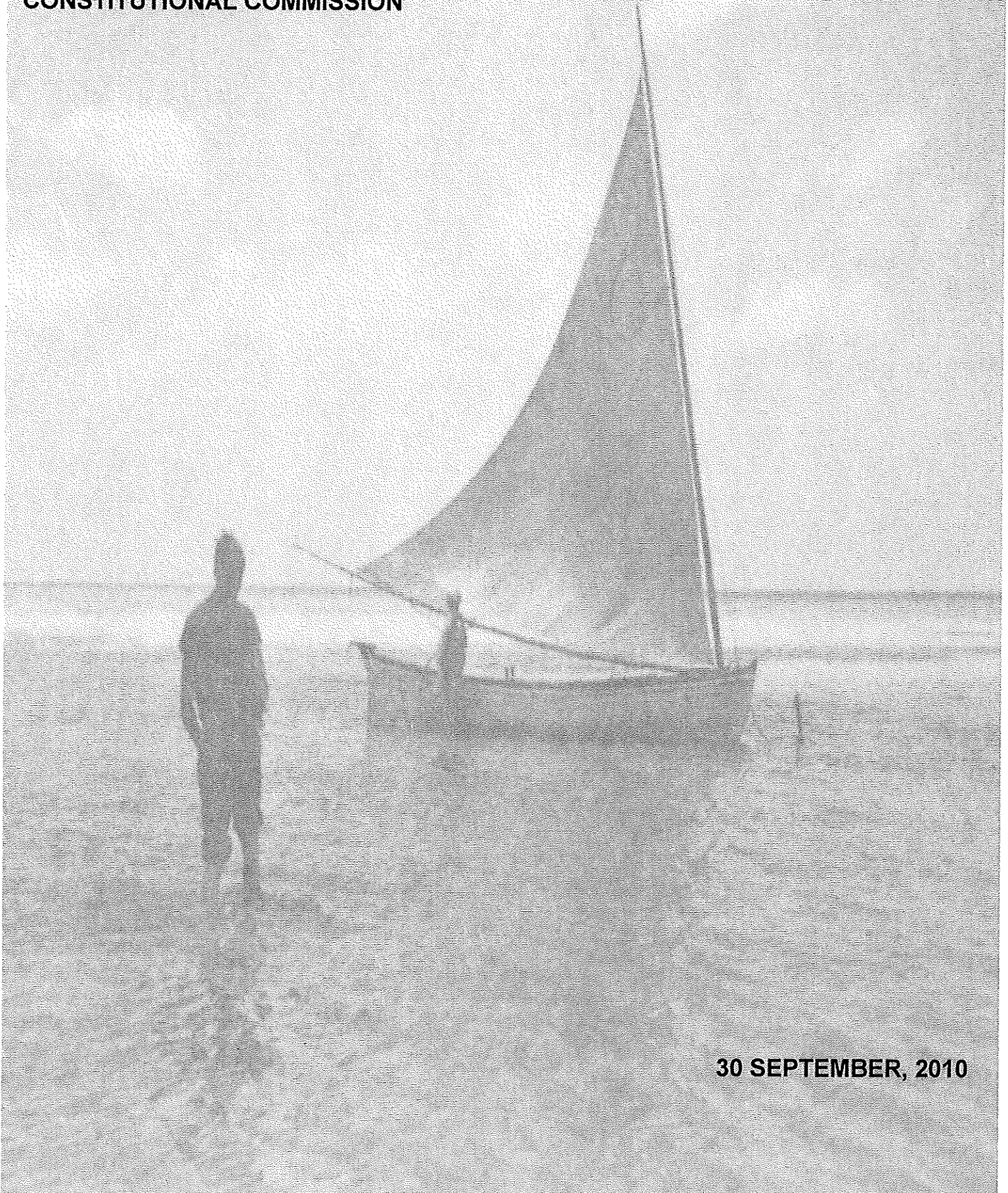


**THE FIRST REPORT OF THE CAYMAN ISLANDS  
CONSTITUTIONAL COMMISSION**



**30 SEPTEMBER, 2010**

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## **Statement from Chairman, Constitutional Commission**

This is our Constitution. It is the highest law of our land and has been approved by referendum by the majority of voters. Whatever your view of the process and the outcome, we encourage everyone to now embrace our Constitution and so that we may all work together to ensure the checks and balances contained therein are applied without fear or favour in order to promote greater accountability as well as open and transparent governance.

Our new Constitution establishes a number of Commissions which are designed to assist with this process. For the first time in our history the people have an enshrined Bill of Rights Freedoms and Responsibilities in our Constitution thereby bringing "rights home" to the Cayman Islands. The Constitution further establishes an independent Human Rights Commission which will monitor the application of Human Rights in the Islands while the Commission for Standards in Public Life will oversee the Register of Interests and ensure the prevention of corruption and conflict of interests through the setting of standards of ethics and procedure. Other important provisions include the establishment of Advisory District Councils to facilitate collaborative governance and a closer understanding of the particular needs of each district.

