



# Constitutional Commission

Annual Update

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July 2024



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## H.E. the Governor's Constitution Day Message

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I am pleased to present this Annual Update of the Constitutional Commission in time for Constitution Day. This year marks the 15th anniversary of the Cayman Islands Constitution, a milestone that provides an opportunity to reflect on the principles upon which governance in the Cayman Islands was founded.

I am immensely grateful to the Commission which has been so ably led by Chairman Vaughan Carter, with support from Member Annikki Hill. In particular, I wish to thank Chairman Carter for his wisdom and commitment to the Commission since 2015. Mr. Carter's expertise has been invaluable and he has demonstrated a commendable level of dedication through his service both as Member and Chairman.

In this Annual Update, we witness not only the achievements of the past twelve months but also the enduring legacy of the Commission's work, particularly when it comes to education. I was especially pleased to see a continuation of the Commission's efforts to educate young people on the importance of the Constitution and the involvement with groups such as the Cayman Islands Youth Parliament.

May this Annual Update stand as a testament to our collective commitment to upholding the principles of justice, equality, and freedom that define the Cayman Islands Constitution.

**Mrs. Jane Owen**  
Her Excellency, the Governor

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## Foreword

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There is no disguising the fact – nor should there be – that this has been a difficult year for the Constitutional Commission. For reasons which are beyond the control of the Constitutional Commission, it has not been properly constituted for the entire period covered by this Annual Update. This irregularity follows previous, albeit shorter, periods in recent times in which the Constitutional Commission has been down a member; periods during which the Constitutional Commission has also been without the administrative and technical support necessary to deliver on its constitutional mandate. While the Constitutional Commission acknowledges that repeated efforts have been made to identify suitably qualified new members, and is pleased to report that additional staff have been recruited to the Commissions Secretariat (the body that supports the Constitutional Commission, along with various other Commissions established under the Constitution or otherwise by statute), the membership deficiency has inevitably had a negative impact on the capacity of the Constitutional Commission to perform its constitutional functions.

In accordance with section 118(2) of the Constitution, the Constitutional Commission should consist of a Chairman and two other members; and so, the lack of one member on what is only a three-member Commission is felt particularly acutely. Although the Constitution is silent on what comprises a quorum for the Constitutional Commission to operate, when it became apparent that the Constitutional Commission would be without its full complement of members for a protracted period, the remaining members resolved that it would not be appropriate for the Constitutional Commission to conduct certain types of business until the panel was properly reconstituted.

This position was discussed with Her Excellency, the Governor, and it was understood that, in the absence of its third member, it would not be reasonably practicable for the Constitutional Commission to take formal positions for the purposes of advising the Government on questions concerning constitutional status and development in the Cayman Islands (section 118(3)(a) of the Constitution), or publishing reports, discussion papers, information papers and other documents on constitutional matters affecting the Cayman Islands (section 118(3)(b) of the Constitution); but that the Constitutional Commission could be expected to persevere with the more neutral but nonetheless crucial task promoting understanding and

awareness of the Constitution and its values (section 118(3)(c) of the Constitution). The need for continuing public education on constitutional development in the Cayman Islands was in fact the impetus behind the inception of a standing Constitutional Commission in the 2009 Constitution, and so it was fundamentally important that the Constitutional Commission's efforts in this regard were not interrupted. Education therefore became the Constitutional Commission's primary focus throughout the last year and a section in this Annual Update is accordingly devoted to showcasing this outreach. Indeed, this publication, which also includes updates on various other projects and initiatives that the Constitutional Commissions already had underway, is itself a valuable educational resource.

The ongoing delay in identifying a third member has, however, regrettably prevented the Constitutional Commission from taking a formal position on a range of notable constitutional issues that it had intended to consider this year. These include: (i) the exercise of the power to dissolve Parliament under section 84(2) of the Constitution; (ii) the need for reform of campaign financing for Parliamentary elections; and (iii) the suitability of an electoral system based on first-past-the-post elections in single member constituencies and the options for electoral reform. These are all topics that would benefit from analysis by the Constitutional Commission as soon as it is able to do so.

The hiatus in the more contentious aspects of the Constitutional Commission's work has also meant that it has been unable to follow up on numerous recommendations, which remain outstanding, and which include: (i) tracking the five recommendations made for the amendment of the Constitution as part of the process that resulted in the 2020 Amendment of the Constitution, but which were not included in this Amendment; (ii) incorporating a chapter on the formation of the government into the Cabinet Manual; (iii) enhancing the Parliamentary Code of Conduct to ensure it is enforceable; (iv) improving the independence and impartiality of the Speaker of Parliament; (v) implementing Advisory District Councils; and (vi) enacting legislation to better regulate the operations of the various Commissions enshrined in the Constitution.

