and we don't know that and we can't do this. These are the kind of things that will rile the people up into unnecessary strife in this country. That's what obtained in the other Territories. I have followed the other Territories, the history, and what happened before they went into independence, and these are the kind of things that caused it. Hear what I tell you? Now, you all can do what you like about it, but I tell you this, Mr. Chairman, I'm not happy from where I hear him going, but he has not explained what it's all about because what he has explained can be done and should rightly be done in Cabinet.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Alden.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): The Leader of Opposition seems to have conceded the next elections. He keeps talking about "they" and what "they are gonna do". None of this will come into effect until after the next elections, so I'm happy for that concession so early.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): You take it for that.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): But, Mr. Chairman, the language we have employed is language which is taken almost exactly from the British Virgin Islands Constitution which has just recently been granted. We certainly — and the one in Gibraltar the language is even more vague. TCI simply have an advisory National Security Council, which just gives — is essentially a consultative body as opposed to what obtains in the British Virgin Islands, which is the model that we're after. And we're certainly not interested in creating a situation where the council becomes responsible for — for looking into — or deciding on which operational matters — in fact, the Governor ought not to be doing that, and that is a matter for the Commissioner of Police. And...

[inaudible comment]

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE): So, we're not after operational control or involvement in what the police are investigating and what they're doing. But as recent events have unfolded, it is quite clear that there is an oversight body that is necessary to deal with matters affecting internal security, and, certainly, the UK itself has publicly acknowledged the need for involvement of the elected government in affairs affecting internal security. And I don't think you'll find — perhaps with the exception of the Leader of the Opposition — anyone in Cayman who will tell you now that they believe the present arrangement is satisfactory. What the Leader of the Opposition doesn't seem to appreciate is that under the present arrangement Cabinet has no constitutional responsibility for police matters. All we can do is deal with funding, and if the Governor doesn't agree, or if we refuse that and the Governor is unhappy with it, he still has the ability to exercise his reserved powers and ensure that whatever the issue is, is funded. So there's very limited, very limited, control or oversight of what happens in relation to internal security by Cabinet under the present constitutional arrangement, and we are saying that that is unsatisfactory.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. I think — I mean I'm assuming as well that in — I'm assuming as well that in response to the Governor's question that you have no intention that a National Security Council, if there were one, would have within its remits police staffing matters, because that is a concern, that the police staffing matters should be out of the political — the elected political circle, in the same way as the public service; is that right?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Well, I'm not sure I'm prepared to concede that entirely. If you look at the makeup of the proposed makeup of this commission, and you have now proposed another civil servant to be on board, I mean, we can look at the balance of power on it to ensure that —

But I'd say this much. I think given the recent experiences that we've had that we would envisage this council to have some say in matters relating to the Commissioner and those very senior sorts of appointments. I mean I don't think anyone is concerned about what happens with the rank and file; that is a matter that properly ought to be dealt with either by the Commissioner himself, or by some other civil service vehicle. I — there is an argument, and I've heard it articulated quite eloquently in a number of places, even within the civil service, that there is no proper basis for having the police dealt with separately and outside the general provisions relating to the staffing of the civil service. Creating a separate entity or constitutional provision to deal with police appointments is unnecessary. That could be dealt with under the general provisions of — that govern employment in the civil service.

But I'm not pushing that argument, I'm just saying that there is there are other views about how this ought to be handled, but we certainly wouldn't envisage that the National Security Council would be dealing with appointments of constables and sergeants and all of that. But it is certainly within our contemplation that top appointments would be matters that would be considered by the National Security Council.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yep.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman, there would be in no circumstance that the Opposition would support anything that the Minister just said.

Those people that he speaks to in regards to appointment of police vis-à-vis or versus regular civil servants are obviously people who are wholly lost in the fact that police have the power to arrest, and police are very, very special people, not that they are people that should be above the law themselves, and not that we shouldn't have proper checks and balance to ensure that we have a well run police force; that is of utmost importance to the Territory, and to any society. I'm curious as to why we're not having the same forceful push by the Government to ensure that the public understands that there's a necessity for a police ombudsman, to have it adequately staffed and independent of the police service, and to ensure that we have the type of internal investigatory and discipline regime within the police that will allay some of the fears that are out there in the public and in all societies. Every society that are built the way that we are built there's always a natural agitation between the civic society and the police, and police forces generally has done a poor job at community policing and building and inculcating trust within the police force.

Last Thursday when we met we expressed our concerns in regards to this council. We also expressed our concerns that it's not broad based enough to give us comfort, that we're not getting a very small group of people, narrow group of people, getting very close to the upper command of the police force. What the Minister has just said causes me even more concern than ever before, because if he had said that appointments of constables, to say that — and to make the case that you're talking about being involved with the appointment of the upper command, I'm not sure if he understands how a police force works. The rank and file follow the order and direction of the upper command, and the reality is that once upper command within the police service in any way, in our view, in any way feel as though they owe their position to politicians, things will go wrong.

I was sitting here just listening backward and forward because I made — I put forward our case last Thursday, and I put forward a case for there to be additional scrutiny by the legislature, which we don't do now. We do a poor job as legislators, and that rests at the feet of the incumbent government. We do a poor job at utilising the powers we have via Finance Committee, and Finance Committee has the authority to dissolve itself *in camera* at any point in time to find out what it wants to and delve into matters that it feels it needs to but could prejudice government if it was public. So, we have tools currently that aren't being used.

Then we get the Government jumping up because they see something somewhere else. I do not know the historical context of TCI, BVI or Gibraltar, and so because something works for them constitutionally, I honestly and truly — as far as I'm concerned, that's irrelevant to this country. This country's Constitution has to come out of our unique history and our unique practices and our unique society. How — how — how matters work — and there could be that in both of those — all three of those Territories that have been long well entrenched separations, and therefore the practitioners getting into these types of new political creatures, new constitutional creatures, will not necessarily cause any real concern and then in the end not cause any harm to society. That's good for them. That's great. If there's other Territories that have that, that's fine, I applaud them, I wish them well. As a legislator I've been elected by the people of the Cayman Islands.

Recent events — the Government has this mantra of recent events, and with every recent event comes a constitutional solution.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Yeah.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): That tells me that the Government ought to be telling the people that anything that really goes wrong in the country, you need to just bide your time until we can get Mr. Hendry and his team down to find a constitutional solution. The recent events, if we're going to be truthful, has been due to the lack of courage by previous Governors to deal with critical matters. That's been one of the big problems that we faced. We've all heard the rumours. We've all heard the rumours about what was covered up and what was turned a blind eye to. It's a tough pill to swallow as a country that we could have the type of shake up that we have had in succession. Those events happening five, ten years apart, whilst each individual been a significant matter and a significant occurrence. But to have them in succession I can understand and I feel it, the entire community feels it. But to say that I am now going to react and overreact and start creating constitutional creatures for which there is no ultimate accountability, none, because to say that we're going to wait every four years to try and deal with the three Ministers who sit on this council is not good enough.

At the end of the day, if the Government is saying they need a more formalised process by which, or through which to get information as it regards the police, if the Government is saying — and I still need them to define what "policy" means. The Minister — and I was taking notes inadvertently said earlier operational matters with the police, he corrected himself. I want him to tell us how — what exactly about policing policy, what is it that this council is going to do? Give us an example. He's given me one that has caused me great concern, that is, he's advocating for the appointment of the Commissioner and senior police. I will never support that. Never. Not now and not in a million years.

If he can — if they can give us some real life examples, what is it that this council is going to do, perhaps we would be in a better position to be able to, as all colleagues, put our minds to the task and come up with something that could work, but at the end of the day will not compromise politicalisation of the police force.

Let's use a simple example. Anyone that sits on this council, the day their child, sibling, close acquaintance gets into any problem, they're gonna be politically supported. That ought not to ever to be the case, nor the appearance that that can happen should ever be the case. That runs contrary to good governance and equity in any society. At the end of the day, it's human beings that's gonna be here. I don't see this being a line of computers who you can put the right programme in and you get the right result at the end. Human beings create relationships. Relationships often get blurred, not because people started out with ill intentions, and not because they're necessarily bad people, but they're just human beings. At the end of the day they're just human beings. I have grave concerns getting any politicians too close to the police service.

We made an alternate suggestion that perhaps in our Standing Orders we should create a committee, a National Security Committee, which is made up of all Members of the House, and those Members of the House can regulate the conduct of that committee, and you bring the police in and you try to hold the police to account, because at the end of day what — and I haven't heard the Government say this — what is the end result that we want? We want a clean, productive police force that gives us value for money. That's what we want. I don't see how this is necessary to get that end result. The Government needs to be clear to the country, and to all of us, what their result — what their objective is. I've already heard one objective, which is the appointment of senior police officers which is, as far as we're concerned, a huge no-go, huge no-go.

The other point we raised last Thursday is, in all these things how we gonna get civic involvement? Why shouldn't we have representatives from the Ministers' Association, the Justice of the Peace Association, and those types of people that usually bring the type of credibility and integrity that the public will repose a lot of trust in? You'll hear us make this point again when it comes to the judiciary — the Judicial and Legal Services Commission. But at the end of the day, the Government has not made an argument as to why this is necessary and will work and will not be to the detriment of people now or in the future.

You see, this Government — the other little issue that I have with how this Government approaches things, not only do they look at recent circumstances and react in a knee-jerk way, they also seem to believe that we ought to judge every institution based on who they believe will sit and hold these posts. There's one huge weakness in democracy, Mr. Chairman: anyone can get elected, say, once they meet the qualifications. The 15 of us could be gone by May 20th of next year, and all those theoreticians that we hear on the talk shows could be the ones holding these posts. That's what I want for my three daughters and all the children in the country?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): That would be a mess.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Right now we already hear of excesses in the RCIP going with armed — going armed, knocking down doors, trying to execute a warrant on an 18-year-old young lady who hadn't paid a traffic ticket. Those are the sorts of things that the Government need to be talking about. Those are the things that the Government need to be talking about in terms of a proper police ombudsman, to allay public fears and build trust.

I, again, said a lot, so let's just ask the Government, please give us an example of policy. What policy will this council implement and recommend that cannot be done in a different manner? I — this one is really mind boggling.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Thank you, Rolston. I give the opportunity to the Government representatives to reply either before or after a break because I think we should have a break. But would you like to go now? And then we'll have a break for a few minutes.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, I've never been more sad and disappointed —

MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY): Neither have I, sir.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): — in such a complete lack of confidence and value placed in our own people by one of our representatives.

[inaudible comment by the Leader of the Opposition]

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): The reality is, Mr. Chairman, is that somebody, or some bodies have to be responsible for all aspects relating to government and to good governance.

What this Government is proposing is not a reaction to recent events. We published our paper on 12th January. Recent events have bolstered the need for something like a National Security Council. This is something that's been recognised by the UK itself. The National Audit Office report speaks — which was published in December of last year, speaks of the appropriateness of having what they call "shared responsibility" for matters affecting internal security. Quite how we get there is something we'll have to work out, and the Government is not at all averse to looking at the makeup of the council or the commission, and carefully defining what its role should be and so forth, but we are adamant that there must be involvement by the elected government in critical decisions affecting internal security. To do otherwise is a dereliction of duty on the part of those who represent these Islands.

For us to continue to say that we are satisfied that the United Kingdom, or the United Kingdom's rep in the form of the Governor, should be solely — wholly and solely responsible for all matters affecting internal security is just unrealistic, does not reflect the realities of modern day Cayman, and certainly does not meet the interests of the people of these Islands.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, I know you said that you want to go take a break, and so do I, but when we talk about shared responsibility, that is agreed. But in what way and in what areas are they talking about?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): The broad statement about the Audit Office report goes further than he says, but I want to say this: if we look like we are independent, the perception is that we are independent, or on the way to it. And you have clearly said to us already what we can expect as far as what you will agree. To keep riding these issues and bringing back these points where it only tries to frighten people, then, what are you doing?

But there are some more things that I could draw reference to, and whether you want me to do it now or when I come back, I will, because we need to put some things clearly when they draw references about what they want because their actions are not action — their actions today are not actions in 2013, they are today.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Well, I think we'd all benefit from 10 minutes, 15 minutes let's say. Come back at 11:35. Thank you.

RECESS

RESUMED

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, thank you very much. There's just one final point I need to make for the record on the matter we were discussing before the break, and then I think it would be good if we moved on because I think we have a pretty good idea of the positions on that subject.

The point I must make on it is the degree to which any advice of a National Security Council, or the Cabinet or whoever it was would be taking part in the sharing of responsibility. I have to reserve that issue because I know, I know, that our Minister would need to take a decision on it. I know the way you've drafted it in the Working Paper is similar to the precedent of the BVI Constitution — similar, not the same but similar — but in this case it was a personal decision of the Minister — of our Minister in the light of the package as a whole, all right? So I'm not closing any doors, but I'm just reserving the position.

PROPOSAL 12 – NO CHANGE WITH REGARD TO THE GOVERNOR'S RESPONSIBILITY FOR THE CIVIL SERVICE

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): With that could we move into, I hope, less choppy waters, I hope less choppy waters, to Proposal 12, which is to do with the Governor's responsibility for the civil service or the public service; and from our point of view, we applaud mightily the proposition that: **"The Governor should continue to have constitutional responsibility for appointing, disciplining and dismissing civil servants, subject to the applicable legislation, presently the Public Service Management Law."**

But I just wanted to ask a question on the Working Paper you kindly circulated yesterday on this, which deals with this subject — if you'll bear with me for a moment — yeah, on page 64 and following. It's really sections 101 and 102. I don't have a problem with 101, which is the second part of Proposal 12 as I understand it. And section 102 is fine with us too. My only question really is — and I'm trying to catch up with the current state of affairs here in the Cayman Islands. My recollection is that it was The Public Service Management Law passed a couple of years ago I think now, in which the structure was that high level appointments are reserved to the Governor, and then there's a sort of cascading down of responsibility to heads of — permanent secretaries and so on and so forth, and then there's an appeal mechanism written into the law for people who have grievances. Is there civil service commission — no.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Civil Service Appeals Commission.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Civil Service Appeals Commission. Thanks, Sam. And all that's fine, but it — does it quite fit with the way section 102 is drafted, where it says that **the Governor may by regulations delegate powers of appointment**, et cetera? It may be only a point of drafting to fit the current situation. You see what I mean? If it's regulated in a law, that's different from giving a Governor constitutional power to make these regulations by delegation, so I might need to make some reference to the Public Service Management Law or any law, you know, amending or replacing it, or something like that.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Something like subject to the provisions of the Public Service Management Law the Governor may, or something like that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah. Governor?