During the many constitutional discussions that have taken place over the past ten years there have been two requests made repeatedly by the public. The first is for more education on the Constitution and the second is for simplification of the document. The Constitutional Commission (the Commission) will make these two requests a priority during our tenure and we believe the ground work that has already been laid will make both these requests a reality in the near future.

My fellow commissioners and I are committed to the responsibility entrusted to our care and will always strive to ensure that the independence of the Commission is not compromised as we seek to advise the government and consult the community on matters concerning constitutional status and development in the Cayman Islands.

As a community every citizen has the opportunity to get involved and help shape the current as well as the ongoing debate on this all important document and we encourage you to do your part in creating history.

Finally, we acknowledge with sincere gratitude the many persons and organisations who have played a vital role in the establishing of the Commission and who further contributed to the publication of this report. In particular, we mention the work of the Strategic Policy Advisor to the Deputy Governor Mr. Peter Gough and the staff of the Commissions Secretariat. We also document our gratitude to the late Dr. Philip Pedley whose tireless efforts to see the Commission established and succeed did not escape our attention as Commissioners.

.....  
**Pastor Al Ebanks**  
**Chairman, Constitutional Commission**

# Part I: The Cayman Islands Constitutional Commission

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## 1.1 Appointment of the Commission

The Commission is a three-person body established under Section 118 of the Cayman Islands Constitution. Under the Constitution, this Commission has a threefold remit of advising government on questions concerning constitutional status and development, promoting public understanding and awareness of the Constitution and its values, and publishing reports, papers and other documents on any constitutional matters affecting the Cayman Islands. In broad terms, this Commission may be said to combine the functions of an advisory body with those of a think tank on constitutional matters.

The current members of the Commission are

- (1) Chairman, Pastor Al Ebanks (serving for a 3 year term)
- (2) Julene Banks (serving for a 2 year term) and
- (3) Wil Pineau (serving a 4 year term)

Biographies of the members are attached to this report as Appendix 1.

During the period under review the Commission held thirteen standard meetings, on the following dates –

- i. 8 January 2010
- ii. 1 March 2010
- iii. 22 March 2010
- iv. 20 April 2010
- v. 27 April 2010
- vi. 25 May 2010
- vii. 8 June 2010
- viii. 22 June 2010
- ix. 29 June 2010
- x. 20 July 2010
- xi. 24 Aug 2010
- xii. 7 September 2010
- xiii. 28 September 2010

Copies of various documents relating to the Commission including the policies and procedures manual and the minutes of the Commission's standard meetings will be available in the near future on the Commission's website ([www.knowyourconstitution.ky](http://www.knowyourconstitution.ky)) which is currently being developed.

## 1.2 Constitutional Mandate

Section 118(3) of the Constitution states:

*The functions of the Commission shall be –*

- a. *to advise the Government on questions concerning constitutional status and development in the Cayman Islands;*
- b. *to publish reports, discussion papers, information papers and other documents on constitutional matters affecting the Cayman Islands;*
- c. *to promote understanding and awareness of this Constitution and its values; and*
- d. *to exercise other functions as may be prescribed by a law enacted by the Legislature.*

At the time of publication of this report the Legislature had not enacted any legislation authorizing the Commission to exercise any further functions than what is prescribed in section 118(3) (a), (b), and (c).

Section 118(4) grants the Commission its independent status when it states that "in the exercise of its functions, the Constitutional Commission and its members shall not be subject to the direction or control of any other person or authority".

### **1.3 Commission's Work Plan**

The Commission devised a work plan that was divided into the following phases that have been operating concurrently –

- **Organisational phase** - during which the Commissioners will adopt rules of procedure and a work plan and form thematic committees;
- **Public Education Phase** – during which the Commission will inform the public about its work and process. This will include promoting understanding and awareness of the Constitution and its provisions through various media;
- **Public Consultation Phase** - during which the Commissioners will meet with key stakeholders and the public to engage in discussions to gain feedback/solicit and determine the views of the public on constitutional matters;
- **Research and Expert Consultation Phase** – during which the Commissioners will consult with experts for clarification of constitutional matters;
- **Report Writing Phase** - during which the Commissioners will analyse the views expressed by the public and prepare reports, papers and other documents as appropriate in response to those views; and
- **Advisory Phase** - during which the Commissioners will advise the Government, either at the request of Government or on the initiative of the Commission, on matters concerning constitutional status and development in the Cayman Islands.

During the *organisational phase* the Commission undertook the necessary steps to produce a policies and procedures manual which governs the conduct of its business. The Commission also took the opportunity during this phase to engage students by inviting them to participate in designing a logo for the Commission through a school competition. Additionally, the Commission wrote introductory letters to the Premier and the United Nations Special Committee of 24 on Decolonization and requested that they be kept informed on matters relating to the constitutional status of the Cayman Islands. During this phase, the members as per their appointment letters confirmed in writing to the Governor on 16 July 2010 that they had agreed to staggered appointment terms as previously mentioned in order to maintain a level of continuity for the Commission.