As the Constitutional Commission has previously observed, this is a significant body of work that merits due and proper consideration, even if these recommendations are not ultimately accepted. In the absence of any formal processing, there is thus a genuine concern that much of the work produced by the Constitutional Commission could simply disappear into the ether and have little practical benefit. Presently, the Constitutional Commission follows a convention of sending its reports to the Governor, the Hon. Premier, and the Hon. Leader of the Opposition, but since it is the Governor who has tended to meet regularly with the Constitutional Commission, it generally falls to the Governor to respond. However, many of the issues raised by the Constitutional Commission's recommendations fall outside of the Governor's remit; and so, while it may be apposite for the Governor's Office to coordinate responses to these recommendations, it can only do so with the assistance of other constitutional actors and, in certain instances, where there is the political will to do so. A more formal process would make it clear who is responsible for what, manage expectations and responsibilities, and, in so doing, enhance the utility and effectiveness of the Constitutional Commission.

Notwithstanding these challenges, the Constitutional Commission has continued to actively pursue its educational outreach, and the successful partnership with the Collas Crill Moot, along with the positive engagement with the Cayman Islands Youth Parliament, both of which are highlighted in this Annual Update, are testament not only to the Constitutional Commission's commitment, but also to its ingenuity. These projects were born out of necessity at a time when funding and expertise was not readily available for the Constitutional Commission to pursue its own public education agenda independently; and by associating itself with these pre-existing inter-school competitions, the Constitutional Commission has certainly made a virtue out of this necessity. However, the Constitutional Commission cannot be solely reliant on the good graces of other organisations and entities for propagating a greater understanding and awareness of the Constitution. The appointment of an in-house Public Relations and Education Coordinator within the Commissions Secretariat is therefore particularly encouraging, not least because this is one of several enhancements to the staffing arrangements at the Secretariat, which should provide a newly reconstituted Constitutional Commission with the capacity to better execute its educational priorities moving forward.

The Constitutional Commission extends a warm welcome all the new staff in the Commissions Secretariat, including the new Manager and Deputy Manager, along with its gratitude to their predecessors for their contributions. The Constitutional Commission also recognises the significant involvement of the Portfolio of the Civil Service in supporting the development of what looks to be a more resilient structure for the Commissions Secretariat, which similarly bodes well for the future. It is nevertheless appropriate to signal one note of caution regarding the relationship between the Commissions Secretariat and the Portfolio of the Civil Service, which is that, where the Commissions Secretariat is a unit of the Portfolio of the Civil Service, and where the Manager of the Commissions Secretariat reports directly to a Deputy Chief Officer in the Portfolio of the Civil Service, it is imperative that a clear and unambiguous separation is maintained between these logistical arrangements and the substantive work of the independent Commissions.

In the Constitutional Commission's experience, this separation has not always been as conspicuous as it could be; a case in point being when the Commissions Secretariat was called upon to prepare responses to recommendations relating to the Constitution, which had been tendered by the Constitutional Commission, and which the Commissions Secretariat had supported the Constitutional Commission in preparing in the first place; thereby placing the Commissions Secretariat in a difficult and potentially compromising position. This example further underscores the need for some formal guidance on how the Constitutional Commission's recommendations are processed and reveals that this would in fact benefit all parties involved in the process. In addition to defining the expectations on the part of the Governor and the Governor's Office when recommendations are submitted, it would also clarify the role of the Commissions Secretariat, thereby ensuring that it is not caught between two masters, as well as upholding the independence and integrity of the Constitutional Commission.

With the appointments of the two remaining Constitutional Commissioners also coming to an end, the task of lobbying for the establishment of this more formal arrangement for the processing of recommendations will now fall to an entirely new Constitutional Commission; and it is therefore imperative that this new team

is put in place as soon as possible. Finding the right balance within this three-member panel has further complicated recruitment efforts, but as the outgoing Chair, I have been advised that new appointments are in train. At the same time, it has also been heartening to receive reassurances that the work of the Constitutional Commission is valued and that the Constitutional Commission does indeed have an important role to play in the future.