HIS EXCELLENCY THE GOVERNOR: I've only got one comment which is we already have a little bit of an issue, and the Attorney General may or may not want to comment on this, but we already have a little bit of an issue with Personnel Regulations for the civil service which are currently approved and issued by Cabinet, whereas that raises a question about whether that, in some way, constrains the constitutional powers of the Governor. And we've already looked at that. I mean, in practice it isn't an issue because Cabinet has not suggested something which would be unacceptable or further — in itself, further constrains the Governor. I assign delegations to Chief Officers, delegating to them powers over their human resources.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Under the Public Service Management Law?

HIS EXCELLENCY THE GOVERNOR: Under the law, yes.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Okay. Well, I don't think there's any difficulty of principle here, it's just a matter of finding the right form of words. Yeah, okay.

Well, unless anybody else had has anything on this point. McKeeva?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, for the record I want to read in what our position is. Consistent with support of the role of the Governor, we found that there is support for the position of maintaining the status quo. In addition based on feedback, the Opposition would welcome the reintroduction of an invigorating and reformed version of the Public Service Commission to deal with the recruitment and dismissal of civil servants rather than the current position, whereby human resources are managed under the guidance of the Public Service Management Law.

There is no independent voice in that makeup as such, and that is our concern.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, so that we can have a clear understanding of that, the public service ... is it the Public Service Appellant Tribunal?

HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE): Appeals Tribunal.

TIBBETTS (MEMBER OF HON. D. KURT PPM, LEADER OF GOVERNMENT BUSINESS. MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND **HOUSING**): Appeals Tribunal that is in operation now is the recourse any civil servant has if he or she is dissatisfied with a decision with regards, I think, hiring or firing. Now, what Mr. Bush just said is that there is no independent body.

See, formerly the Public Service Commission used to deal with the hiring and the firing of civil servants, and the Governor at the end of the day ratified the decision or not. So, the final authority rested with him, as it does now, but there was the Public Service Commission which dealt with both the hiring and the firing. Now, the devolution of authority through the Public Service Management Law is the same cascading that you spoke to earlier on that you just wanted to confirm obtains now. And if we have — if we were to go back to a Public Service Commission I'm not 100 per cent sure what those functions would be as envisaged by the proposal of the Opposition, but if it were to be similar to what obtained prior to the Public Service Management Law, then, you change the whole system back again, and all that obtains now reverts. So, that's what I am not 100 per cent sure that I quite understand from the Opposition's perspective. This Civil Service Appeals Tribunal is supposed to be an independent body, so I would just like clarity with that so that we don't

get bogged down, because I don't think that anybody is veering from the principles that we want to apply, I just don't know how logically certain things would fall in place.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman, if I might just quickly, and this was a point that was brought to our attention during our last round of meetings by a former civil servant, senior civil servant, and we also got two written submissions in this regard. The point and the principle is not to take the current system and revert back to the old system where it is a centralised hiring, firing, disciplinary function and functionality, but to have what would be, I would term, a new type PSC where they would actually, instead of just being at the tail end when there's a complaint, that there would be still an independent voice that would be part of most of hiring panels. So, for example, when a position is up and it goes out and there's a panel appointed — let's say it's a panel that's three, that one of the member of all panels would be a part of that restyled type PSC that would be the independent sort of check, as it were, in the system. So, it would just it would be I'm not saying insignificant, but certainly from a practicality standpoint wouldn't be a major shift from where we are, and so it wouldn't be to get away from the decentralization, but to augment the decentralisation with some — a little more independence coming from a more central and technical area.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): So through you, Mr. Chair, if I may?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Then if I understand you correctly, what you're suggesting is that what now is the Civil Service Appeals Tribunal, that body should be reshaped, not just to be an appellant body, but to also participate in — so are you saying then you should have two different bodies?

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): The PSC as we envision would have basically two arms: one arm would be the appellant body, and obviously the appellant body ought not to be involved in any decisions that come to it for appeal because it would be an obvious conflict.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): You mean would only be involved with the appeal?

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): There would be an independent appellate body.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Um-hm.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): The question that I thought I was asked was whether or not that body should also be involved with the hiring process, and I'm saying no, that body would still retain its functionality, there would just be —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): So that's what I'm saying to you. You're talking about two bodies then?

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Right, within the PSC.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): So the PSC would have a sub-committee that deals with appeals or what? You know, you see — you say you will have a new Public Service Commission but then you speak to two bodies. It's either Public Service Commission or it's not. Just hear me. So, what I'm trying to find out is if you have a Public Service Commission, you're saying it will be two bodies under that. How would — I mean, in other words, a Public Service Commission is a Public Service Commission, you're talking about a — the functions.

Well, Mr. Chairman, most of us will understand by now the Public Service Management Law, the way it functions and where the whole process of decentralisation has taken place, and hence the law itself. Certainly we would think that you would need to have consultation with those who operate it, to find out what is practical and what is not. And I believe that the representation — I don't know who or I haven't seen the representation, but we have heard some grumblings ourselves, and I think that a part of the problem that seems to be being experienced is, we now have the Portfolio of the Civil Service, which has graduated from being the personnel department, and while that now doesn't — while that Portfolio of the Civil Service doesn't actually deal with the hiring and firing, it does audits through the various organs of government, either to question the way a certain department or ministry or portfolio operates or to guide the process at to how it should operate because each of those arms have their own HR department. Now, that Portfolio of the Civil Service, the head of that portfolio is on par with the Chief Officer or Permanent Secretary, and that portfolio sort of directs the methodology of the way these ministries and portfolios should use in their hiring practices. And it seems to me like there is a difficulty internally between my peer telling me what to do and how to do it. I'm simply saying that it is my belief that that's where this difficulty stems from.

Now, from a constitutional standpoint, whatever is done certainly needs to be able to work within the framework of the Public Service Management Law if we are not about to change the system.

[inaudible comment]

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah. Yeah. And I mean it is certainly not our view that we should change the system, and I'm not suggesting that what the Opposition is saying will change the system either. All I'm saying to you is what their intentions are in achieving the representation that they've had is something from a practical standpoint that would have to be addressed by those who operate the system, to see if there's any deficiency there now and hear what they have to say. So I suspect that is something that we would need to speak to His Excellency and the Chief Secretary about.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Governor?

HIS EXCELLENCY THE GOVERNOR: I don't think I'm going to comment on this in great detail; it doesn't seem to me that this is probably the central issue or the best use of time, but just to make a couple of points for clarification for the benefit of everybody listening.

At the moment what happens, very briefly, is that each Chief Officer, and then within — within — under them sometimes heads of department, the so-called head officers, they have delegated to them the authority to hire people, promote people and so on, and that seems to me a very sensible idea of putting the human resources and the finance resources and the work together under the authority of a Chief Officer. But there are a lot of rules and regulations as to how they can apply that authority so that they do not abuse it in any way. I'm not suggesting any of them are, but one has to put safeguards in.

And one of the safeguards is that there's an audit function which is carried out by the Portfolio of the Civil Service, to ensure that — it's not double guessing every decision, it's not looking at every decision, it's a periodic audit to examine whether — that each arm of government is fulfilling the law and the regulations objectively as they should do. And indeed I've seen a lot of those audit results, and the overall picture is actually a very encouraging one, where this is a fairly knew regime, people are actually, as a generality or overwhelmingly, following the spirit and the wording of the law and the regulations. But that's the role of the Portfolio of the Civil Service, as well as to look at some training and standard setting, is to provide an audit function.

I think probably how the new Constitution might apply to the civil service does need a little bit more examination because one thing that — it's not clear to me there has been much input from the civil service itself and from the head of the civil service, the Chief Secretary, into looking at these particular provisions. I'm not saying there's necessarily problems, but it probably does need a little more examination before the next round.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes. I mean it's not excluded, of course, that ... you know, the Public Service Management Law is not set in concrete, presumably and that if there are further refinements to make the system work better and to provide for some independent input into the process, the recruitment process, for example, as Rolston mentioned, that could be worked into that law. I mean, in the 2003 Draft we were suffering at that time from uncertainty as to what would happen and that law came in after that time. And what we put in there were provisions, the basic provisions for the Civil Service Commission, but they have rightly now been taken out of your Working Paper because there isn't such a thing anymore.

But one possibility, one theoretical possibility anyway, is that one could write into a new constitution something like that section 90 it was and provide simply who — in order to make sure it's an independent body with constitutional status, and then say that its functions shall be as prescribed by law.

Now, we have to think carefully about whether that's sensible because if you did that you'd be stuck with a body of that sort which might not fit into the law as it is at the moment. So, it seems to me two options: one is to do something like that but do it flexibly enough to a law for such a body to be given functions, whether appeal, advising on recruitment of teachers, participating in recruitment panels or whatever, which could be then done by legislation. Or, one could leave that out and leave it all to be regulated in ordinary legislation and leave the key point which — the most important point which is that this is a Governor's responsibility, this power to delegate. So anyway, it sounds as if we need to think — do a little bit more thinking about it but — HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chair, if I may just add these few points —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): — of some observations in relating some of the representations that have been made to us.

Let me just start by saying our position is that it would be a huge step backward to — and a huge policy decision to go back to the old situation where there was no delegation of this function to Chief Officers, that is, the hiring and firing and promotion and so forth. And there is a certain nostalgia, amount of nostalgia around the civil service about the good old days with the PSC, so that is a factor. But I think more than that is one — the point that the Leader made in relation to the resentment or rivalry about persons at the same level, that is, one Chief Officer of the Portfolio of the Civil Service actually overseeing what the other Chief Officers do. So, that is a problem that we have to find a way to fix. I don't think it needs a constitutional fix, but we have to find some way to address that.

But I think the overriding concern, at least the one that we've heard most regularly, is what's been described as a lack of confidence in the Civil Service Appeals Tribunal. And when we try to drill down into it, of course civil servants are usually quite reticent and reluctant to actually talk too much about details to the elected people, but it seemed to us that the concern has arisen more from the composition of the tribunal rather than it is about the concept of the tribunal. So — and I did say that I thought it was, you know, taking a huge — a huge tool to swat a fly to deal with. If that is in fact the real issue, then representations ought to be made to the Governor about that so that those can address that level.

And then there is the other point which I understand and am quite empathetic to is that civil servants want some constitutional recognition for the system that governs them in the Constitution, and maybe we can find a way to do that, but as I say, we certainly as the Government are not supportive of a move backward which is to claw back all of these hiring and promotion functions to a commission or to the Governor. It's a step backward.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Thank you.

PROPOSAL 13 – ESTABLISH A JUDICIAL AND LEGAL SERVICES COMMISSION

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, shall we move on to the Judicial and Legal Service Commission; this is Proposal 13. And our main concern on this particular point relates to the composition, that the concept of Judicial and Legal Services Commission is, in principle, fine with us, and the way that you've drafted it in the Working Paper in terms of its function seems to be generally fine. We ought perhaps to pause and consider when we come in a moment to consider the offices which will be within the remit of the — of the JLSC.

But can we look at the — can we start by looking at the proposed composition? And the first point is chairmanship, and we've had some experience of this sort of thing of trying to get this right in other territories. And the first question — I think our view (but it's obviously open for discussion), our view is that the chairmanship ought to be the president of the Court of Appeal rather than the Chief Justice on the basis that the president of the Court of Appeal is a higher office. Now, I know that no judge of the Court of Appeal is resident here, they're visiting.

HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE): Right.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): And so that's the counterargument. You know there's an argument that the chairman of this body ought to be the senior judge who is resident here. But there are one or two other points that troubled us and that was representatives of the — or nominations of the Bar and the Solicitors Associations which the Law Society and the Bar Association — which seem to us a little difficult when talking about selecting judges before whom these chaps will appear, no doubt in due course.

And we wondered whether it would be better to say — provide instead for the president of the Court of Appeal; and the Chief Justice; and then one other member who holds or has held high judicial office, that's to say, another senior judge from another jurisdiction perhaps (but it doesn't necessarily need to be); and one member who is legally qualified but is no longer in practice, that's to say, someone from within the jurisdiction or without, a retired legally qualified person. I don't think we have a problem with the lay members because it's perhaps useful to have lay, i.e. non-legally qualified representation on this commission, but can we just pause on that point just to look at the composition first and see where we can go with it? HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Yes. Mr. Chairman, I don't think conceptually we have too big a problem with that except that — and we hear what you say about it being a non-practicing lawyer. Of course you immediately reduce the pool of significant people when you do that. But we do think it is important that there is representation or at least — not representation, that there is involvement up to two bar associations locally in the choice of who that person ought to be.

As you well know, as I think everybody at the table well knows, lawyers have very strong views about the bench, generally, and are probably the greatest champions of the independence of the judiciary that exist. And I think it would be — well, I wouldn't say it's an insult, but I think it would be — it would be viewed as a snub in a huge way if he established such a council and we didn't provide for there to be some input from the local bar.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Thank you, Chair. I keep my interventions very surgical.

I have no problem with the creation of the commission. I think it is welcomed development Like you I have some concerns about the composition of it as it relates to the member from the Bar Association and Law Society for a number of reasons: one is that the Bar Association and the Law Society are not really truly representative bodies of the over 480 lawyers who practice in the jurisdiction. My recollection — and I stand corrected — is that currently there are probably less than 28 members of the Bar Association when it is functioning, the Law Society has probably less than 40 members, active members. There are a number of lawyers, majority of lawyers, who are not members of either associations. In addition to that there are about 30 lawyers in the public bar who are not members of any of these associations as well. There is also a Cayman Islands Defence Bar Association that is not affiliated to any of these two bar associations, and so...

In addition to that, there is a concern about the size of the jurisdiction and the compactness, if I might put it that way. There are approximately about four law firms that account for at least a third, a little more than a third of lawyers practicing here. From time to time a number of our judges are appointed on contract. The — invariably the Bar Association president and the Law Society president are from one of these big firms. It would put both the judges, in my view, the magistrate and the judges, as well as the lawyer, in a sort of an uncomfortable position to adjudicate on matters where the person appearing in front of him might very well be the person who sits on this very body, and who is likely to determine the renewal of his contract in another five years or so, not to mention the point of discipline because I see where part of the remit is to discipline judges. That in itself, in my view, would cause

severe discomfort and will unwittingly compromise the independence of the judiciary. So, those are the concerns that I have as it relates to that.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, I hate to differ with my friend about the numbers, but I do believe that they are grossly understated. I haven't been in active practice so I'm not going to push it too far, but I am going to check when I go to lunch. But unless the practice has changed, virtually every practicing lawyer in Cayman is a member of the Law Society. The Caymanian Bar Association is limited to Caymanian lawyers, and it is not invariably that the head — that the president comes from a big firm. I was president for two years, and I certainly didn't come from a big firm.