While the Commission has not organised formal public meetings they continue to educate the public by answering any enquiries addressed to them. In particular the Commission researched an enquiry made related to the validity of the composition of the Ministerial Councils that were established in early 2010. The Commission responded to the request informing the member of the public that when reading section 56(4) of the Constitution and taking into consideration the

definition of public officer found in section 124(2) the current composition of the Councils was in their opinion in compliance with the Constitution. A copy of the formal response will be available on the Commission's website in the near future.

In the preliminary stages of the *public consultation phase* the Commission held a number of meetings with various stakeholders that were identified because of their past works and contributions to the constitutional modernisation initiative over the preceding years. During this period the Commission met with the following stakeholders –

- i. His Excellency the Governor;
- ii. the Honourable Premier;
- iii. the People's Progressive Movement;
- iv. People for Referendum;
- v. the Cayman Islands Civil Service Association;
- vi. the Cayman Islands Bar Association;
- vii. the Cayman Ministers' Association;
- viii. the Former Constitutional Review Secretariat;
- ix. Dr. Carlyle Corbin;
- x. the Concerned Citizens Group;
- xi. Mr. Steve McField;
- xii. the Human Rights Commission;
- xiii. the Commission for Standards in Public Life; and
- xiv. the NGO Constitutional Working Group.

The purpose of these meetings was for the Commission to formally introduce itself to these groups and individuals and to begin to build a working relationship. The Commission is keen to establish a strong non-partisan network to facilitate the sharing of knowledge and to ensure that it is a vehicle for the voice of the people of the Cayman Islands to be heard. During these meetings attendees were invited to share any concerns or issues that they had with the contents of the Constitution or in the way in which it was being implemented. A summary of the issues discussed may be found in Appendix 2 of this document. This is a working document to be used to engage public discussion on various issues as part of the public consultation phase.

Prior to the submission of this report, the Commission began working on the *research and expert consultation phase* and had recently made requests to various individuals to provide the Commission with discussion papers on the issues of Advisory District Councils and People Initiated Referendums. It is the Commission's opinion that there is a need for extensive public education and consultation on the many available options for establishing the District Councils and legislation governing the referendum process prior to the Legislature enacting these laws.

## **1.4 Media Engagement**

On 22 March 2010 the Commission held its first press briefing in the Commission Secretariat Boardroom. The press briefing afforded the Commission the opportunity for formally introduce itself to the local media and members of the public. Persons attending the press briefing were afforded the opportunity to question the Commission on matters related to the Constitution and the Commission as a whole.

In addition to the press briefing the Commission attended a reception on 14 April 2010 which was hosted by the Commission Secretariat. This particular reception served as a "meet and greet" in which the Governor, Deputy Governor, Members of the Legislative Assembly, Chief Officers and other Dignitaries were introduced to the members of the Constitutional Commission, the Commission for Standards in Public Life and the Human Rights Commission.

One of the major functions of the Commission is to promote awareness of the Constitution and its values and thus the Commission actively participated in the first ever Constitution Week in July 2010. Starting with a reception at Government House on 1 July 2010 the Commission participated in the many events focused on the Constitution including appearances on the CITN morning show "Day Break" (2 July 2010), the Rooster morning show "Cayman Cross Talk" (6 July 2010), the DMS morning show "Talk Live" (7 July 2010), and the Radio Cayman lunchtime show "Talk Today" (9 July 2010). In addition to these media appearances during Constitution Week 2010 the Chairman of the Commission travelled to Cayman Brac with the Chairpersons of the Human Rights Commission, the Commission for Standards in Public Life, the Deputy Governor and members of his staff to deliver a presentation on how the Constitution affects the lives of civil servants on 8 July 2010. The Commission also made itself available to the general public on 10 July 2010 by visiting district libraries with educational material for children. Constitution Week 2010 culminated with a church service on 11 July 2010.

## Part II: Progress Report on the Implementation of the Constitution

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Since the Appointed Day the following constitutional milestones have occurred:

### Part II: The Governor

- i. On 25 November 2009 the Advisory Committee on the Prerogative of Mercy (ACPM) was appointed by the Governor in accordance with section 40 of the Constitution. The Committee comprises Arek Joseph, Pastor Stanwyck Myles, Beulah McField, Davelee Tibbetts and two ex officio members, namely the Attorney General and the Chief Medical Officer. The ACPM held its inaugural meeting on 23 September, 2010.

### Part III: The Executive

- i. On 18 May 2010 the Cabinet welcomed Mr. Arden McLean, MLA and Mr. Ezzard Miller, MLA to a meeting of the Cabinet in accordance with section 47 of the Constitution for the purpose of making representations with respect to matter affecting their districts.
- ii. For the first time under the Constitution the Premier chaired a meeting of the Cabinet in the absence of the Governor on 1 December 2009.
- iii. On 24 February the National Security Council was appointed by the Governor in accordance with section 58 of the Constitution. The Council is responsible for advising the Governor on matters related to internal security, with the exception of operational and staffing matters. As of September 2010 the Council had met a total of six times and is currently in the process of creating a National Crime Prevention Strategy. The Council comprises –
  - a. His Excellency the Governor, as Chairman;
  - b. the Honourable Premier,
  - c. the Honourable Minister Juliana O'Connor-Connolly;
  - d. the Honourable Minister J. Mark P. Scotland;
  - e. the Honourable Leader of the Opposition;
  - f. Mrs. Brigitte Kirkconnell-Shaughness;
  - g. Mr. Dan Scott;
  - h. the Honourable Deputy Governor, *ex-officio*;
  - i. the Honourable Attorney General, *ex-officio*; and
  - j. the Commissioner of Police, *ex-officio*.