Speaking personally, it has been my honour to serve as a Constitutional Commissioner since January 2015, and as the Chair of the Constitutional Commission for the past seven years. I would like to acknowledge the work of all the Commissioners that I have had the pleasure of serving with, while reserving particular gratitude for Commissioner Annikki Hill, who leaves the Constitutional Commission with me, and who has helped me immeasurably with her wise counsel to navigate this recent difficult period. In my view, Commissioner Hill had so much to offer Constitutional Commission that it was not able to benefit from whilst operating within the membership constraints noted in this Foreword and which unfortunately affected the Constitutional Commission for almost all of her term as a Commissioner. I sincerely hope that there is an opportunity for our community to benefit from Ms. Hill's many skills and expertise once again sometime soon.

Insofar as the Constitutional Commission is concerned, its future direction will, of course, be a matter for the new Commissioners when they are duly appointed. I nevertheless sign off by drawing attention to what in my experience are some of the major constitutional issues, which the new Constitutional Commission may wish to take forward, but which we should all probably take some time to reflect upon this Constitution Day. These are:

- 1. On understanding and awareness of the Constitution:** the integration of some form of civics education into the core curriculum in all our schools, which recognises the status of the Cayman Islands Constitution and delivers on this by utilising locally relevant examples and resources (a familiar theme that is consistent with recommendations previously advanced by the Constitutional Commission);
- 2. On questions concerning constitutional status and development in the Cayman Islands:** the need for greater transparency in the way that our Constitution may come to be amended (a theme that is pursued in this Annual Update in the article on Freedom of Information Requests and the 2020 Amendment to the Constitution); and
- 3. On constitutional matters affecting the Cayman Islands arising from the Constitutional Commission's reports:** the importance of a legislative framework for the Constitutional Commission to govern its operations more effectively, to preserve its independence, and, critically, to ensure that its work is given due and proper consideration.

**Vaughan Carter**

**Chairman, Constitutional Commission**

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## Tribute to Former Commissions Secretariat Manager: **Deborah Susan Bodden**

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The Constitutional Commission joined with the wider community in recognising the immense contribution of former Commissions Secretariat Manager, Ms. Deborah Susan Bodden, upon her sad and premature passing in August 2023. It was Ms. Bodden who first established the Commissions Secretariat and who, as its first Manager, provided all the Commissions with the crucial administrative, strategic, and research support that enabled these institutions to carry out their constitutional functions and responsibilities. During her tenure, Ms. Bodden worked diligently to enhance our democracy

and to make lives better for the people of the Cayman Islands. Her invaluable efforts were greatly appreciated by current and former members of all the Commissions she supported, as well as by her colleagues.

A tribute to Ms. Bodden, prepared by the Chairman of the Constitutional Commission, can be read in full at the Constitutional Commission's website [here](#).

The Constitutional Commission would also like to take this opportunity to extend its deepest sympathies once again to Ms. Bodden's family and loved ones and to reaffirm that her memory continues to inspire and inform our work.

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# Promoting Understanding and Awareness

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Following its successful partnership with the Conyers Inter-School Debate Tournament in March last year, the Constitutional Commission had utilised this model to continue to promote greater understanding and awareness of the Constitution in secondary schools.

In 2023, the Constitutional Commission partnered with the law firm, Collas Crill, to develop a problem with a constitutional theme for its inter-school Moot final and the Constitutional Commission also assisted with the judging of the Moot final, which was held at the Courthouse on 29 November 2023.

In 2024, the Constitutional Commission also supported the Cayman Islands Youth Parliament Programme with a presentation on the constitutional role and function of Parliament at the House of Parliament on 6 February 2024.

More generally, the filling of the vacant position of Public Relations and Education Coordinator in the Commissions Secretariat has enabled the Constitutional Commission to review its various educational offerings, to identify where supplementary materials would be beneficial, and to create new educational worksheets for the primary school level.

## Constitutional Commission Partners with Collas Crill for Moot Final

The Constitutional Commission was delighted to partner with Collas Crill for the firm's second inter-school Moot final, held on 29 November 2023, in Court Room 2 at the Courthouse in central George Town.

The Collas Crill Moot is a competition aimed at senior secondary school students in the Cayman Islands, where participants compete in teams of two in a mock-trial

setting. During the preliminary rounds of the competition, a number of teams from Cayman Prep & High School, Cayman International School, Clifton Hunter High School and St. Ignatius High School vied with one another, testing the skills that they had been trained in by attorneys from Collas Crill, across a range of different legal topics.