[inaudible comment]

HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE): That's — that's the Bar Association.

But I do take the point about a member of the council standing up before the judge that he appoints, and I think that is a powerful point. What we are prepared to concede is that there is —that however we come by representation from the local bar, whether ... it was just convenient to say Bar Association and Law Society because they are organised bodies, but that there is — that they have an input into the choice of at least one member of this council however we work that out, not that necessarily a member, a practicing lawyer from one of those associations actually sits on the commission. That's the concession I think that we are prepared to make.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): In that regard, I think we might get some sort of a — or might find section 98, I think it is, (b) of the BVI Constitution instructive. Let me just confirm.

[inaudible comment]

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): No, the BVI Constitution.

[inaudible comment]

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Ninetyeight (b) provides for organisation of the work and the manner in which it performs its function, speaks about — sorry, (b) speaks about consultation by a commission with persons or authorities other than members. In other words, the Law Society and Bar Association and other representative bodies could be consulted as a matter of course.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, that's not what we have in mind at all. We're talking about the appointment of a member or members to the commission. Otherwise, we revert to the time-honoured practice of these things are done without any involvement of — of civil society and the people that are affected. So you just get a bunch of officials appointing more officials. That's not what we're trying to get to at all.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF **OPPOSITION):** Mr. Chairman, I'd like to put forward for the record our position: Based on the feedback from the public, the Opposition agrees with the broad objective of establishing a Judicial and Legal Services Commission. However, we have some concerns regarding the nomination process and by extension the potential composition of this commission. It is not clear why there should be a need to assign specific nominations from the so-called Premier and Opposition. Instead it would seem preferable for the commission to be appointed independent of the political apparatus. We would recommend instead that the Chief Justice and the two local legal associations nominate the members to the commission under a welldefined agreed procedure. We have no concerns regarding the proposed participation of the president of the Court of Appeal and being different from the government's proposal we would like for it to be stipulated that the commission would also be responsible for disciplinary matters relating to the judges and magistrates which it appoints.

Finally, we would recommend that in the interest of independence and discipline that the following measures be implemented with respect to the commission and its role:

- That a code of best practice is established for the members of the commission;
- That any executive staff of the commission be subject to the code of conduct;
- That a Register of Interest be established for both the members of the commission, as well as any executive staff members;
- That the commission consists of respectable non-practicing attorneys to minimise potential conflict of interests. These are our thoughts, for obvious reasons, Mr. Chairman.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, I know that my colleague, Minister McLaughlin, made the point, but I just wanted to ensure that this point was clear.

When he last spoke about the appointments to the commission, it was not that he was reiterating that a representative from the Law Society, or representative from the Bar Association should be appointed, but rather that they should have input into who is appointed.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): I just wanted to make sure of that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, I appreciate that and I was — it was actually going through my own mind at the same time that such input might be that a member would be appointed by the Governor after consultation with these bodies, in order to give them some sort of say, not binding say, but some — they could deliver their views to the Governor so he could take it into account.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Now it may be — it may be that the person that they would like to see on the commission would a practicing member and that might not be thought appropriate for the reasons that the AG and I have indicated. On the other hand, if the Governor consulted them about a respectable and active, mentally alert, knowledgeable retired lawyer, it would not face these problems, he would be more content and if they were — if they liked him as well that would be — him or her I should say, it would be that would be a good way forward. But I mean it's just the thought off the top of my head. I did take your point, though. I understood it.

HON. SAMUEL W. BULGIN, QC, JP. (ATTORNEY GENERAL): Would such an accommodation be made for the lawyers of the public bar?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Sorry?

HON. SAMUEL W. BULGIN, QC, JP. (ATTORNEY GENERAL): Would such an accommodation be made for the lawyers of the public bar?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, I think if we go down that route we should specify all of the — you're saying there are three bodies, aren't you?

HON. SAMUEL W. BULGIN, QC, JP. (ATTORNEY GENERAL): That's right.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): And I don't see any reason to discriminate against one of the three. If they're the three, as it were, legal associations — legal practitioners associations here they should all be brought into the picture.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): McKeeva.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Might it not be wise — and I think we talked about this last Thursday — to revise the matter or to relook at this legal associations, to revise it to say that be represented from legal — that representation from legal professions and use the Justices Association and/or representatives from the Ministers Association — that use them rather than...

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Rather than the — rather than the political input, yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Right, than political input.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, I think we would be relaxed about that. I mean, one simple way to — simpler way to cut through this apart from the two members who are, you know the president of the Court of Appeal and the CJ, who seem to me ought to be on this commission by virtue of their office, is to have provision for all of the other members to be appointed by the Governor after consultation with, and then you list whoever in civil society you think is appropriate. But if — if there's a strong view that the Governor should also consult the Premier and the Leader of the Opposition rather than take their nominations and be forced to put them on that could be accommodated as well.

I mean, you know, I'm sure any — I'm looking at the Governor now who might disagree with me — I'm sure any Governor who wanted to make sure that this body was representative and perceived to be independent and acceptable within the community would naturally wish to consult widely, in any case, before appointing people. But the key point is that the — I think the independence of such a body and their perception of its independence would be enhanced if there were no or very few members who the Governor was forced to appoint because somebody had come and said, you know, this is the man or this is the woman we want on it, and you'd have no choice in the matter. And that person might perceived to be put on for not the best of reasons and might not — might be very far from being the best candidate for this particular task.

Governor? Have I overstepped the mark?

HIS EXCELLENCY THE GOVERNOR: I don't think so at all, but I don't — it's not that I particularly want to comment on. I want to comment on one very particular point that I'm not certain and I throw it in the ring, and one point on which I am pretty certain.

The first detailed point has been drawn to my attention that there might be an issue of propriety in such a commission with the Chief Justice on it, not questioning the Chief Justice should be on it, appointing or advising the Governor on who should be on the Court of Appeal, and particularly, who should be the president of the Court of Appeal. Now, maybe that's something that can be covered by some code of regulations or code of conduct that's going to be such, where in certain circumstances certain members might have to recuse themselves from the selection process. But I throw that in because it's been drawn to my attention.

The other point on which I'm — have fairly strong views, and this is one of the few areas where I have publicly lobbied to any extent, is I would like to see a Judicial and Legal Services Commission that did have a remit for standards of conduct and discipline, not just for appointments. And I think that ought to be — something I believed for some time, but I think recent experience ought to show that that would be helpful in dealing with issues that hopefully would rarely arise but clearly can arise.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Thank you. Well, I think — I think actually on both points — I'll come to you in a moment, McKeeva — I agree. I think actually a very good function — of course, one can fill out all of the functions of a new Judicial and Legal Services Commission by legislation, as Sam has reminded us, but one a question of codes of conduct and ethics of judicial, some could actually be stated in the Constitution as one of the functions.

The other point I rather share, I am worried about Court of Appeal judges being within the remit of this commission. I think it would actually be unprecedented, and it makes me worry —

HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING): The BVI.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman — no, Mr. Chairman, it might be helpful if we looked at what you've agreed to recently, you being the UK.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): And in the case of Gibraltar, the president of the Court of Appeal is the chairman, and then there's — if you go to page 41, section 57 of the Gibraltar Constitution. So, you've got the president of the Court of Appeal as chairman; the Chief Justice; stipendiary magistrate; two members appointed by the Governor acting in accordance with the advice of Chief Minister; and two members appointed by the Governor acting in his discretion.

If we go to what has been agreed in relation to the BVI, it is the Chief Justice who's the chairman; and then one judge of the Court of Appeal or the high court nominated by the Chief Justice after consultation with the Governor and the Virgin Islands General Legal Council; the chairman of the Public Service Commission; and two other members appointed by the Governor acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member, at least one of whom will be a legal practitioner.

And in TCI what you just agreed to is that the chairman doesn't have to be anybody in particular but is appointed by the Governor acting in his discretion; and two members appointed by the Governor acting after consultation with the Premier and the Leader of the Opposition.

So, what is being proposed by us is by no means novel or —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): — unprecedented at all.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, I agree. I think one has to — I mean they're all slightly different you see, and they — first of all, they reflect the particular circumstances or wishes of the Territory concerned. But also we have had some experience now of these — these new bodies operating.

I mean I think we can work out between us what would be a suitable composition, and I take your point that it is right that there ought to be input from what one might call the principal stakeholders. But also, you know, it's not just the legal profession who needs to be satisfied that this is a genuine and independent body. The public as a whole should — so there is room, and I know what you're — where you're coming from. The political input could be the elected representatives of the people and I grasp that.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): You got it, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I think the — unless anybody else on that particular point — McKeeva?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, we don't support the politicalisation of this body. This is — will be a creature that must have full independence from any political guidance.

Mr. Chairman, even when you look at the Government's proposal which we just got yesterday, and you see on page 63, and that would have been section 4, section 5, if you read that you can see what could happen. If you see by having two political appointees what possibilities could exist there, and I gather from what they're saying is that four members, any decision would have the concurrence of not less than four members.

I know that the Government don't mind this, as they're putting it forward, so we believe — and that's why we believe, Mr. Chairman, that civil society in this instance could have a — an input rather than the political apparatus. This is talking about judges and the discipline and the hiring of judges, and I know that the Government wants to get their fingers in there, but I don't believe that's necessary. I can't see why it should be, no matter whether we're talking about being the people's elected representative. We want it to be independent at all times, and they all know that that will not happen. The appointees, the political appointees are going to talk to the political appointers.

And I didn't find any support for this. This is one of the things that the people are wary of in this country, that having politicians in these areas interfering and having a say in these areas not graduated to that point yet. And if we follow this trend they're taking us a whole distance from what we understand people want and are ready to accept. And this might occur in those places that have had constitution — the kind of constitutions that they have had for many years longer than we have, and some of these places might even be independent Territories. So, I am not prepared to go there yet, Mr. Chairman. I think that we are trying to take this country too close to those positions, and perception means a lot in the international arena, and our bread and butter depends tremendously on perception in the international arena. So I'd like to say again that we would like rather to see the Ministers' Association and the justices of the peace be included there and hope that the politicians don't interfere with them.

[inaudible comment]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Yes, sir, when we say the Ministers' Association we would certainly mean the SDA; they're here.

[laughter]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): And I don't even know if they are or not.

[inaudible comment]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well, you can put whatever you want to put to it, but I think we need to include — you see, our party — Mr. Chairman, you look at our party and you see what it says: For all the people, not all the people that the PPM want. They didn't say anything about what the PPM want.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Thank you.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): So, Mr. Chairman, I will stop there if you will take those things into consideration.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Thank you very much.

I think we'll come back to this after lunch. I think we should break for lunch and come back, spend a little bit of time afterwards because it is important. I don't anticipate that we'll settle anything, but I do want to have a bit of a discussion about the offices who would be within the remit — which would be within the remit of the Judicial and Legal Services Commission as well.

But, shall we come back therefore quarter to 2, and we'll crack on from there? Thank you.

LUNCH RECESS

RESUMED

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Ladies and gentlemen, I'm sorry we're starting a little bit later than I suggested. This is mostly my fault.

But shall we just return briefly to Judicial and Legal Service Commission? And we had an inconclusive discussion about how such commission might be composed, but I think unless anyone else wants to speak on that particular point, we could move on to the question of which offices would be within the remit of it. And I raise some doubts about whether the Court of Appeal judges should be within the remit, and I said I thought it was unprecedented, but then Alden pointed out, quite correctly, that in the new Constitution of Gibraltar the Judicial Services Commission does have within its remit Court of Appeal judges. But I still wonder whether that's a good idea. I mean, I see in your Working Paper, on page 63, section 1049c) you have listed: **Judges of the Court of Appeal (please confirm or reject)** and I — when I came to that I wondered whether that was addressed to me or to somebody else.

[laughter]

[inaudible comment]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Anyway, it's — it's a thing I think we'd like to think about.

The other point is, as I mentioned either yesterday or the day before, one possibility is to add into this list the Attorney General, the office of the Attorney General, as is the case with the new BVI Constitution, where the Attorney General is appointed on the advice of the Judicial and Legal Service Commission subject to a veto by the Governor if he considers that that would be prejudicial to Her Majesty's interests.

The only other point is, what about other offices in the public service that require legal qualifications such as Registrar of the Grand Court and some offices in the AG's chambers? You know, I mean, for example, in the BVI Constitution it says: **Any office in the public service of the Attorney General's chambers or of any registrar or any officer of the high court who is required to possess legal qualifications [**and then it goes on] **in such other offices in the public service to appointment which persons are required to possess legal qualifications as may be prescribed by any law or government policy at the time being in force in the Virgin Islands**. So that allows some flexibility to add into the remit of the Judicial and Legal Services Commission office holders who require —or offices which require legal **qualifications to fill them**. I don't know what you think about that, I just raise it as a question.

Alden, please.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, we didn't have that in contemplation. We had in mind that the senior posts, and felt that you could continue to deal with the other more junior positions in the usual way, because to do otherwise you're now investing this commission with — with a much wider range of work and you'd probably have to set up a whole new administrative process to deal with it. If you're dealing with, you know, a few appointments a year it's a lot different than if you're dealing with — I'm not sure how many Sam have in his stable now, but there are a lot more than there used to be. So, I mean, that's not a strong view, obviously, we have about it but that's just our thinking.

HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Mr. Chairman, in connection with your suggestion of the AG, because we took away his prosecutorial offices — and that should satisfy all that we needed and were concerns about. But a matter that I'd like to throw out for consideration is judges and people of the court and their membership in secret societies. I know it's awful quiet, but...

[laughter]

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Mr. Chairman, if I might, sir, I think —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): In Cayman — sorry, Mr. Chairman, but in Cayman we've got a couple, some who fix houses and some who fix cars, and I don't know whether that has any special bearings on the judiciary.

[laughter]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Pastor Al.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Mr. Chairman, if I might, in relationship — I'm probably the troublemaker.

[laughter]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): We can blame you.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): You can blame me. I won't ask Minister Bush to take responsibility from that — for that since, I mean — he is a Minister of Parliament, isn't he?