### Part IV: The Legislature

On 25 November, 2009 the Electoral Boundary Commission (EBC) was appointed by the Governor in accordance with section 88 of the Constitution. The EBC comprised of Carl Dundas (Chairman), Norman Bodden, and Adriannie Webb. Due to scheduling conflicts the EBC was not able to begin its work until March 2010 however the EBC subsequently conducted its research and submitted its report to the Governor and the Legislative Assembly. The report of the EBC can be found at [www.gov.ky](http://www.gov.ky).

### Part V: The Judicature



On 1 August 2009 the Judicial and Legal Services Commission (JLSC) was appointed by the Governor in accordance with section 105 of the Constitution. The JLSC comprises –

- a. Mr. Dan Scott, as Chairman;
- b. Mrs. Dara Flowers-Burke;
- c. President Court of Cayman Islands Court of Appeal (Sir John Chadwick), *ex officio*;
- d. Justice Edward Zacca, JA, OJ;
- e. Sir David Simmons;
- f. Justice Richard Ground, OBE, QC;
- g. Mr. Richard Coles; and
- h. Mr. Charles Jennings

The JLSC held their inaugural meeting on 30 and 31 August, 2010. The JLSC is currently in the process of creating a policies and procedures manual which will govern the conduct of its business.

#### Part VIII: Institutions Supporting Democracy

In addition to the appointment of the Constitutional Commission, the following appointments have been made:

- i. On 2 January 2010 the Human Rights Commission (HRC) was appointed by the Governor in accordance with section 116 of the Constitution. The HRC's primary responsibility is to promote understanding and observance of human rights in the Cayman Islands. For more information on the HRC and human rights in general please visit their website at [www.humanrightscommission.ky](http://www.humanrightscommission.ky). The HRC comprises –
  - a. Mr. Richard Coles, as Chairman for a term of four years;
  - b. Mrs. Sara Collins - member for a term of four years;
  - c. Mrs. Cathy Frazier - member for a term of three years;
  - d. Reverend Nicholas Sykes – member for a term of four years; and
  - e. Mr. Alistair Walters - member for a term of three years.
- ii. On 15 January 2010 the Commission for Standards in Public Life (CSPL) was appointed by the Governor in accordance with section 117 of the Constitution for a term of four years. The CSPL recently submitted its six-month report, as mandated by the Constitution, which can be found at [www.constitution.gov.ky](http://www.constitution.gov.ky). The CSPL comprises –
  - a. Mrs. Karin Thompson, as Chair;
  - b. Mrs. Nyda Mae Flatley;
  - c. Mr. Roy McTaggart;
  - d. Mr. Hedley Robinson; and
  - e. Pastor Winston Rose.

## Part III: Moving Forward

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The Constitution is the supreme law of the Cayman Islands and it provides the framework in which good governance can be achieved. Accordingly it must be ensured that all subordinate legislation is in complete compliance with the Constitution. It is the recommendation of the Commission that the Government and the Legislature carefully review all existing legislation and strive to make the necessary amendments in a timely manner.

The Commission conducted a review of the Constitution and identified legislation, orders, and other processes referenced in Parts II-IX that, in our opinion, should be high agenda items for enactment or amendment. However section 5 of the Cayman Islands Constitution Order states "that all existing laws shall have effect on and after the appointed day as if they have been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as are necessary to bring them into conformity with the Constitution." Thus in the absence of the Legislature taking the necessary measures to amend existing legislation, current laws should be read and construed to incorporate and apply the relevant provisions of the Constitution.

The legislation, orders, other processes and sections of the Constitution that were identified as matters of priority are as follows -

### Part I: Bill of Rights Freedoms, and Responsibilities

Part I of the Constitution has been delayed from coming into effect until 6 November 2012, with sections 6(2) and (3) being delayed an additional year to allow for the construction of the necessary infrastructure. However, the Commission recommends that all necessary measures be undertaken to ensure that existing legislation, process and procedures are compliant with the provisions of Constitution prior to 6 November, 2012. Further it is recommended that any new legislation needed to supplement the existing legislation either be enacted or drafted prior to 6 November, 2012.

### Part III: The Executive

- i. Section 45 of the Constitution authorises the Cabinet to meet at such times as its rules and procedures may prescribe. The Commission recommends that the Cabinet update its *Guide to Operations of the Cabinet*, to reflect the provisions of the Constitution, specifically the new composition of the Cabinet, the new procedure for appointing the Premier and the other Ministers, and the new procedures for calling and facilitating Cabinet meetings.
- ii. To date the office of Director of Public Prosecutions has not been appointed. In accordance with section 4(4) of the Cayman Islands Constitution Order the Attorney General has been performing the functions of the Director of Public Prosecutions. The Commission recommends that the appointment of the Director of Public Prosecutions be considered as a matter of priority for His Excellency the Governor and the Cayman Islands Government.