The top teams from each of the four schools qualified for the Moot final, which had been selected as a forum to highlight the importance of the Constitution. To this end, the Constitutional Commission worked with Collas Crill to develop a fictitious constitutional problem, which the students then tackled in front of a panel of three judges.

Constitutional Commission Member Annikki Hill was part of the judging panel, where she was joined by Collas Crill Managing Partner Stephen Leontsinis, as the head of the panel, and Senior Associate Annalisa Shibli. The students presented their arguments and were marked on their court etiquette, persuasiveness, clarity, body language, time-keeping, and legal argument.

In what the judges described as an extremely tight competition, the St. Ignatius High School team, comprised of Soleya Manzanares and Leanna Allen, ultimately pipped Cayman Prep & High School to the title of 2023 Collas Crill Moot champions. All the finalists were however recognised in a prize-giving ceremony and reception, which followed the formal mooting. In addition to the prizes awarded by Collas Crill, copies of its Constitutional Comic Book produced by the Constitutional Commission were made available to the attendees.

The Constitutional Commission would like to extend its congratulations once again to the winners, Ms. Manzanares and Ms. Allen, and indeed all the finalists, on their engagement with the challenging constitutional issues contained in the Moot final problem.

The Constitutional Commission hopes that this introduction to constitutional law will inspire the Moot finalists to become not only advocates for constitutional education but perhaps even the next generation of advocates arguing real cases concerning the interpretation and application of the Constitution in our Courts.

The Constitutional Commission would also like to express its gratitude to Collas Crill for allowing the Constitutional Commission to be its partner in the Moot final and for sharing the Constitutional Commission's vision of using inter-school competitions to promote constitutional education amongst our young people. The success of this partnership was also acknowledged by Collas Crill Managing Partner, Stephen Leontsinis, who noted that:

*Partnering with the Constitutional Commission has been an enlightening way to elevate the Moot competition and allow participants to grapple with legal and constitutional issues they may not face on a daily basis. At Collas Crill we are passionate about developing Cayman's next generation, and the Moot competition provides a wonderful opportunity for all students – not just future lawyers – to develop valuable skills in a Courtroom setting. We are most grateful to the Constitutional Commission for their commitment to the Moot and look forward to the 2024 competition kicking off later this year.*

The Collas Crill Moot final was featured in a Cayman Compass article on 1 December 2023, the full text of which can be found on the Cayman Compass' website [here](#).



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# MOOT FINAL: CONSTITUTIONAL ISSUE

## FACTS & LEGAL QUESTION

1. On 24 June 2023, the global medical reporting body, the International Disease Centre, published the following announcement:

### INTERNATIONAL DISEASE CENTRE

Geneva, Switzerland

#### Press Release – for immediate release

The International Disease Centre today announces the discovery of a new viral pathogen, SARS-COV-23. SARS-COV-23 is known to spread amongst humans, and can result in a disease to be called Covid-23.

SARS-COV-23 is a mutation of the Covid-19 virus. SARS-COV-23 and Covid-23 are still undergoing significant testing, but early testing by the WHO indicates that the virus is immune to existing Covid-19 vaccines.

Symptoms of Covid-23 are extreme, and in many cases, death can result. At present, the only viable treatment protocol is prolonged admission to a medical facility for ongoing symptom management. Approximately 80% of test subjects who contract Covid-23 ultimately die from the disease.

Covid-23 appears to spread particularly quickly between persons aged 14 – 22, and symptoms of the disease are most severe and deadly in that age group also.

A vaccine development programme for Covid-23 has already been commenced. Members of the public are urged to take immediate steps to protect themselves, and to obey all instructions issued by their national governments.

*[A parody, not to be taken seriously, for competitive academic purposes only]*

2. In the weeks following the announcement, most countries in the world go into lockdown (again), but Covid-23 continues to spread amongst the population, particularly teenagers, with devastating effect.

# MOOT FINAL: CONSTITUTIONAL ISSUE

## FACTS & LEGAL QUESTION

3. The Cayman Islands government issues an administrative order placing the country into lockdown on 15 July 2023, when the first case of Covid-23 is confirmed on the island.
4. By early September 2023, a vaccine has been developed for Covid-23, which is showing great results in testing. The vaccine is approved by the IDC for public use, and a mass vaccination campaign begins in the Cayman Islands by the end of September 2023. The first eligible people for the vaccine are those aged 14 – 22, given the disproportionate impact of Covid-23 on people in this age group.
5. On 15 October 2023, the government of the Cayman Islands releases a press release announcing that over 90% of the Island's young people had been successfully vaccinated, and so schools would re-open the following day, Monday 16 October 2023 and all online learning must immediately cease so that resources can be focussed on catching up the learning missed during the lockdown period. The government announces that, because of the extreme symptoms of Covid-23 and the high risk of death, only vaccinated students would be allowed to return to school, and no exceptions would be allowed.
6. Also on 15 October 2023, an Act called the Covid-23 School Response Act is assented to by the Governor. The Act is only 4 sections, comprising the following:

<b>Section 1: Title</b>	This Act shall be known as the Covid-23 School Response Act
<b>Section 2: Commencement</b>	This Act shall take effect immediately upon assent by the Governor.
<b>Section 3: Mandatory Vaccination</b>	It is compulsory for all residents of the Cayman Islands aged between 14 and 22 years to be vaccinated against Covid-23.
<b>Section 4: School Attendance</b>	(1) With immediate effect, all Government, assisted and independent schools in the Cayman Islands will re-open for in-person education. (2) Only those students who have been vaccinated in compliance with section 3 will be permitted to attend school.

7. Many people are upset by the Act, especially sections 3 and 4, but an opinion is issued by several well-known law firms confirming that the Act was passed in accordance with proper procedures so cannot be challenged on procedural grounds. The opinion makes no reference to the validity or otherwise of the content of the Act.

# MOOT FINAL: CONSTITUTIONAL ISSUE

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## FACTS & LEGAL QUESTION

8. A group of concerned citizens, the School Access Coalition, bring an urgent action against the Government pursuant to s26 of the Constitution, seeking orders that sections 3 and 4 of the Covid-23 School Response Act are unconstitutional. The orders sought are broad and refer to both sections 23 and 25 of the Constitution. The Government indicates an intention to defend the action and an urgent hearing is convened before the Grand Court to hear argument.
  
9. The hearing is intended to consider two aspects in dispute: first, whether or not the Act is in compliance with the Constitution and second, if it is not in compliance, the options available to the Court. In your presentation (of 15 minutes per team) you should focus on the following:
  - (a) if you appear for the School Access Coalition, the rights that your clients say have been infringed by the Act (including potentially the rights to private and family life, conscience and religion, education and non-discrimination) and what remedy/ies the Court should order in relation to the Act.
  
  - (b) if you appear for the Government, the various restrictions and limitations on the rights appearing in the Constitution itself, the argument that the Act can be said to uphold a number of the rights referred to above and the argument that the Government acted in accordance with its duties towards children as set out in the Constitution. You should also address the remedy that the Court should order, in the event that your client is unsuccessful on the primary argument.

## Constitutional Commission Supports the Cayman Islands Youth Parliament

The Constitutional Commission also committed to supporting the Cayman Islands Youth Parliament. With the assistance of the former Speaker of Parliament, the Hon. Katherine Ebanks-Wilks MP, and the other Parliamentary officers that support the Cayman Islands Youth Parliament, it was determined that the Chairman of the Constitutional Commission would conduct a training session for the aspiring Parliamentarians.

On 6 February 2024, the Chair of the Constitutional Commission attended at the House of Parliament to present at a meeting of the Cayman Islands Youth Parliament. The Chair's presentation began by explaining the significance of Parliament in the Westminster system of government, before tracing the development of the legislative branch of government in the Cayman Islands through our various written constitutions and culminating with the 2020 Amendment to the 2009 Constitution

in which the Legislative Assembly was renamed as the Parliament. The Chair's presentation concluded by considering how the Constitution was relevant to the two motions – on a National Development Plan for the Cayman Islands and Immigration and Border Reform – that had been selected to be debated by the Youth Parliamentarians.

The constitutional presentation was well received by both the organisers of and the participants in the Cayman Islands Youth Parliament and it is hoped that a similar session will become a regular feature of the programme in future years. Following his presentation, the Chair of the Constitutional Commission was also invited to attend the official Cayman Islands Youth Parliament debate on Commonwealth Day on 11 March 2024, the broadcast of which can be viewed on YouTube [here](#).

Further information on the Cayman Islands Youth Parliament can be found on the Parliament's website [here](#).