A MEMBER: No.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): No. Okay. Leader of the Opposition, okay, I stand corrected.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): That's good enough. Don't listen to the deer on that side.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Anyway, leaving the politics aside, sir —

[inaudible comment]

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): — which I'm not interested in, the — a big concern within the general populace in relationship especially to — to our courts and many of our senior officials, but since we're dealing with the courts I'll just simply deal with that.

There's always been concerns expressed locally and it's a very small community, people are — know each other quite well and know sort of the — they may not always have all the facts but know some of the inner workings of these things. And there's really concern, again, not that justice is done, but justice appears to be done.

And at a minimum in relationship to secret societies we were wondering if some consideration couldn't be given to there at least being a public registry where people have to declare, not just their financial interests, but their interests in and associations with organisations, whether that happens to be a church or some other organisations that they would have to declare those interests. And I just raise it as a matter of concern.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Thank you.

Right. There's one other point under Proposal 13 which is the third one, **"The Constitution should require the Cabinet to provide adequate financial support to the judicial administration,"** which strikes me as admirable, although, I guess in the end it would be for the legislature to vote — vote the funds across the board. But is it intended to write something into the Constitution on that point? I couldn't find anything immediately in the Working Paper, but... HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Yes, sir, we haven't got that bit of drafting in there yet.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. But you do intend to put in something? Yeah. Okay.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, I've been checking, as I undertook to do, on the numbers in these two associations, law associations. I haven't got the one from the Law Society yet, but I gather it's somewhere around 400, but I'll have the figures shortly, but there are 116 members in the Caymanian Bar Association. I just got this from the secretary.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Thank you.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): My question is whether they're active and paid up members, just for the record.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): This is information from the secretary so I would presume that they are active and paid up.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): No. No. We need to confirm. We can't assume anything now.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Sorry. I hate to be — I hate to be coming back on this, but irrespective of numbers, it doesn't change the underlying premise of the potential to compromise the administration of justice in that regard.

And since we are on that, you just threw out the issue of the potential offices that — what office that might be included in that, that if assuming Crown counsel were to be included in the persons who were to be appointed, promoted, disciplined, that would increase my reservations about the propriety of having members of the private bar in that body when Crown counsel would be required to stand up and prosecute against their clients every day in an adversarial position, that could become real untenable.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, we've conceded that point. The reason I raised the number is that the Attorney General said that these are — or suggested that these two associations were not representative, and that I think seriously demeans and diminishes their value, and it is important that your office, or your delegation does not leave with the impression that the Bar Association and the Law Society are not active and are not representative. So, I intend to bring to your attention as soon as I have the number, the actual number of Law Society members as well so you have the full picture.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): All right, thank you very much.

PROPOSAL 14 – LIMIT THE ROLE OF THE ATTORNEY GENERAL AND CHANGE THE RULES FOR HIS APPOINTMENT

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, if we could then move on to the next topic. We've actually done to death almost Proposal 14, and we even touched on Proposal 15, the director —

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): Mr. Chair, may I just interrupt for a moment, if I may? The discussion yesterday about the role of the Attorney General in Cabinet, I just wanted to point out a contradiction. Section 44 of the Working Draft says that the Attorney under Cabinet may attend and then section 52 says he must attend. I just point that out because they are contradictory, and I think a decision has to be made if it is decided that the Attorney is not to be a member of Cabinet whether he must or may attend. As I understood it, the Government's preference was for must attend.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): All right. Thank you very much. I think — I think that's very helpful. Right.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes. Yes.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Just one quick point as I was reflecting on the current Constitution, current practice as it

relates to the Attorney General, and I haven't heard it mentioned or seen anywhere here, at least I certainly have not noticed it.

In the new arrangement where we're hiving off the prosecutorial function, in his absence who would act for the Attorney General? Because, surely, we would not — certainly on this side we wouldn't be happy for it to be anyone other than someone that's still within the Attorney General's chambers.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I absolutely agree. I do remember that in the 2003 Draft Constitution, the — it provided for a Solicitor General to hold the prosecutorial function, then there was this little clause that said the Solicitor General would act as the Attorney General in the absence of the Attorney General. And I recall receiving communications from respectable lawyers in the Cayman Islands who thought that would be a very bad thing, and I can see the point. I think that an acting Attorney General would need to be appointed, but from within the AG's chambers would be the natural place to look.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): We agree with that, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Not in the DPPs —

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): We agree with that, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. So as far as the DPP is concerned, I think I perceived general consensus that that would be a good post to create and to invest with the functions, the prosecutorial functions which presently — at present are vested in the Attorney General, and I see from the draft Working Paper the formulation about how Judicial and Legal Service Commission would advise on the appointment of the DPP and indeed would have — have within its remit discipline and possible removal of the DPP subject to — subject to the Governor's veto in extreme circumstances. So, I think the way it's drafted the DPP would have security of tenure, such as would be provided by having to — having a suggestion that he should be removed looked at by the Judicial and Legal Service Commission. It wouldn't be a matter — an arbitrary matter. Is that the intention? I mean I'm assuming that's what you were intending, that there should be some constitutional protection for the office of the DPP and this is how it is provided. Yeah?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): That's fine, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Good. All right. Sam, did you want to make a point about the DPP I think?

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): I was just checking on the security of tenure of the DPP. My position would be — subject to this would be that his removal should be no different from that of — certainly from a Grand Court judge, the provision of his removal from office for obvious reasons.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, that's an interesting point because, of course, the — in this Working Paper the rather long procedure for the removal of a Grand Court judge or Court of Appeal judge involving the Privy Council and all that is retained, and I think that's quite right that it is, and so, one would have to make an exception in section 100, because, otherwise, it's inconsistent at the moment. It looks as if the removal of a judge is a matter for the Judicial and Legal Service Commission whereas it's a special procedure elsewhere. But the point of — the point of — you know, that's just a matter of clarification. The point of substance the Attorney General is raising is whether it's sufficient security of tenure for the DPP that he cannot be removed, except in accordance of the advice of the Judicial and Legal Service Commission and the Governor's ultimate decision.

Now, are there any views about that? I think Sam is suggesting that it might be better to have a separate tribunal in the case of — to advise on the removal of the DPP. I don't know what people think about that. We can — we don't have to decide anything now, we can think it over. But he's raised the point.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, you will note on page 65 of our paper that right at the top we've actually said that the sections below, the ones just referred to need consideration as a result of the changes of appointment of the Attorney General and the proposed role of the Judicial and Legal Services Commission.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Um-hm.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): That's an indication we haven't thought that all the way through ourselves, so...

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): We will.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I mean my immediate reaction is that if you have a properly constituted independent Judicial and Legal Service Commission which is trusted to make recommendations for appointments, it is — it goes quite a long way, if not a very long way, to providing a safeguard as regards discipline and removal. And one could argue that it's duplicatory to have to set up a separate tribunal for the DPP and the AG if the AG is covered by this. Judges is — judges are perhaps a different matter because, traditionally, as you know in Constitutions of Overseas Territories for a century or more, removal has to be referred right up to the judicial committee, who then advise the Queen whether a judge should be removed. So it is a bit more elaborate in their case. But I notice in any case you left — you left all that in this Working Paper, and I assume you did that deliberately, and I think that's right.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): I think — I would agree with exactly what you just said. It used to be that judges were considered to have tenure for obvious reasons, good behaviour and so on, but that officers such as attorneys, DPPs this was not considered that important.

This is changing in many democratic countries and, again, Council of Europe, documents, statements, directives all point to the need for the attorney and the DPP to have almost equal, not quite equal, but almost equal security of tenure. So, security of tenure, yes, the Attorney General makes a good point on that. It must be taken care of, it's a foundation of the rule of law that that be so. How it is done, duplication is a point, expense, and the Governor's point this morning I think is a very valid one. It has been discussed as well, namely, that discipline, as well as appointments and possibly removals, ought all to be taken within that body which begins to grow in expertise in that area, and is after all about as independent as you can get, at least for the non-judges in terms of removal.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): I have no difficulty with that. As far as I'm concerned, they ought to enjoy the greater security of tenure given the matters that they would be required to adjudicate on.

Just one other matter in respect of the DPP post, as I mentioned to you, that is something as well that is long overdue. The point I wish to make is that I am aware, as I sit here is that there is some logistical problems in terms of administrative issues within the office of the DPP. in certainly the one OT that I'm aware of, and it has nothing to do with line management. It is quite understood that the DPP is a majority plentitude of powers and constitutional protection. But issues as to who speaks to the DPPs' budget, who put forward their policy proposals, who are responsible for all of that sort of thing, there are some concerns about how all of that needs to be addressed. And so, the point I would wish to make is that the Constitution could properly create the office of DPP with all the constitutional trappings (security of tenure, et cetera), and then makes a point that a law may be passed by Legislative Assembly to address the workings of the office in terms of the administrative nuances, and so that would provide a little bit more flexibility in that regard.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes, that is a good point. Good. Thank you very much, Sam. That's good.

PROPOSAL 16 – CREATE THE OFFICE OF CABINET SECRETARY

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, on to another very important post, that of Cabinet Secretary, Proposal 16.

I think this is a matter of writing into a new Constitution a post which exists already and has been done for some time. I think the only point I would like to make on it, which is a sort of supplementary to the way that the proposal is described, is to work into the functions of the Cabinet Secretary, instead of just providing support and help in coordinating the implementation of policies, instead of just to the Cabinet, also to the Governor because the Governor would have special responsibilities and will be taking decisions that also need to be coordinated. So, I think we would be perfectly happy with a Cabinet Secretary being a constitutional office with functions of the kind described in the service of both the Cabinet and the Governor working together. Is that all right?

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Well, to the extent that Governor's a member of Cabinet, then, that must be right. **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. Okay. Anything else on this point? Proposal 17 — sorry, McKeeva, did you want a word?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman, what and how does the Government propose the security of tenure, the route for the security of tenure of the Cabinet Secretary?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Mr. Chairman, the Working Paper, page 28, section 45. Forty-five (1)(b): There shall be — well, section 45 starting at the top: There shall be (a) a Cabinet office which shall be an office in the Cayman Islands government; and (b) a Cabinet Secretary whose office shall be a public office who shall be a person who is a Caymanian and who shall be appointed by the Governor acting after consultation with the Premier. So, it is a — it is a civil service post with a prescribed means of appointment.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): As I read it, the holder of this office would have the equivalent security of tenure as any Permanent Secretary or other senior civil servant. Yeah, I think that will be normal.

PROPOSAL 17 – ESTABLISH A HUMAN RIGHTS COMMISSION

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Proposal 17: Establish a Human Rights Commission. This is fine with us, and I see that part of the draft Bill of Rights you've passed to us has a section on this which looked okay to us, I think.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Sorry, sir, it's actually at the front of the Working Paper you have.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes. Should we look at this now or — I think ... let's look at it now rather than when we come to the Bill of Rights itself. It's a —

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Page 19, sir. **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** — rather discrete point.

Page 19, section 26. I wondered on this draft: **(5) Commission shall replace the Human Rights Committee**, whether it was necessary to say that. Is the Human Rights Committee a body established by law or is it — no. So...

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): It's a Cabinet creature, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): A Cabinet creature.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Its appointments are made, or were made by Cabinet.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): And was the idea of this (5) so that there would be no question of there being two bodies, a Human Rights Commission and a Human Rights Committee, with the consequent confusion that there might be —

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): Yes, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. [laughter] I see.

Yes, I think the — I think the only suggestion we might have is in relation to its functions, and this is really a suggestion. It says in 7 that: The commission has power to receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights; and provide advice to persons who consider that their rights or freedoms have been infringed; provide a forum for dealing with complaints by mediation or conciliation or by making recommendations; issue guidance on procedures for dealing with any complaints or breaches or infringements of rights or freedoms.

And I wonder whether, first of all, would it be useful to add in that it could undertake investigations of its own initiative and make recommendations of a particular or general character? Or is it intended that it would be solely — it could only — it could only do — it could only get involved because it's been activated by a person bringing a complaint, an actual complaint? HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): We hadn't sought to proscribe its activities in that way, really. Our principal concern was to ensure that, based on representations that we had, it didn't have a judicial or quasi judicial function.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): But I don't think that we'd have any objection on the Government's side — we haven't talked to anybody else — to it being able to sort of own motion investigations.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I mean I notice that in (10) on page 20 there would be — further provision relating to — The establishment and operation of the Commission may be made by Parliament that such legislation shall not derogate any provision of this section. So, the effect of that, I suppose, is that this is the minimum and this is the basic remit, though, a further task can be added provided they don't take away from anything which in this section.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): If I may helpfully add, the existing Human Rights Committee does currently have as part of its terms of reference, which have been circulated to the delegation, we currently do have the ability to investigate — initiate investigations of our own volition under our existing terms of reference.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Good. Okay, well if it's —

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): If I may say, for the avoidance of doubt, it's probably — for the avoidance of doubt, it might be worth putting something like that in.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): In, yes.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): There was concern expressed during the discussions about the commission having executive powers or judicial-type powers so that in this draft it has no such powers. On the other hand, there's also been concern expressed about a rights culture that is too litigious. This is a way — in some way of siphoning off some of that litigation.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): And hence the powers for mediation and conciliation within this commission, so that not everybody rushes off to courts to try and settle it —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): — in this way.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, I think that's very valuable. Very valuable from that point of view.

Then the other point I was just going to suggest, and I think it's implicit really in (8) to a certain extent, but it might be useful even to write in that where the commission makes recommendations to public entities, public authorities, those authorities are not obliged to accept the views of the commission, but must respond in writing within a reasonable time with the responses being published unless there's a good reason not to. At the moment it's rather unclear what ... I don't want to use the word "defendant", but only what the object of a complaint to the Human Rights Commission might have to do about a recommendation to the Human Rights Commission, and I think "recommendations" implies that they're not binding.

And then (8) makes clear that the commission will not have power to make binding determinations, or even compel any person to do anything against their will. So it's quite clear it's not an enforcement, they're not a judicial or enforcement body, but it might benefit actually from stating specifically that if the commission makes a recommendation to public authority, the public authority doesn't just bin it or ignore it, it has to at least respond within a reasonable time.

Anyway, that's my suggestion which I think might be picked up a bit. Does that sound a good idea or a bad idea?

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): We would welcome such a development. We obviously are cognisant of the concerns relating to the way the commission operates.