### Part IV: The Legislature

- i. To date the Legislature has not enacted a law which makes provision for holding a people-initiated referendum. At a minimum this legislation must prescribe the processes that are to be followed by the Cabinet when determining the wording of the referendum question(s) and determining the date that the referendum is held. To ensure that the voice of the people is heard on this matter, the Commission has invited various

stakeholders to make written submissions on proposals for a people-initiated referendum law to form the basis for wider public consultation.

- ii. Section 71 of the Constitution requires that a number of amendments are made to the Legislative Assembly Standing Orders to ensure the Legislative Assembly is compliant with fair procedural practices. As prescribed by section 71 the Standing Orders must provide for—
  - o fair procedures, adequate notice of Bills and motions, and a sufficient opportunity for members of the Legislative Assembly (including opposition members) to speak and otherwise participate in the proceedings of the Legislative Assembly;
  - o the establishment of a Finance Committee, which shall be chaired by the Minister responsible for Finance
  - o the establishment of other Standing Committees, which may be charged with monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister and that the composition of these standing committees, so far as possible, reflect proportionately the composition of elected membership of the Legislative Assembly.

The recommendation of the Constitutional Commission is that the Standing Orders of the Legislative Assembly should be amended as soon as possible to reflect the provisions of the Constitution. One key area to be included is to ensure that Standing Orders and the procedures of the Legislative Assembly reflect the requirement contained in section 77(2), which is that a minimum of 21 days for the publication of a Bill prior to the commencement of the sitting of the Legislative Assembly in which it is scheduled to be introduced.

- iii. While it was previously noted that the EBC had submitted its report to the Governor and the Legislative Assembly, the draft order by the Governor has not been laid by the Premier before the Legislative Assembly for its approval. This draft order would give effect, whether with or without modifications, to the recommendations contained in the EBC's report. The wording of section 89(3) may benefit from clarification regarding the role of the Premier.

#### Part VIII: Institutions Supporting Democracy

- i. In accordance with section 119 of the Constitution the Legislature is required to enact legislation which provides for the establishment, functions and jurisdiction of Councils for each electoral district to operate as advisory bodies to the elected members of the Legislative Assembly.
- ii. It is the Commission's opinion that there is a need for extensive public education and consultation on the many available options for establishing the District Councils and that this should occur prior to the drafting of any such legislation.

## Part IV: Summary

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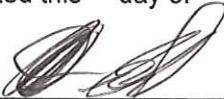
In the coming months the Commission is dedicated to tackling a number of new initiatives and to continue to strengthen its collaborative efforts. The Commission has requested that a number of individuals and groups produce discussion and information papers on the topics of People Initiated Referendums and Advisory District Councils. Once these papers have been reviewed they will be published on the Commission's website and a series of public meetings will be held to not only educate the public on the available options, but to also gather public feedback which will then form the basis of a report that will be submitted to the Legislative Assembly.

Continuing on the educational theme, the Commission is currently in talks with a number of local artists in an effort to produce a series of educational booklets on constitutional matters. The Commission intends to utilise the information contained in the *Constitution Guide*, which was produced by the Student Chapter of the Cayman Islands Bar Association in these booklets. The Commission is hopeful that these booklets will serve as a mechanism to further educate and engage all members of the public especially the youth on the purpose and values of the Constitution.

The Commission is currently in the process of creating their website – [www.knowyourconstitution.ky](http://www.knowyourconstitution.ky). This website will serve as a resource tool offering educational material for the public and will include links to the information previously disseminated through the Constitutional Modernisation Initiative. The website will also contain copies of any reports written by the Commission, minutes of meetings, and responses to public enquiries.

The Commission also endeavours to firmly establish the vision and goals that it has for itself and in doing so will make further recommendations to the Government on legislation regarding additional provisions relating to the establishment and operation of the Commission if deemed necessary.

Dated this    day of    2010



Pastor Al Ebanks  
Chairman  
Constitutional Commission



Julene Banks  
Member  
Constitutional Commission



Wil Pineau  
Member  
Constitutional Commission

## Appendices



### Appendix 1: Members' Biographies



**Mr. Alden A. Ebanks**, affectionately known as **Pastor Al**, has been the full-time pastor of the Agape Family Worship Centre for the past 23 years. Over the past 30 years he has served on numerous Boards and in 2003, he was one of 500 persons recognised as a nation builder on the Quincentennial Wall of Honour. He has been an outspoken community leader on issues of national importance and was Co-Chair of the Chamber Working Group on Constitutional Modernization in the Cayman Islands and in this role has addressed the United Nations (UN) Committee of 24 both at the UN Headquarters in New York City and also at a regional seminar in Canouan, St. Vincent and the Grenadines

In 2009, he was a part of the negotiating team who successfully negotiated a new Constitution for the Cayman Islands. On December 9<sup>th</sup> 2009 he was appointed Chairman of the Constitutional Commission.