The actual position now currently is that we effectively only have the nuisance value —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yep.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): — of following up with public authorities in relation to our reports and recommendations, in order to attempt to prompt a response. So, an obligation on the public authorities at minimum to respond to us in writing would certainly be helpful along that vein, again, of course, with the built-in qualification that it would not be a binding recommendation which hopefully will go some way to assuaging some concerns that it would be a binding recommendation —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): — or a responsibility. So, we would welcome that suggestion.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. Thank you.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Pastor Al, yes.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): If I might just step back up to number 7 for a moment.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Sure. Seven?

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Seven (a).

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Oh, (7).

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Yeah, sorry. Twenty-six — THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): — seven (a).

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): The last part of that sentence making reference to international human rights treaties that have been extended to the Cayman Islands, we have serious reservations about that, particularly in light of the decision recently made in the Bermuda case, and the reference made in their Constitution to other jurisdiction human rights, for instance, the European Union Convention on human rights made on that and what role that played in the Privy Council's decisions. And so we have reservations about the reference to any other Bill of Rights other than — or human rights other than the own that we will be dealing with locally.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Mr. Chairman, if it assists I can try to respond

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah, please.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): — to that comment. In the *Thompson* case particularly the Human Rights Commission did have powers of enforcement which are far more extensive than is currently proposed for the existing Human Rights Commission, in particular, they are able to make binding tribunal-type recommendations and decisions. So, Mr. Thompson's appeal to the Human Rights Commission then resulted in a formal report and finding, judicial finding, but to the extent that this Human Rights Commission will not have equivalent powers. If that concern is hopefully somewhat then lessened we'll have some reassurances on that vein. Because we — on this basis, the Cayman's Human Rights Commission would not have equivalent judicial powers, and that's been made I think quite clear.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Right. Our concern would not be in respect to the local Human Rights Commission, it would be the fact that we have the caselaw — and I'm not a lawyer nor a politician so I may not be using the right terminology at all, but we do have a decision of a court that was — that was made — or I should say the Privy Council that was made, who did make reference to these points, and the concern that we have is they may become matters of caselaw and any representation — any disputes that are made locally within our courts, not so much in relationship to the Human Rights Committee.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): I don't think we can avoid that. The Privy Council is the highest court in the land for us. It's not an issue of the Human Rights Commission being able to develop or progress the caselaw any further than it currently exists, that would be an issue for the courts. And the courts continue to —under this draft will continue to exclusively retain that jurisdiction. The Human Rights Commission will obviously be able to reference existing cases to the extent it's helpful to do so, but in terms of applying it directly into Cayman law, that's strictly within the purview of the courts.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Mr. Chair, the solution lies halfway between those two propositions.

My reading of the case is that ... Pastor Al explained that it's a decision from the Privy Council, but the real truth is that the Privy Council decision turns on a particular provision within the Human Rights Act from the — from Bermuda. Melanie's argument, of course, not — excuse me for calling you that — is not terribly outlandish in that it is a decision from the Privy Council, and to that extent it might very well translate into to a common law provision, which can easily be floated down somewhere.

So, somewhere in between there, there is some sort of happy medium, where I'm just not sure, but it would depend, of course, entirely on how the court is prepared, including the Privy Council to construe any provision of our Constitution and our similar legislation that we might have.

And so, whilst I have the floor might I just play a little bit of devil's advocate and make a point that Mr. Gordon Barlow would make —

[laughter]

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): — which is whether there is some argument, or room for an argument, that 26(4) cannot properly be reconciled with 26(9), that is: **The commission shall be independent of the government of the Cayman Islands, but the commission must make an annual report to Parliament about its activities.** So, that would seem a little bit sort of inconsistent to me, I don't know. Mr. Barlow — I'm sure it hasn't escaped Mr. Barlow. **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. I mean, I think actually ... I asked myself a similar question on (4), and I wondered whether it wouldn't be better to use the time-honoured formula in relation to the DPP, the Auditor General, the Complaints Commissioner, that in the exercise of its functions the commission shall not be subject to direction or control of any other person or authority, any other person or authority. That gives it constitutional independence. It doesn't mean to say it can't — it can still report annually to Parliament, and that will be a very good thing, and one can get an annual review of the state of affairs in the Territory.

On the question that Pastor Al raised, I was thinking it over and really this reference to international rights treaties that have descended to the Cayman Islands, the principal interest in that — in any work done by the Human Rights Commission on those things, on that aspect, leave aside a local Bill of Rights and the Constitution, but as far as the treaties are concerned, it's the UK government who is responsible for performance of those treaties.

And I'm looking to my esteemed colleague, Susan, who...

I mean I think we would find it very useful if there was a body which — an independent body which looked into such a thing, you know — say the rights of child convention, is that extended to the Cayman Islands, UN Convention on the Right of a Child? Now, it's very difficult for the UK government across the water to be able to monitor how that is complied with. And Susan was in Geneva quite recently answering questions from the monitoring committee under that convention, and she had to gather up such material that was available from the various Territories, in order to answer their questions.

So, I don't know. Would you like to say anything on this point, Susan, as it immediately strikes you?

MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION): I think from our point of view it would be useful to have something like this because there is supposed to be an ongoing monitoring of the implementation of treaties that have been extended to the Territories, and there are a number of the United Nations treaties which have been extended and create obligations, international obligations. So I think it would be very useful to have a body which would have the ability to monitor the implementation of these treaties, to sort of pick up shortcomings as they went along, but without having any enforcement power.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): We currently do also provide that level of commentary to the extent that it's been raised in any complaints that have come before us. We do look at international treaty obligations, and — as part of the process of us assessing what our current position

should be and whether there is a *prima facie* breach of any human rights obligations relevant to Cayman that have been extended. So, we currently do perform that function, obviously, on a less formal basis, but again we would welcome the ability to do that.

MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION): What would be useful actually is to have the power to — without having received a complaint, to look into the implementation of —

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Yes.

MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION): — these treaties because that's the problem, that every five years or so you have to go to the United Nations and report, like we've just done in the Rights of Child Convention —report on what the Cayman Islands is doing in terms of implementation of the treaties.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Yes.

MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION): So, I think it would be really useful to have a body which was constantly monitoring the implementation so that when that five-year period comes up, you know, you can make the report.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): We'd agree and we would support that. And, obviously, the annual report mechanism can be beneficial on a practical side to fulfill that function. But, again, we would welcome and support the ability to do that formally for Cayman.

PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE): Mr. Chairman, if I may? Notwithstanding the point just made, I'm wondering whether or not that could not be achieved by a — an act or outside with the Constitution, because, really, I'm looking at the effect of section 26 that same 26(7)(a) if, in fact, we have that in the Constitution, isn't the effect tantamount to the fact that we're giving constitutional recognition to a body of law that outside of this jurisdiction, for which we ourselves have not reviewed, are we binding ourselves constitutionally to a law which we —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Yes.

PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE): — which we have not seen or reviewed?

UDP LEGAL ADVISER: You see, that's the real question, because I'm concerned when there's a conflict between the treaties —

PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE): Right.

UDP LEGAL ADVISER: — and what's actually in our Constitution. And I can easily see this arising with respect to the Bill of Rights.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Yes.

PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE): Right. So I don't know if a compromise can be made so that the same effect be achieved, but outside of the Constitution.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): McKeeva, yes.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): I would like to read a paper into the records that deals with the whole matter, and before I do that, if we're talking about how we're going to be independent of the government I — while the Governor is not appointing members on the advice of, they're still consulting — he's still consulting on the appointment of Members. And perhaps while I'm reading this someone can explain to me why it's necessary to do that if the aim and objective is to have it as completely independent of government as possible.

I don't mind it being a document being laid on the table of the House because that then informs us — it's a report, and it should inform us, so I wouldn't mind that, but someone would explain to me on why the political apparatus have to be involved in it.

I want to quote — to read this letter, sir: This is the most radical set of proposals regarding human rights yet put forward in the Cayman Islands. This should come as no surprise given that promoting human rights is the main focus and job of this group. If all of the HRC proposals were accepted, human rights would eventually become the central node of legal, social and cultural thinking in Cayman. All issues in our national conversation would be viewed within the framework of how we define our rights for this or that. This would not happen overnight, but the enabling mechanisms of the proposals, the breadth of rights, the power of the courts, the horizontal application of rights, et cetera, would all tend in this direction.

The championing of rights in the absence of any mention of responsibilities runs directly against the grain of Cayman's history and culture. Traditionally, Caymanians have thought of the rights of their neighbours in terms of their own responsibility towards their neighbour, with an equal sense that their neighbour has a corresponding responsibility towards them. Fairness or equity between neighbours has been thought of as a set of mutual responsibilities. Any notion of rights has sprung from a strong consciousness of prior responsibilities. The modern notion of rights as a free floating concept has had little or no meaning in the history of Cayman.

This view of responsibilities and rights stems from the essentially biblical idea that human rights don't so much possess rights, which they can assert when they wish, but rather deserve respect from the other party in any relationship because both parties are made in the image of God. The traditional, cultural, legal, social fabric in Cayman has been very strongly coloured by this biblical view and remains so. The idea that human beings possess free floating human rights is, essentially, a more secular concept; a concept that has historically gained ground in the west other the past 300 years as Judeo-Christian thinking has declined. Similarly, it is only gaining ground in Cayman as Caymanian society has become more secular. However, the current slow secularisation process occurring in Cayman must be seen alongside or against the numerous contrary examples in which traditional Caymanian thinking on this subject is strongly expressed.

The HRC proposals therefore seem to be designed not for a small Caribbean country with its own distinct history and culture, but for the life of a small imaginary European country which is situated at the heart of the most advanced or secular countries in the European union. In reality, if Cayman were compared to a European country, we would be much closer to a country like Poland, which is proud of its traditional values and unashamed of its opposition to, for example, gay marriage.

The HRC proposals are therefore out of touch with where Cayman is today, and where it is likely to be in the foreseeable future. The proposals should be seen as a bold attempt to transform Caymanian society rather than as a considered attempt to express or sum up the consensus of Caymanian views on this subject. They are an attempt to Europeanise Cayman, not an attempt to sum up what Caymanians feel.

If one thing is clear it is that there is no one accepted global template of what human rights consist of. Jurisdictions around the world vary considerably in how they define and enforce human rights, yet each jurisdiction would claim that its approach is valid far from Net News view that human rights are akin to mosaic tablets of stone handed down on Mount Sinai, the genesis of human rights in Western History over the last 300 years, and especially since World War II, can be chartered as part of a distinct intellectual movement.

In view of this, Cayman must be very wary of being stuck with a preordained template of human rights. Rather Cayman must be allowed to charter its own path toward defining and enforcing human rights in this jurisdiction in the midst of an ongoing and dynamic global debate on what constitutes human rights and how best to nurture and enforce them. For this reason, a law defining human rights would be the better and safer method for Caymanians to choose rather than a Bill of Rights enshrined in a constitution, the latter may actually make us look like a radical outpost of Europe stuck in the western Caribbean, a trophy for someone else's values, but not our own.

Mr. Chairman, our position — end of quote I should have said. Our position is that we have found support for the provisions outlined in the proposal; however, we have not found support for the Human Rights Commission to be established within the Constitution. Instead, there is support for the Human Rights Commission to be created by way of domestic legislation.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Thank you.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Mr. Chairman, may I simply ask the Leader to clarify whether the statement that you've read was that in response to the HRC's position paper specifically rather than the Proposal 17 regarding the commission?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): It was "Pressing for a Law for Human Rights Rather Than a Law for a Constitutional Bill Remains of the Highest Importance". That's what was headed in the paper. But this was a critical review of the April — you might recall this, 2008 Proposals from the Human Rights Commission.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Thank you. The Human Rights Committee, we're not a commission.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well...

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): In that case —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): I'll give you a little promotion.

[laughter]

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): In that case, the Human Rights Committee's paper and proposals all deal and comment strictly and only on the Bill of Rights itself which we haven't yet come to. It may be helpful if we respond more fully when we've — when we're discussing the Bill of Rights, Proposal 4.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): That's fine. I'll certainly give you that opportunity.

[laughter]

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Mr. Chairman, sorry —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I should like — I should like just to — unless —

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): Just two quick comments, please.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yep, okay.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): In relationship to the point that I made earlier, (7)(a), again, I would just state that we would not want to see any reference to any other jurisdiction's Bill of Rights other than our own because that's what we're dealing with, a Caymanian Bill of Rights, or I should say a Bill of Rights for the Cayman Islands. And so, we would not want to see reference made to others. Having said that, the point that Ms. McLaughlin made in regard to their function, or someone made to their functions, in regard to being able to evaluate all of these conventions that have been extended to us, we have no issue with the functions being carried out, that's not our contention. It is not enshrining it in the Constitution.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION): The second thing I would say is in relationship to (9), again, it was possibly as a result of some input that we had on this, and the idea of a report to Parliament wasn't that they would be reporting to Parliament, but that Parliament would be aware of where we complied, where we were in violation, where we were so that, again, our elected officials would know that the official work of the Human Rights Commission/Committee, that that work could be maybe on an annual basis submitted to the Legislative Assembly for if nothing more than information, that they would know again where we were complying or violating in the mind of the work that was done. So, it was only from that perspective that that recommendation was made.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): I think the drafting is obviously just subject to some tidying up just to make their position clear. But if it's helpful, obviously, the main functions of the commission can set out in the Constitution, and then otherwise elaborated on in a separate HRC law provided we're not prevented from doing that by (10) which I think we looked at briefly. But I don't think that was the intention for the — for the HRC law to be tied to — or restricted to expanding on the functions. I mean, I know — I know the way it currently reads, but I don't think that was the intention. Professor Jowell, you can confirm if that was the case.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): It is — the intention was, as I understood it, was to make it strictly constitutional, an important body that needs to be up front rather than expanded by legislation.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I just have one more question before I hope moving on to the next — the next point, and that is section — (8)(a): **Commission has no power to represent or provide representation to parties to litigation.** And one of the problems of course with genuine enforcement, or a lesser enforcement (mediation in this case or going to — getting — getting one's complaint heard), is that people throw their hands in the air and say: I can't afford it. And, you know, in a sense it's a sort of legal aid question, legal aid, legal assistance question. It might be, I suppose, that the commission is simply — wouldn't be — wouldn't have the capacity to do this.

But I just wonder what the thinking was about actually ruling out that a Human Rights Commission might provide representation to a complainant who — after all, they will be probably the — well, undoubtedly, the experts in this field of law in the Territory. Or perhaps that's the reason why they shouldn't have that function. [laughter]

[inaudible comment]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Things dawn on me slowly.

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): There's that factor, but there's also — and you've nailed it, the legal aid factor. We don't, at this stage, feel that we're in a position as a country, as a government to have a huge budget to deal with human rights complaints and representation, and that's what it would require, if we give them the wherewithal, from a constitutional standpoint, to go on and represent people who had human rights complaints. It would, perhaps unwittingly. also encourage much more human rights litigation than perhaps would otherwise be the case.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well if we not got the money to help the commission, where are we going to get the money from for the lawsuit?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Susan?

MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION): The only thing that worries me slightly about the way this is worded at the moment is, would it prevent individual members of the commission acting on a *pro bono* basis for people, because I don't — because as Ian says, these are the experts probably in the Territory, so I don't think or I wonder do you want to stop these people acting individually?

HON. ALDEN M. MCLAUGHLIN, JR., JP. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE): I think — I think that is a basic definitional point. It's — the Constitution speaks to — or the draft speaks to the commission, not to any member of the commission. So, if they wish to act in their individual capacity, I don't see any constitutional bar to that.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Mr. Chairman?

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): In other words, Mr. Chair — sorry. In other words, Mr. Chair, how I see it is worded now — and I mean, it's really just a repetition of what Minister McLaughlin just said. I don't see it at all being able to be construed as to affect any individual action, because that individual action would not be an individual action on behalf of that — of the commission, it would be on the persons' own accord, as I understand it.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): I would agree with that. I think the — as I — as we read it, rather, the (8)(a) would —reflects the power of the commission as a body rather than its membership individually. And, in any event, we obviously do have a constitutionally enshrined right to provide legal aid, and in that regard any human rights issues can properly be litigated through the courts in the normal way. And moreover, I'm not entirely convinced that the HRC would want judicial powers. I think that may move us away from our ability to mediate rather than having a full representative role before the courts.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay, thank you.

UDP LEGAL ADVISER: Can I ask a quick question?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Sorry.

UDP LEGAL ADVISER: Just a quick question.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

UDP LEGAL ADVISER: My — I'm not sure why we limited acts to — against the government in making it simply horizontal because what comes to mind, for example, is the over discrimination that we have in the workplace, for example, and this is against employers. And the current Labour Law is employer friendly, so, you know, that's a real concern that I have. And I can think, for example, that we don't have authority to bring a class action, for example, and there's nothing to hang it on, and I know a Constitution would be something that one could hang this on. So, I wasn't sure in my thinking why it was drafted this way and it was so limited. So, that's just a question that I had.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): As I understand it, this is a question more about the actual Bill of Rights in its horizontal — it's vertical rather than horizontal application. That, I think, is for the next discussion —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): — with respect.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah, we'll come back to that.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Um, Mr. Chairman? Mr. Chairman, sir?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes, McKeeva.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): I was waiting on explanation as to why we need the Governor consulting the Leader of Government and the Leader of Opposition before appointing Members. The thought process is that this is to be independent of the government of the Cayman Islands.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, if we go that far in the interpretation, the Governor is a part of the government. So what, we gonna totally exclude him too? Who does it?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well, not under our Constitution because he is the head of the country and not elected Members, unless you all get the Constitution you're asking to be satisfied for the Governor to do what he has to do.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, if I remember correctly, you yourself stating early on in these discussions the fact that His Excellency the Governor, in all of the interpretations as we move forward, is part and parcel of the government. **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Indeed head of the government.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Head of the government.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): It's a whole lot different than the political arm of the government and of the political apparatus.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Being involved when the Constitution says it's going to be independent of. And I am saying there is no true independence of if you are having the elected apparatus involved.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, I think the — I take your point, but I think there are two things here which, in our view, make it acceptable. One is I'm very much in favour of such a body being entirely independent, but one is that the Governor would not be bound by the advice or any views expressed by the Premier and the Leader of the Opposition because it's the Governor after consulting these — he can — the Governor can act otherwise than the Premier or the Leader of the Opposition wish, in order to ensure that there is genuinely independent body or as far as possible. And the other is the provision which I suggested which should be written in, which should be a constitutional bar on a commission being instructed by any other person or authority, anyone else — Governor, Ministers, Legislative Assembly, police, anybody — who will be completely independent.

Now, you could say, for the sake of extreme purity there should be no political voice in the selection of any of the members of the commission, and that's a choice for you to think further about I think. I mean — but from our perspective we're not troubled by this because for all of these safeguards which I mentioned.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): But what I want you to this of, sir, is that politicians being what we are is going to — when something is not right, and I have my concerns about this peace and serenity that we want to have in the country. You're not going to have that as long as there is a fight going on between the Governor and the politicians, and this is one of those cases, at least as we might think of it, that can bring that sort of row where the politicians say: See, again, they're only consulting. I knew the

Government of the day would be one of the prime movers of that argument when the time came, as we all see what's happening now. We don't have say, although they vote for this position.

Anyway, sir, I leave it in your capable hands and I ask with that is — who's going to table and be associated and put the money in the budget for these things, because we can't have the Constitution saying and, sir, at least — again, I say at least we might think of it. We can't have the Constitution saying one thing and then little by little bits here and there is not doing what the Constitution says. Because if the Minister of Education has to keep in his remit these beautiful girls, and you gotta keep the budget for them, and he got to bring the paper down to table it, then, what — how is it that they're so disconnected from the government?

And so, either something needs to be rectified so that any constitution that we get, any order that we get will clearly be stating what is the position.

And while I remember it, try, sir, and see if we can get a document that the ordinary people of this country do not have to get a lawyer to read it to them. I looked at Guernsey, what is being proposed there, and some of it the wording is so plain, and here we gotta go get a lawyer to understand our own Constitution and probably a QC, if not a battery of lawyers.

[laughter]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Anyway, sir

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Mr. Chairman, if I —

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): No disrespect to lawyers. I wanted to be one.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I should be very — I should be very grateful to be made a QC and be paid even, you know, ten times as much as I've ever been paid in my life, if you think that would be helpful. Anyway, I take the point.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Mr. Chairman, if I may add a few points —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes, certainly.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): — just in response to — provide hopefully some additional reassurance to the members that have raised some concerns.

Notwithstanding its informal operations and the existence of the existing Human Rights Committee as essentially at the pleasure of Cabinet, the committee is quite confident, and I don't think there would be any views to the contrary, that this committee does operate currently very independently of the government. Our work and role and function has not been influenced by — or otherwise by the existing administration. Our reports have been, in some respects, taking the government to task on a number of important points including Cayman's compliance with international treaty obligations and otherwise how we operate generally and approach human rights here in Cayman.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well, praise be for that, but that's as it exists today. But we're talking about the future I was reminded of that some time ago. We're talking about the future. And as I said, the Constitution shouldn't read one thing while bits and pieces is happening that I — I consider it *ultra vires* the Constitution.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Well, what we're speaking of is formalising the existing committee's role and function into the Constitution. And I think this draft, bearing in mind it is a Working Draft, it may have to be subject to some amendments and corrections to address some of these issues, but in large part it is meant to reflect the existing position and to formalise it into the Constitution. So where it says that section 26(4) that it shall be independent of the government, that is again working towards reflecting the actual current existing position. And as the Chairman has rightly pointed out, from a pure perspective there may be the argument that there is some political influence in at least the appointment stage, but from a practical point of view it's still sensible, it still has some merit.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): I have my concerns about the whole apparatus of the consultation with the political arm of government. Then the political arm of government is expected — I hope not — I mean the Governor can control that by not giving the responsibility of the Human Rights Commission to an elected Member. That can be controlled that way. That can be given to window officials to lay the report on the table and any corresponding discussions be held with that arm of government. And in today's Cayman, and perhaps for some while yet, that would be more palatable than having, as I said, the political arm of government involved, and only one arm of government. And you're talking about the rights of everybody.

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Well, again, the appropriateness of the selection of the actual members will obviously take account of the fact that those persons will not feel any allegiance to any political party and will be able to discharge their function and role independently and properly.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): And that would be the Governor's right to appoint, and I would hope that that's what he would do, Mr. Chairman

MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE): Absolutely. Well, to the extent that the political — the Leader of the Opposition and the Premier, such as it is, would have any input in suggesting a particular person as members would obviously again take account of that before suggesting a person for membership.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION): Well, I think — I'm still asking, Mr. Chair, why do we need the political arm involved in that appointment when we're saying they're not, should not be.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, I think we should have a break now.

[laughter]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): And come back at half past. Come back at half past three.

RECESS

RESUMED

PROPOSAL 18 – ESTABLISH A COMMISSION FOR STANDARDS IN PUBLIC LIFE

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I suggest we proceed to Proposal 18: Establish a Commission for Standards in Public Life.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Mr. Chairman? Mr. Chairman? I hope you're going to come back to those points I raised.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Do you mean the last ones just before the break? Yes.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Not necessarily [inaudible].

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, okay. This is expressed in the Working Document in section 105, on page 66, and I don't — at first sight, I don't see any problem with it. Certainly we have no objection to the principle, and it seems to me to be expressed in a very, very reasonable way. I think we had one suggestion, and I'm not sure that it's in there already, and that is the remit of this commission might usefully include codes of conduct for members of statutory boards, in order to broaden it slightly. And it's not clear to me whether statutory boards are within its remit at the moment, but perhaps we can point out —

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): To —sorry, sir, to a limited extent —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): — to review and establish procedures for appointing members to public bodies on the terms of their appointment, but not I think the actual conduct.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I mean is there a value — it doesn't have to be stated in the Constitution because again this could be supplemented by legislation, but —

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): It's an easy fix —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): — at least drafting wise because if you look at (8)(b) which speaks to monitoring standards of ethical conduct in Parliament/the Cabinet on the part of public officials and civil servants, we could simply insert —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Recommending codes of conduct.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Yeah. Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): It's all part of the piece, isn't it?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay. Any other comments on this point? Sam?

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Minister, just help us. How does this sit with the first day draft — well, not the draft the Anti-Corruption Law that is about to be ruled on shortly? And secondly, in respect of the current, where applicable, Public Service Management Law and the codes of conduct, are they in addition to supplementary?

MCLAUGHLIN, JR., JP (MEMBER OF PPM, HON. ALDEN M. MINISTER EDUCATION, TRAINING, YOUTH, SPORTS OF 82 **CULTURE):** Mr. Chairman, through you, sir, the commission would have the Anti-Corruption Law is a law. There — it creates criminal offences as a result of ... well, unethical conduct in some instances, and the Public Service Management Law obviously just governs the public service. The commission, as we envisage it and as we have drafted it, doesn't have any powers to sanction. It may investigate, it may write reports, and they get laid on the Table of the House and whatever action then follows will follow, whether it's picked up by the police or by prosecution or whatever the case may be. It's a matter for those agencies. We don't propose to invest this with any of those sorts of functions.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, through you. THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. AG, in that light, do you see any difficulties?

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): No. As — well, as — provided it is a reporting body as the Minister quite rightly explained. I wasn't quite sure exactly how — how —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): What was envisaged.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah, well if you look at (8)(g), that really is — that really is — is what happens when everything else is done, which is to report regularly to the Parliament.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Okay.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): On its activities.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Okay. All right. Because, you see, what I was looking for was something that says specifically that whenever it compiles a report and makes a finding, then, that should be reported to Parliament as opposed to **reporting every six months**. We seem to be sort of — a report as to whether anything happens or not as opposed to a reporting on particular transgressions for that matter.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): To report to Parliament at regular intervals and no less than every six months.

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Right.

MCLAUGHLIN, JR., JP (MEMBER OF PPM, HON. ALDEN M. EDUCATION, TRAINING. YOUTH, MINISTER OF SPORTS 82 **CULTURE):** But, Mr. Chairman, I don't think we'd have any objection to strengthening their sort of reporting protocol in the way the AG requests. What we were careful not to do, and we had long debates — when I say debates, lasting months about how — how this commission should be structured and what it should be entitled to do. And we came around to the view, having taken into consideration the two points the AG raised about the Anti-Corruption Law and the Public Service Management Law and various other things, that the last thing we needed was another agency capable of — of prosecuting ... or prosecuting is probably the wrong expression, but able to — to sanction behaviour. That's the last thing we need. What we need is - is a commission specific to public officials and elected Members, to make sure that everybody is doing what they're supposed to do and to report regularly. We believe that just the existence of this commission will have a positive impact on the conduct of public officials and —

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Well, I appreciate that, and I also appreciate that these are just sort of basic framework to be improved upon as we go along. But in the same vein, if you look at the penultimate subparagraph which is (f), (8) - (f) I think it is.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): To draft laws?

HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL): Not just to draft laws but to draft laws to prevent any Minister or public official employing his power for any personal benefit or advantage, in effect, corruption or abuse of office. That's, in effect, what you're getting at, which would be something that is covered under the Anti-Corruption Law, so there need to be some sort of reconciling of all that's the point I'm making.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I mean it seems to me that on its — the way I read it anyway, in that regard, I mean to draft laws might not be quite the right word, but **to make recommendations**.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Recommendations, yes. Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): To make legislation or something like that.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Because in the end, it'll be for the legislature to pass or not to pass, and no doubt it will go through the AG's chambers to make sure that there's coherence and so on.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): So instead of to draft laws we could perhaps say to recommend legislation.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah. Yeah. Okay.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): On that particular point, I've just been reminded by my colleague here that I think what we intended was to draft codes as opposed to laws, codes of conduct as opposed to ... as opposed to laws.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Oh, I see. Under (f)?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Oh, that will probably be ... yes.

And on that point in (f), I noticed that public official ... now, when we come to look tomorrow morning at the Bill of Rights draft, the public official has got a special definition for the purposes of that bill. But what do you mean here? Do you mean public officer as defined later on (i.e., a member of the public service), or do you mean parastatal bodies or something like that as well? I mean it's partly related to the point I raised earlier about statutory bodies.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): I think that's a very fair question. I think probably that — as I understand it, what was meant was the broadest definition possible —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): — in this context because these sorts of —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I mean.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): — standards ought to be applied to as many a possible.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Should one try and use general language such as —

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): Yes.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — the Minister, public authority or public officer —

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): Yes.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — so you get actually the Ministers, the collective bodies and then the individual —

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): Yes.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — public officers, which is a very broad term of course, but (f) is talking about individual human beings. Okay, that's very helpful.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): We wouldn't want to leave out the Opposition or we wouldn't want them to feel left out, so the language employed needs to be broad enough to include non-ministerial Members of the legislature.