**Mrs. Julene Banks** qualified as an attorney-at-law in 1991 through studies in a joint programme with the University of Liverpool and the Cayman Islands Law School. Mrs. Banks also participated in an International Development Lawyers Course designed to enable public and private lawyers to facilitate the process of economic and other development in their countries. Mrs Banks is now in private practice focusing on Estate Planning and other family matters, especially advocacy for children and the elderly. She believes that personal empowerment through a systemic approach can bring about the necessary changes to families, societies and nations. She serves in the Sunday School, Women's Fellowship, Mission Outreach and other ministries as a member of the John Gray Memorial United Church, congregation of the United Church in Jamaica and the Cayman Islands. Mrs. Banks is a life member of the National Trust and believes that protecting our environment is a key to the wholeness and health of a country and its people. She sees the new Constitution as being a catalyst to bring about improved structures of good governance and the enhancement of the Cayman Islands. In 2003, she was one of 500 persons recognized as a nation builder on the Quincentennial Wall of Honour and in 2010 was awarded the Queen's Badge and Certificate of Honour for services to the Community.



**Mr. Wil Pineau** is a journalist by profession and has served as the Chief Executive Officer of the Cayman Islands Chamber of Commerce since 1994. He has served on numerous government and private sector advisory committees and boards. He served as Secretary to the Non-Governmental Organisation Constitutional Working Group and has attended regional United Nations seminars and conferences on Self Determination in Anguilla, St. Vincent and the Grenadines and New York City. In 2009 he served as a member of the negotiating team during Constitutional talks in the Cayman Islands. Prior to the Chamber position, he served as Editor of *The New Caymanian* newspaper, Associate Editor of *Newstar* magazine and Editor of the reference book, *Cayman Islands Who's Who and Business Guide*.

## Appendix 2: Summary of Stakeholder's Meetings



### **Constitutional Commission** **Stakeholder Meetings Summary**

The Constitutional Commission, in order to complete the organizational phase of its process and in preparation of its public education and consultation phase, participated in various meetings with key stakeholders to ascertain priority issues and establish a coordinated, collaborative approach to ensure that the Cayman Islands Constitution is given the esteem that is due to the highest law in the land.

The Key Stakeholders were identified by the Commission because of their past works and contributions to the constitutional modernization process in the Cayman Islands.

To date the Constitutional Commission has met with the following stakeholders groups –

1. Cayman Islands Bar Association

Mr. Nick Rogers  
Mr. Abraham Thoppil

2. Cayman Islands Civil Service Association

Mr. James Watler  
Mr. Charles Brown

3. Cayman Minister's Association

Rev. Nicholas Sykes  
Pastor Winston Rose  
Pastor Charles Boucher

4. Commission for Standards in Public Life

Mrs. Karin Thompson  
Mrs. Nyda Mae Flatley

5. Concerned Citizens Group

Mrs. Alice Mae Coe  
Mrs. Ezmie Smith

6. Representatives from the former Constitutional Review Secretariat

Mrs. Suzanne Bothwell  
Mr. Christen Suckoo

7. Human Rights Commission

Mr. Richard Coles  
Rev. Nicholas Sykes  
Cathy Frazier

8. NGO Constitutional Working Group

Mr. William Adam  
Mr. Dennie Warren Jr.  
Rev. Nicholas Sykes

9. People for Referendum

Mr. William Adam  
Mr. Dennie Warren Jr.

10. People's Progressive Movement

Honourable Leader of the Opposition D Kurt Tibbetts  
Deputy Leader of the Opposition Alden McLaughlin  
MLA Arden McLean  
MLA Anthony Eden

In addition to the aforementioned stakeholder groups the Constitutional Commission has also met with the following individuals –

1. His Excellency the Governor;
2. the Honourable Premier W McKeeva Bush;
3. Dr. Carlyle Corbin; and
4. Mr. Steve McField

## **General Concerns/Issues**

During the meetings participants highlighted a number of concerns and issues that they had which did not relate to any specific provision in the Constitution. This section summarizes those concerns and issues in no particular order or relevance.

### **I. Outstanding Constitutional Issues**

The Government may be vulnerable to unseen liabilities if it does not close the existing constitutional gaps by completely and effectively implementing all the sections of the Constitution.

In the cases where provisions contained in the Constitution require enabling legislation, such as the Advisory District Councils, it is the responsibility of the Legislature to ensure that the required legislation is enacted.

### **II. Independence of the Commissions**

There are three Commissions established in Part VIII of the Constitution, namely the Human Rights Commission, the Commission for Standards in Public and the Constitutional Commission. Under the Constitution each of these Commissions is free from the control or direction of any other person or authority.



It was expressed that these Commissions are not truly independent if they rely on financial support from the Government, which is voted on by the Legislative Assembly.

### III. Bill of Rights and Christianity

The following questions were put forward in regards to the effect of the Bill of Rights (BoR) on Christianity:

- i. To what extent does the BoR allow Christian teaching of religious education and Christian conduct of assemblies?
- ii. To what extent does the BoR allow for the localization of Christian values in the legislation of the Cayman Islands?
- iii. To what extent does the BoR affect private institutions current ability to teach according to a particular persuasion of faith without unreasonable interference?
- iv. The role of the church in education processes is to help disseminate information. How does the BOR affect this at a larger level?