HIS EXCELLENCY THE GOVERNOR: Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yep. Sorry, Governor.

HIS EXCELLENCY THE GOVERNOR: There is at the end of this Working Document a series of definitions which still contains one or two things I think which are leftovers from earlier drafts, such as reference to the Civil Service Commission.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah yes.

HIS EXCELLENCY THE GOVERNOR: But there is a definition of public officer and public office.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HIS EXCELLENCY THE GOVERNOR: And I think that refers to an office of emolument in the public service, and I would have thought that was limiting rather than broadening the definition.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): But you mean somebody who's paid by the civil service, Governor?

HIS EXCELLENCY THE GOVERNOR: Well, that's how I interpreted those words.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Right. But — but the fact is, as we just discussed, it would go beyond that. **HIS EXCELLENCY THE GOVERNOR:** Yeah. The point I'm making is that at some point somebody's going to get around to looking at those definitions —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): No. I take —

HIS EXCELLENCY THE GOVERNOR: And there will be need to be some tidying up.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Right. And I take your point, too, but I'm just saying it would go broader than that once it's possible.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): And the words at the bottom of section 113, on page 71 indicate that that interpretation section generally needs considerable review.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Well, it is a thing we'll have to look at, at a later stage, when we know what else is there, but I mean it is important that some of the customary definitions in the Constitution such as "public office", "public officer" and "public service", which is central because they're referred to so many times, are done correctly and the right people are included within them and the wrong people are not included. Yes.

And indeed, I see "public officials" pops up at the bottom of page 67, but we can sort out this. My understanding is that you want to give the broadest possible scope covering all parts of public life really.

HON. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Everything.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): And not be limited and that's fine.

PROPOSAL 19 – OUTLINE THE RESPONSIBILTIES OF THE AUDITOR GENERAL

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Can we go on to the Auditor, Auditor General? This seems to me splendid. Heartily agree. As expressed in section 104, I could see nothing wrong with it at all and, most importantly, it actually sets out the prime functions of the Auditor General and the independence of the office and the relationship with the Public Accounts Committee.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): We're okay with this.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Good?

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Yeah, this [inaudible] now.

PROPOSAL 20 – HARMONISE THE RESPONSIBILITIES OF THE VARIOUS OVERSIGHT BODIES

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Proposal 20, Harmonise the Responsibilities of the Various Oversight Bodies. I mean, I was assuming here that that is a direction to us all in considering what goes into a new Constitution; that they should be harmonized, and then there will be a certain amount of harmonisation in the various pieces of legislation of the kind that Sam mentioned. It is important that they get harmonised but there's nothing really for us to do and no one could really disagree with this proposition, I think.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes, Rolston.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Sorry to transgress, sir. Just one quick point because we do have something in writing that we're looking at, and I know you will be taking this away with you.

104 (5) says: In the exercise his functions under this, the Auditor General shall not be subject to the direction or control of any other person or authority save that he's answerable to the Public Accounts Committee of Parliament and must attend upon that committee at its request.

I just want to ensure that we are saying here that when we talk about this in just plain English that once the committee makes a request of the Auditor General, that the Auditor General, in that instance, would — would be obliged to carry out that work? **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, I think so. I think — I think that's right. I mean I'm not entirely ... I'm not entirely comfortable with the way (5) is constructed because the purity of the first half of it looks as if it's been cut back, and one might actually hive that into a separate subsection. But the — but I think the principle is right that the Public Accounts Committee should be able to request the Auditor General to do work, and the Auditor General when the Public Accounts Committee wants to question him or her should be obliged to go there. I mean, the two should work hand in hand, really, because ultimately the Auditor General is there to serve the legislative body.

Good.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): I just want to make that clear, sir, because there has been some instances where some people may have interpreted their role to not have to serve the PAC and could get an out by going to other entities within the government structure, like the Governor.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, the intention of this is exactly what Mr. Anglin and yourself were just talking about, so if the wording needs to be more pointed then we certainly don't have a problem with that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. That's great.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Okay?

HIS EXCELLENCY THE GOVERNOR: Mr. Chairman, could I ask ... sorry, Mr. Chairman, could I just ask again for point of clarification?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HIS EXCELLENCY THE GOVERNOR: This section in 104 is currently drafted **specifies certain responsibilities of the Auditor — functions/ activities the Auditor General can carry out**. And then under 4 refers to his powers and duties being further prescribed by law. I assume there isn't an intention here to limit his ability to carry out investigations at his own initiative, which seems to me one of the fundamental checks and balances which the logic can generally provide.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): You're assuming what, sir?

HIS EXCELLENCY THE GOVERNOR: That the intention is not to restrict the Auditor General's ability to carry out investigations at his own initiative, or maybe that is the intention.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No. I read it that the principal power of the Auditor General is in (2): **To have power to audit the public accounts of the Cayman Islands and accounts in financial dealings of all authorities, offices or departments of government or all courts of law.** That's the constitutional duty. Are you saying that —

HIS EXCELLENCY THE GOVERNOR: Well I was just slightly concerned that the effect, depending on what was in local legislation — therefore legislation that could be changed by a different government in practice — that the effect might be that the Auditor General could only do what the Public Accounts Committee want him to do, and if the Public Accounts Committee for some reason did not want, say, a previous government's activities to be investigated or current government's activities to be investigated, that he will not be able to do so.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chair, might I?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Please.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Just so — through you. So — so, (2) of 104, HE, that in itself before you speak to any — before you speak to (4), do you think that the powers outlined in (2) are sufficient?

HIS EXCELLENCY THE GOVERNOR: Um, well, I ask the question, but (2) refers to the public accounts.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): The Auditor General should have the power and responsibility to audit the public accounts of the Cayman Islands and the accounts and financial dealings of all authorities, offices or departments of government and all courts of law. What I'm trying to determine is whether you think that that subsection does not outline his powers sufficiently.

HIS EXCELLENCY THE GOVERNOR: I'm afraid I don't know the answer, that's why I'm raising the question.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): But the — right, but the reason — sorry, Mr. Chair, the reason I was asking you the question, HE, is because unless that is unsatisfactory —

HIS EXCELLENCY THE GOVERNOR: Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): — then whatever legislation is created in (4) could not assume (2), because (2) will be the Constitution —

HIS EXCELLENCY THE GOVERNOR: Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): — and (4) would be underlying legislation. That's the point that I'm trying to make.

HIS EXCELLENCY THE GOVERNOR: Yeah.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): So I don't — **HIS EXCELLENCY THE GOVERNOR:** I see your point absolutely, but it gets down to definition of —interpretation of words, which there may well be some case history here. But it refers to his responsibility being to audit, and it isn't limited to public accounts, it says and financial dealings of authorities. But I just wonder if audit includes, for example, value for money, investigation, which is one of the things which the current Auditor General does.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): If I may say, it's similar to the question that was asked by the Human Rights Committee, namely, in — under the new Human Rights Commission should there be a specific power for the avoidance of doubt of proactive — to provide for proactive investigations. And the decision there, as I understood it, was yes, if that is one of the functions that's envisaged, we might as well put it up front. The same answer seems to apply here. If that is an additional function that isn't made clear, for the avoidance of doubt why not make it clear?

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING): So, we just need to make a note of that and to make sure that the wording makes that point absolutely clear, as the intention was not for him to not be able to.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): Yes, that's correct.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): So, sorry I missed that.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Double negative, that's all.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): What are the additional words that would — would deal with the point?

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): To undertake the value-for-money investigations.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. Okay.

PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE): Dot, dot, dot.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Jolly good.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Long time I haven't heard that, Mr. Chair.

[laughter]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): There is a question, and one might take just a minute or two to consider it, about the security of tenure of the Auditor General, because under the — I was just turning to the 2003 Draft there was a bit more detail on that point.

I appreciate that no Auditor General could be removed except by the Governor, and that is — that is security of tenure to a point. But on page 72 of the 2003 Draft there was a specific provision in section 94(4): **The Auditor General may be removed from office only for an inability to discharge the functions of his office whether arising** from infirmative body or mind or any other course or for **misbehaviour and shall not be removed except in accordance with** (5). And then (5) provides that: The Auditor General shall be removed from office by the Governor if the Governor acting in his discretion is satisfied that he ought to be removed from office for inability as aforesaid or misbehaviour.

Now, in a way, it could be argued —, and you may say that this is your own thinking — that it wasn't necessary to go through all that if the power resides in the Governor anyway, but I'm wondering actually whether it wouldn't make it clearer and easier for the office of the Governor — Governor.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): You mean —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — and the Governor in the future that these are the only grounds.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): You mean Mr. Chair to adopt some similar wording at least like the 2003 Draft?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah, it's simply section —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): We wouldn't have a problem with that, sir.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Section 94, (4) and (5).

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah, I've looked at it. Yes.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): A sort of constitutional acknowledgment that the Governor is subject to human frailty.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Sorry, that?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): I said that a sort of constitutional acknowledgment that even the Governor is subject to human frailty.

[laughter]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): We're all human, with our frailties.

[pause]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): We're making cracking progress. So, we've done the Auditor, and we know about harmonization. Can we have a look — can we try and do before we close at 430 because —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT **ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Which one are you doing, sir?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): What I would like to do is start tomorrow morning with the Bill of Rights and —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah, but which one —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): If we go on now, we can either —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): To 21?

PROPOSAL 21 – SIMPLIFY THE RULES ON ELIGIBILITY TO VOTE. NO CHANGE TO THE RULES ON ELIGIBILITY TO STAND FOR ELECTION

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Twenty one.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I realise 22 is controversial.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): We spent a fair amount of time on 22 already.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, we have.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Twenty one, Mr. Chair, you see the proposal.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Now, there was only — I think there was only one point of importance which was made when we met on Thursday, and I think it was a point raised by the Opposition regarding when a person becomes eligible to vote by age 18. And I think perhaps they could well articulate what their point is to see how we could get that included.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): Mr. Chairman, as it stands, due to the actual administration of — in the Elections Office to administer the elections list, the elections role, they have to have certain mandatory cutoff periods for registration, so that there is time for things like persons to object to a person being on the list, or being in the list in a certain district, et cetera.

What has happened is, though, we have, I believe, inadvertently concluded that people who weren't of age to vote by the date of that registration could not be put on the list for the upcoming election. However, we believe that the standard ought to be that a person who would be as of age to vote on the date that the elections will be held — on or before the date that the elections will be held ought to be eligible to put — be put on the list. We believe that because the same documentation that would have to be submitted to prove that you're eligible to be on the list (i.e. your age, parentage, et cetera) would naturally be able to prove that you were eligible to vote on the day of the election.

And so, just as anyone could then challenge those same names on the grounds of whether or not they truly do meet all the criteria, whether they're registered in the correct district, you'd still have those names on the list open for those challenges, but the bottom line is you wouldn't disenfranchise persons who were simply eligible to vote, but just due to their date of birth they missed it because they were born between that date the election was set and the registration date, which is more of a procedural date that the Elections Office requires so that they can administer the voters list.

[inaudible comment]

MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY): Right. In this case — and it's usually six month I think is the — Mr. Connor could help me here, but I think it's usually six months before the election. Well, it's several months before the election.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): So, Mr. Chair, in essence, once the individual can fulfill all of the other criteria, and that person will be 18 on or before the election date, and that person goes through all of the processes to ensure that proper scrutiny is available and all like that, the person can actually register before his or her 18th birthday, to fulfill all of the other requirements and be able to vote on that day.

As obtains now, it's by registration on your birth date, and what you find is, as I understand, that whenever the last day for registration is — let us say it's three months before the elections. Then anybody who turns 18 between that date and election day is disenfranchised for that election and won't be able to vote until the next election, and those are the people that are trying to be captured.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I see the point. My only — my only question is whether it is workable to write in something that would fix that so that a person is entitled to be registered if they've obtained the age of 18 by the time of the register being completed. But also would be — would have attained the age of 18 —

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yeah. Rolston, what's the connection between the Constitution and the Election Law again? There's some connection, Mr. Chairman, between registration — something in the Election Law the way it reads now and the Constitution.

MR. CLINE A. GLIDDEN, JR. (MEMBER OF UDP, DEPUTY SPEAKER OF THE HOUSE): Mr. Chairman, I think my colleague is getting the actual document. Right now, basically, the Constitution specifies that the person had to be 18 prior to the end — at the registration date.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Yes.

MR. CLINE A. GLIDDEN, JR. (MEMBER OF UDP, DEPUTY SPEAKER OF THE HOUSE): And what we want to say is that it would be 18 prior to election date.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes. It's only — I'm only — I'm not objecting this matter of principle because I think it's very, very good. But ... Governor?

HIS EXCELLENCY THE GOVERNOR: I just want to raise a practical question. That's going to work if you're clear when the election is going to be. Now, the Constitution sets out the month effectively, when the election is going to be, and the normal practice here (but not a far as I recall required by the Constitution) is to specify the specific date, the specific day and that month up to a year in advance, and we have specified for the next elections.

But what if for one reason or another that date was to change, or under certain circumstances it was not made clear well in advance? You could have somebody — how are you to decide whether to register somebody if you weren't certain whether it was going to be the first day of the month, the fifth day of the month, the tenth day of the month or the 20th day of the month?

HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): Mr. Chairman, if I may? The objective here is to: (1) ensure everybody's registered; that is fundamental, we need to ensure that they are registered. But the problem we are having is that the Constitution and the law, as far as I recall, calls for the cut off of those persons at that registration date, the last registration date, which is usually about three or four months prior to the election.

What is being proposed is that those people between the registration date and election date is being disenfranchised.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): It doesn't matter whether the election is postponed. We went through a postponement of the election in 2004 for — there was a six months postponement, but the registration was extended to the same timeframe before the election for the cutoff registration date.

What we — what the proposal is, is that even if that election is postponed, the registration date can still be cut off at a particular period, but we need to make provisions in the law, in the Constitution, wherever, to ensure that those people fall in that void, in that empty area between the cutoff registration and the election day, be able to register up to registration date, up to that registration cutoff date, and they are then they go through the process of going through the magistrate to verify it, and what have you, and they are eligible on election day to vote.