### IV. Unauthorized attempts of public officers to amend legislation:

An issue was raised regarding the current Police Commissioner attempting to change s. 43 of Firearms Law so that once a license is granted, the police have the right to enter private premises of gun holders at any time and inspect the firearm. It was suggested that this could potentially be an infringement per section 9 of the Constitution which states that individuals must give consent for authorities to enter their premises.

### V. Recall

It was suggested that recall would be a benefit to the people of the Cayman Islands because they would be granted a mechanism to remove elected members from the Legislative Assembly when the need arose rather than just having that opportunity during general elections which are held at least every four years.

### VI. Proposed Amendments

It was suggested that due to the workload of the current members of the Cabinet that an amendment be made to add an additional Minister to the current composition of the Cabinet so that the total number of Ministers would reach six including the Premier. It was recommended that this amendment be made after an agreement was made between the Premier and the Leader of the Opposition that this would be a minor change to the Constitution. However it was noted that other stakeholders opposed the amendment on the grounds that it was not a minor change and in fact should be decided by the electorate in a referendum.

Some stakeholders felt that the current proposal to amend the Constitution when it has not been implemented in its entirety is worrisome. The Government should strive to implement the outstanding provisions of the Constitution and monitor its effectiveness before conducting a review and proposing amendments.

### VII. National Council

It was suggested that in addition to the Advisory District Councils a National Council should be established for the purposes of examining bills introduced in the Legislative Assembly. It was proposed that this council would comprise approximately twenty members with the requisite knowledge and experience.

## **Specific Concerns/Issues**

A number of stakeholders had concerns or issues with specific provisions contained in the Constitution for various reasons. This section summarizes those concerns and issues in the order in which they appear in the Constitution.

### **Part I – Bill of Rights, Freedoms and Responsibilities**

#### **I. Sections 10(4) & 11 vs. 16**

In section 10(4) "no religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education." Section 11 details the right to freedom of expression (of all kinds) and section 16(1) a person shall not be treated in a discriminatory manner in respect to their religion or beliefs.

The question was put forward for consideration of how to promote the values of a predominately Christian faith based community while remaining accountable in allowing the freedom to worship, educate and express beliefs according to different doctrines?

#### **II. Section 12(2)(c)**

The following question was put forward in relation to this section –

- What implications does this have on public officers?

#### **III. Section 18(2) – Protection of the environment**

It was recommended that the word "shall" replace the word "should" so that provision would read as follows –

"To this end government **shall** adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that -

- (a) limit pollution and ecological degradation;
- (b) promote conservation and biodiversity; and
- (c) secure ecologically sustainable development and use of natural resources."

#### **IV. Section 16 - Non-discrimination/Protection for the disabled**

It was noted that currently there are no laws in place to protect and promote the rights of the disabled in Cayman. The Commission was informed that a recommendation has been made for the Government to enact local legislation immediately to cover these needs in the community.

### **Part II – The Governor**

#### **I. Section 31: Functions of the Governor**

Concern was expressed that the Governor has the authority to ignore the best interests of the Cayman Islands if they run counter to the best interest of the United Kingdom.

### **Part III – The Executive**

#### **I. Section 54(6) – Allocation of responsibilities to Ministers**

Concern was expressed over the wording in this section because it was not immediately clear what the possible effects would be on the civil service. Specifically it was unclear as to what administrative functions could be bestowed on these bodies.

#### **II. Section 56: Attorney General**

It was suggested that more detail is needed on the role of the AG so that the public can have a better understanding of role and responsibilities of the office.

### **Part IV – The Legislature**

#### **I. Section 60 – The Legislative Assembly**

It was suggested that the Government is at a disadvantage due to the loss of two votes since the *ex officio* members no longer have voting privileges. Currently due to the provisions of clause 4(3) the number of elected members stands at fifteen (15) rather than eighteen (18) until the next dissolution of the Legislative Assembly.

Options were discussed regarding a suggestion to increase the number of seats as soon as possible. One suggestion was that there should be a request made to the UK Government to pass an order-in-council which would amend this section and allow for the 3 seats to be filled via a bye-election.

#### **II. Section 69 – Power to provide for a referendum**

Concern was expressed over the lack of guidance on how to define a matter of national importance and the following question was put forward – The Constitution already deems the question of independence as an issue of national importance to be determined by a mandatory referendum. Should the proposed legislation include criteria for identifying matters of national importance or include provisions for mandatory/obligatory referendums that must be held in certain circumstances?

#### **III. Section 70 – People-initiated referendums**

It was suggested that the requirement of signatures of 25% of the electorate for triggering a referendum is too onerous.

There was a recommendation for people-initiated referendums to be binding on the Government if assent is given by 2/3 of registered voters and not the 50% that is currently prescribed.

There was also a recommendation that all people-initiated referendums are determined outside of the Government, including the wording of the referendum question(s) and the date of the referendum because as it is currently prescribed it erodes the individual's right to self determination as the referendum processes are not independent of the Government.