Even if — right now we know when the election is; it's the 20th May, it has already been set, but the registration will probably be cut off in March or February ... March maybe, so that there's a whole process of gazetting it and advertising it at the public places and the — waiting for

challenges and certain amount of days. We don't have a problem with that because we think that should — people's registration should be scrutinised by the general public and be given the opportunity to object to that person being on the registry. However, it's only those people up until registration day that turn 18 up until registration day. And if you're three months away from being 18, you must have sufficient sense to be able to vote, because it's only three months. So we need to ensure that those people are not disenfranchised. So the registration can stay the same timeframe, it's prior to the election as it is, but we need to make provision that if that person can prove by the regular documents, and they go through that scrutiny over that period, and they are legitimate, then, they should be able to vote on that election day.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay, thanks.

UDP LEGAL ADVISER: No objections. We're talking about the same things, on the same page, moving right along.

HON. V. ARDEN MCLEAN, JP (MEMBER OF THE PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): But I'm not objecting.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, nobody's objecting. We're simply trying to see —

HON. V. ARDEN MCLEAN, JP (MEMBER OF THE PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): The Governor was weighing in —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — whether it would be practical.

Michael, you wanted to say something?

MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION): Thank you, Mr. Chairman. I appreciate the need in some way to enfranchise as many people as possible, and one route that may be considered — and it's up to the experts rather than me — which I have a memory of somewhere in the British Isles, is that once you have reached the age of 17, you have a provisional right to register when you produce evidence that you are 17, have your birth certificate. You're put on the register as a provisional voter, with the date on which you become eligible to vote after your name, which means that automatically once each person reaches 17, he can apply to be registered provisionally. Once he reaches his 18th birthday, he is not a provisional register, he's a registered one. And that may be the way to do it, and I think it could be

incorporated by changing the Election Law with a simple tuning of the constitutional provision.

HON. V. ARDEN MCLEAN, JP (MEMBER OF THE PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): So, if I may just ask a question. So, he would have a provisional driver's licence, so to speak and — that we usually give, and on that provisional voters' registration card, it would indicate the date that he is eligible to vote? So, he became eligible to vote on 19th May, 2005, on the 20th May he walks into the polling station, then he would be able to vote; is that what you're saying?

A MEMBER: Yeah, that's what he's saying.

HON. V. ARDEN MCLEAN, JP (MEMBER OF THE PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): Good. If that's the solution, let's do it.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Very good.

HIS EXCELLENCY THE GOVERNOR: That sounds workable to me, but could I just suggest as we have — we're not finalising everything today that we do actually consult the Elections Office, because there may be some practical issue that they're aware of and we're not.

MR. ROLSTON M. ANGLIN (MEMBER OF UDP): And, Mr. Chairman, just to say the reason we brought this up is because we have consulted the Elections Office extensively on this issue, and they did say to us that given the current construct of the Constitution and the law, they would — they would have rathered this change be made. Of course, that's taking into account that they were fixated on the 18 number. The 17 number would obviously change that.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right. That's very good. Thank you, Michael. And indeed the experts must be consulted to see whether it would work. But I would envisage that one could, as Michael suggests, simply ... simply amend what's section 84 (1)(b)(2) to make clear that 18 — age 18 years either at the date of registration or at the date of the polling.

There is one other point which I have to mention here, and it's in the next section — sorry, two sections on section 86 of the Working Document, page 54, and this —

MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes.

MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE): Just before you go on — I know we were talking about the issue with the eligibility to vote and the disenfranchised voters, and the consensus was that this is something that we would like, if possible, to have addressed in time for the upcoming election. And if it is something that the UK does not have issue with, and it's just a matter of getting the — the requirements fulfilled and non-controversial, is it something that we could have any kind of undertaking that could be looked at, not necessarily as an amendment or a part of the ongoing constitutional discussions that might take longer, but something that would be considered prior to the next election?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): You mean — you mean amend the current Constitution before the next election? Are you listening, Susan? [laughter] You're looking depressed?

It is a straightforward and short amendment, and if it is desired by both side — both Government and the Opposition, and if the Elections Office confirm that it can be taken care of in tandem with an amendment of the Elections Law and — and the UK Minister was requested to seek such ... you know, a one-line amendment to the current Constitution, I can't possibly see a problem. But I'm looking at my colleagues... Do you think — we'd need to have it in good time. I mean that's the main thing. So, I think if there's a strong interest in doing this prior to the next election and thus — and it would involve — I haven't actually checked the current Constitution, but the — there is an inhibition, isn't there, because this comes from — so there might need to be a very short amend., there would need to be, and that would need to be taken to Privy Council to do a small amendment.

Any comments on that? Susan? No? They don't look too shocked.

But I think what it does mean is that if you wanted it, you should get cracking here at looking at what — whether it would be feasible, and if so, what amendments to the Elections Law, and then in the light of that we'd be in touch — be in touch with the FCO about what would need to be done in terms of a small amendment to the Constitution.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Well, His Excellency is here so he can take our request as being formal.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Okay, I -

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): And we can follow it up with a letter.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah. I have one point on page 54, section 86(2)(c), and I think this reflects the current Constitution: **disqualifies from voting a person who is in lawful custody**. Now, there was judgment of the European Human Rights Courts a year or so ago — maybe 18 months or so ago now which was perfectly clear that a person who is merely in lawful custody, which could include simply in jail overnight for drunkenness or something until he sobers up, cannot be barred from voting. It's a contravention of his human fundamental right to vote. I'm talking about someone who is qualified to vote otherwise.

By contrast somebody — our view is that somebody who is serving a sentence of imprisonment exceeding 12 months who is disqualified under section 85(1)(a), that probably is in our view still okay to maintain that without being in contravention. The judgment isn't awfully clear about that, but I think our conclusion is that section 85(1)(a) is all right, but section 86(2)(c) should come out — well, I think it must come out because it's — it's violating a person's fundamental rights, and arrangements would have to be made for someone who is merely in lawful custody and has not been imprisoned by a virtue of a sentence of court to be able to cast a vote.

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): Mr. Chairman, I can see the argument for why someone who is merely in lawful custody because they've been arrested on suspicion or something, why they shouldn't be deprived the right to vote because no decision has been taken about whether they are guilty or not guilty. But I think to extend it to someone who is serving any sentence of imprisonment is to create a situation that we wouldn't like for a number of reasons, not least of which is practicality.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Are you saying that section 86(2)(c) should be deleted? The other disqualification over the page, section 85(1)(a) can stay as it is. So, if a person has been sentenced to imprisonment by a court for more than 12 months, that person is disqualified from voting?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): No, I'm suggesting if they're serving any sentence of imprisonment **THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** They should be disqualified?

HON. ALDEN M. MCLAUGHLIN, JR., JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, YOUTH, SPORTS & CULTURE): They should be disqualified.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): If they're incarcerated for a conviction.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, let us — leave that with us because we'll need to look into it. As I say, that judgment isn't entirely clear about the length of imprisonment as a result of a sentence of court, but what it was clear was that somebody who is merely in lawful custody and not out on bail, and therefore able to vote, should not be deprived of being able to vote.

Very well. Shall we — what I have planned for tomorrow, unless people want to go on a little bit ... what I had thought for tomorrow is that we should start in the morning with the Bill of Rights and have a good go at it. Are you objecting, Arden?

HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): Pardon me?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Are you objecting or was that just a loud cough?

HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): No, no. I don't object to anything with you, Ian.

[laughter]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Start with the Bill of Rights, have a good go at it, and then we must leave time if we can — well, I'll try to ensure that we have time to look at Proposals 22, 23, 24 and 25, and then leave a little time for — like half an hour or so at the end to talk about where we go next, but we may not need that long, but to wrap up anyway.

So, tomorrow can we start at 930, as promptly as we can, please, and then we'll \dots I'm giving due notice now so that everyone interested in human rights can be there on time. All right —

[inaudible comments]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): What was that, Arden?

HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE): No, I just thought you should bring your ammunition tomorrow. You've been quiet all day.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): All right, thank you very much.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Mr. Chairman?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes, McKeeva.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Are you saying we only have 22, 23, 25 — up to 25 left? Because you got some other issues that were not — were not resolved.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, I know that there are a lot of issues that are not resolved that we won't be able to come back to on this occasion.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): You want —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): But we will have to come back to on a later occasion.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Well, that's what I'm asking —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Oh, yes.

HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Whether we're gonna try to resolve them tomorrow.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Or at a later date.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, at a later date.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): So, some of the things that drew the larger arguments will wait until such time that you come back?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): That we come back for — I mean we get together for discussion?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes. I mean, my — my intention, and I can repeat this tomorrow, but my intention is at the end of tomorrow, when we wind up the first round, is to take away all the papers that have been put on the table, notes of all the discussions that have taken place, and we will prepare a draft.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Working draft?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): A working draft. Not a final draft by any means, a working draft which will be annotated and, in particular, it will be annotated to indicate where there are points which are still controversial and we need to discuss further.

Now, I would then try to send that out to you in three weeks or so, before the end of October at any rate. And this would be for work — this would not be for publication, this will be for work between you in the Cayman Islands delegation and your advisers and so on, to see if you can arrive at some place of consensus on any of the points. And we would — we have talked — I think we have talked about coming back early in December, first week of December for a second round. So, that's more or less two months from now, which should give time, I think, for — for preparation to be made for you to absorb this text. I hope it will provide enough time.

And at that point we can focus, I hope, on the points that have been flagged up as still controversial, still outstanding, and we will go through them all, one by one.

Now, if you find when you get this thing that there has not been annotated a point which you think should be, we should come back to and of course you can say so, and so can anybody. And, of course, no one's position is fixed. People can change their minds and have second thoughts. This is ... as I said on the very first day, nothing is agreed until everything is agreed. But I think with that way of proceeding we shall have something more precise to look at. And it's a matter of we, the UK team, taking our responsibilities and to try to bring together like I did with the 2003 Draft actually, having had discussions, put something down which seems to us reasonable, and then use that as a basis for further work. That's my plan.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): You're saying to get at working document.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): At the end of October.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, before that, if possible. I would — I would work on it as quickly as I can when I get back, and we should try to get it out to you as soon as we can.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): And —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): At the very latest the end of October, but I hope well before that actually.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Yeah, okay. And so we have the middle of October, end of October, and then — and then you gonna be back, you plan to get back for December?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yeah, early December.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Early December.

[pause]

HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF BUSINESS, GOVERNMENT MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING): And, Mr. Chair, I would presume the intention would be between you sending the document and you coming back for us to get together, to go through it, to see if we can come to any closer consensus on the issues where we are apart?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Yes. That's the idea.

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): So, issues — issues that are — seem to be a large issue here (like the Governor's powers and so on) where they're not resolved and we come back with the working document, we can't go to the public to discuss these things; that's what you're saying?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well it's a working document, so I think the best thing — I mean, I would prefer it not to be published because it's a working document and it's still subject to change. Of course you know what the issues are, and no doubt you can talk to your constituents about any of these issues.

My task will be to try to put down in a working document my best shot of what might be generally acceptable, acceptable to us, acceptable to your side generally, and, ultimately, it will pass muster in a referendum. Now, of course, I won't get it all right, it would be impossible for me to get it all right, but I'll try and put down something which which as far as I can see takes account of various points of view. Some things I will not be able to do other than note that there is a substantial controversy about it. I mean in some places I might put down alternatives — alternative texts to discuss.

HON. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): Because where I'm concerned is that if you have the Government going out on a exercise to where they're using the Treasury's money to talk about this, publish it, publicise it through the Secretariat or through their own television, what they call "press briefings", but ... anyway, all those things which are paid for through the public, then, we are greatly disadvantaged. Now, that might not be a concern of yours, I don't know. And if we are — if we continue to be disadvantaged in that way, then, we can only look to you to be our — our mediator in the end, and would hope that in spite of any kind of media campaign that we cannot ourselves have simply because of costs, then, I hope you would take all that into consideration.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Right, well .. yes?

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Yes, Mr. Chair, could you tell us the format of that document that you'll be preparing? Is it basically the 2003 Draft Constitution or is it just —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): No, it's a new draft.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): It's a new draft, okay.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): It will be a new draft, and it will take account — it will be based on these discussions. You will see some things which will not change very much

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Right.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): — or at all from the 2003 Draft, but other things that would change quite radically.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Which, surely, it's going to take the tone of possibly the final document; am I correct?

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well ... a tone?

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Well, the final format.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): I will try to do an entire draft constitution. I will do an entire draft constitution.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Yeah, that's what I figured.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Unless there might be a hole in it here and there where I feel I'm unable to put pen to paper because there's such fundamental disagreement, but I doubt it. I'll try and put something down for everything.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): And, again, I would just reiterate —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): And it will be headed clearly this is a working document for — to assist further discussions at the next round of negotiations.

MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE): Then it's just the language of the document, again back to the original point of it being in legalese, or whether it can just be as easy to understand and interpret as possible —

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Well, I'll make every effort I can on that. I think that there is a problem here. You can oversimplify and lose the — lose the precision that is required. I mean one approach would be to have a Constitution written like the American Constitution which is very short, and then you leave the courts to do what they want to it. We're not going to do that because nobody wants the courts to have that much power, as I've heard repeatedly the last few days, and I agree with that. So, the custom with the Overseas Territories is to have a detailed Constitution, and in some places it becomes rather ... the language becomes rather complex.

And I'm not — no, it is not desirable to oversimplify. I do take your point. The ideal is that the man on the street can pick it up and read and understand it. And you shouldn't have to employ lawyers, let alone QCs, to interpret it. But, inevitably, I'm afraid — I'm being honest — inevitably it will not be a straightforward read. In fact, it will be very soporific read, and I'm very grateful actually to the — I shouldn't say this but to the Government for their Working Document because it sent me to sleep beautifully last night and then my —

[laughter]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Then I awoke terribly alarmed at half past four in the morning thinking: Oh, my God. I didn't finish reading that thing. So, I got it out and carried on to a half a night's sleep and then I was able to finish it.

Anyway, look, we'll do our best. We'll do our best. And if when we come back to the next round and it is thought that something is expressed in an overly elaborate and incomprehensible way, then, do say so. We'll try and see if we can simplify it.

HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING): Mr. Chairman, can you remind everybody of [inaudible]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Oh, yes, 6:30, was it, at the Marriott? I find it very difficult because I never got an invitation to my own party. It's at the —

[laughter]

HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION): I'm sure that you would be hosting it.

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): It's at the Grand Cayman Marriott Beach Resort.

[laughter]

[inaudible comments]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Exactly. I know.

[inaudible comments]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): Lady Jade.

[inaudible comments]

THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION): 630 to 8, dress smart casual. All right?

[inaudible comments]

ADJOURNED