#### IV. Section 81 – Governor’s reserved power

Concern was expressed over the Governor’s authority to introduce, pass, and enact legislation without consent of the Legislative Assembly.

#### Part VII - Finance

##### I. Section 115 – Financial Secretary

It was suggested that the role of the Financial Secretary needed to be better clarified in order to properly educate the public as to the full role and responsibilities of the office.

Concern was expressed that the Financial Secretary could not properly advise the Legislature or the Cabinet since the post holder is no longer a member of either institution.

#### Part VIII – Institutions Supporting Democracy

##### I. Section 116

The implementation of the BoR has been delayed until 2012 and this has somewhat limited the role of Human Rights Committee as prescribed by section 116 because it cannot receive complaints in relation to Part I for the time being and can only receive complaints of breaches of international human rights treaties which have been extended to the Cayman Islands.

It was expressed that the delay of the implementation for the BoR is seen as a positive measure for allowing extensive human rights education in Cayman Islands before this portion of the Constitution comes into effect. However the following questions were put forward for consideration –

- How timely and effective has the human rights education been to date?
- What training measures have been instigated?
- What is the proposed timeline for educating the public sector and the community at large?
- If a complaint is not resolved through the HRC’s mediation and conciliation functions, what happens?

Concerns over the ability of the HRC to deal with complaints without proper tools established were expressed and it was recommended that a specific team be put together to encourage human rights education across the public sector and the community.

It was suggested that it should be the primary responsibility of the Attorney General’s office to ensure this team is compiled to address specific human rights areas in terms of legislation (primary, secondary, policy and policy directives). Additionally it was suggested that common law should also be reviewed in terms of how it affects and applies to the Cayman Islands.

##### II. Section 117 – Commission for Standards in Public Life

Concern was raised over the lack of enabling legislation to support the remit of the Commission for Standards in Public Life as may be prescribed according to section 117 and per the needs of the Register of Interests in section 121. It was noted that support of the Government and the Opposition is required to ensure the effectiveness of this Commission’s ability to fulfill its mandate and to ensure the spirit and content of the Constitution as a whole.

##### III. Section 119 – Advisory District Councils

The urgent need for legislation establishing and regulating Advisory District Councils (ADCs) was expressed to the Commission. This is an issue that needs public participation before any legislation is passed. The two suggested processes to determine membership of the ADCs were -

- a. appointments made His Excellency the Governor in consultation with the Premier and the Leader of the Opposition; or
- b. district elections.

## **Part IX – Miscellaneous**

### **I. Section 124 – Interpretation**

Concern was expressed over the definition of public officer because it currently has placed a limit on those persons eligible for sitting on the Commissions established under the Constitution.

### **II. Section 125: Power reserved to Her Majesty**

It was suggested that in the opinion of the stakeholder, constitutional democracy had not been achieved, but what currently exists is parliamentary rule when looking at powers prescribed to the Governor and Her Majesty the Queen. Concern was expressed over the UK's absolute power over the legislation and that no powers were devolved to overseas territories.

## **Recommendations**

During the stakeholder meetings numerous recommendations were made to the Commission regarding how it could efficiently and effectively perform its functions. A number of stakeholders also offered to assist the Commission in the performance of certain functions. The following section summarizes the recommendations put forward to the Commission.

### **I. Education Programme**

The following suggestions were made in regards to the Commission's future work in educating the public –

- i. make use of technology, such as Facebook and Twitter, to reach wider and more diverse audience;
- ii. couple events with other special interest groups in order to increase attendance;
- iii. utilize radio shows and television programmes as they reach a wider audience than hosting public meetings;
- iv. portray relevance of the Constitution in order to generate interest because all constitutional issues must have public understanding and support;
- v. work to the best of its ability in an independent and consultative way to educate the populace and seek public participation in matters of national importance;
- vi. recommend to the Government that the school curriculum should include a local examination of government in the Cayman Islands and other regional jurisdictions.

In regards to the educational material that should appear on the Commission's website it was recommended that the Constitution be presented in three different versions that are comprehensive and easy to navigate. The three different versions that were suggested are –

- i. the original version of the Constitution;
- ii. a common language explanation of the original version; and
- iii. a version containing any relevant information pertaining to clauses, for example court rulings.

## II. Coordination with other Groups

It was suggested that the Commission make use of the available local resources, including other NGOs that are willing to provide assistance with certain projects. Additionally it was recommended that the Commission engage regional groups, such as ECLAC and Caricom to build capacity within the Territory.

## III. Options for Constitutional Advancement

In the discussing the importance of the Constitution as the fundamental law of the land, it was reiterated that the role of the Commission includes ensuring that proper processes are in place to address any amendments, revisions or advancements. The Constitution includes mechanisms such as referendums which would ensure public participation in the decision making process. Some key stakeholders expressed the view that the question of independence from the United Kingdom is an inevitable step that must be taken in the future and urged the Commission to regard this issue as a matter of priority in its education campaign. It was suggested that the Commission undertake research to identify the various aspects that must be considered by the people of the Cayman Islands before any movements toward independence can be sought.