## Did You Know... about the Cayman Islands Youth Parliament?

- The Cayman Islands Youth Parliament is held annually and 2023-24 marked its 17<sup>th</sup> year.
- The Cayman Islands Youth Parliament provides the opportunity for youth, ages 15-25, to obtain knowledge on the practices and procedures of the Parliament of the Cayman Islands and to use their voices to bring about social change through meaningful representation and debate.
- The Cayman Islands Youth Parliament is designed to demonstrate to future young parliamentarians the role and purpose of parliaments as institutions for democracy and good governance.
- Youth Parliamentarians are nominated by their respective schools or universities throughout the Cayman Islands.
- Once nominated, Youth Parliamentarians attend the House of Parliament and organise meetings, write speeches, draft Motions and Bills, and have the ability to influence decision makers on the issues that matter to young people.



## Constitutional Educational Resources

Over the years the Constitutional Commission has produced a range of educational resources designed to promote understanding and awareness of the Constitution and its values, in accordance with Constitutional Commission's educational mandate in section 118(3)(c) of the Constitution.

These educational resources include:

- The **Constitutional History Digital Timeline**, which tracks the constitutional journey of the Cayman Islands, and which can be accessed on the Constitutional Commission's website [here](#).
- **An Educational Guide to the Constitution**, which was published soon after the 2009 Constitution came into effect and the Constitutional Commission was established to provide readers with a summary of the key provisions of the Constitution in plain English, and which can be accessed on the Constitutional Commission's website [here](#).
- Various **Explanatory Notes** on significant constitutional issues, including: the need for additional legislation to support the provisions for people-initiated referendums; the rights of civil servants to sign petitions; proposed amendments to the Constitution; the appointment of the Premier and other Ministers and the election of the Speaker the constitutional issues arising from the Day and Bodden Bush litigation; the importance of independence and impartiality to the role of the Speaker of Parliament following a general election; the introduction and enforcement of a Parliamentary Code of Conduct; and our final court of appeal, the Judicial Committee of the Privy Council; all of which are available on the Constitutional Commission's website [here](#).

- Other **Correspondence** issued by the Constitutional Commission on various topics, including: suggestions for constitutional revisions in 2014 and 2019; recommendations on Advisory District Councils; and recommendations for the enactment of supplementary legislation to support the work of the institutions that support democracy and the rule of law; all of which are available on the Constitutional Commission's website [here](#).
- The **Cayman Islands Constitution Comic Book**, which was designed to encourage greater awareness of the importance of the Constitution amongst the younger members of our society, and which is available as an e-book on the Constitutional Commission's website [here](#).

The Constitutional Commission has also recommended that further work be undertaken to improve the functionality of the Constitutional Commission's website, so that the educational resources can be more easily accessed by different users – whether they be educators, students, legal professionals, or the general public – for their respective purposes.

# Updates on Projects and Initiatives

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In addition to its educational mandate, section 118(3) of the Constitution also authorises the Constitutional Commission to: (a) advise the Government on questions concerning constitutional status and development in the Cayman Islands; and to (b) publish reports, discussion papers, information papers and other documents on constitutional matters affecting the Cayman Islands.

While these activities have been curtailed during the past year for the reasons explained in the Foreword to this Annual Update, the Constitutional Commission is nevertheless still able to provide updates on several projects and initiatives that were already underway and in which there have been developments of note.

## Freedom of Information Requests and the 2020 Amendment to the Constitution

During its engagements with the public, the Constitutional Commission is frequently asked about how the Cayman Islands Constitution is amended. To better understand this process, the Constitutional Commission sought to obtain records relating to how the Constitution was last amended in 2020. Accordingly, a number of requests for records were submitted in March 2023 to various government entities in the Cayman Islands under the Freedom of Information Act, as well as to the Foreign, Commonwealth and Development Office (FCDO) under the equivalent legislation in the United Kingdom.

**The Constitutional Commission's request sought:** *All relevant documentation relating to the process by which the Cayman Islands Constitution was amended with the enactment of The Cayman Islands Constitution (Amendment) Order 2020, including the records of the constitutional talks that were held at the United*

*Kingdom Government's Foreign and Commonwealth Office in December 2018 and all related documents and correspondence produced both before and after this meeting and dating back to the inception of the proposals to amend the Cayman Islands Constitution following the passing of the Sanctions and Anti-Money Laundering Act 2018 by the United Kingdom Parliament. For the avoidance of any doubt, the records requested include, but are not necessarily limited to, correspondence (both internal to the UK and Cayman Islands Governments, between the UK Government and the Cayman Islands Government, and between the UK or Cayman Islands Government and any third parties); documentation relating to any related meetings, including minutes, notes, transcripts and other such records; and any notes, memoranda or other record produced in connection with this process and the amendment of the Cayman Islands Constitution.*

Over the ensuing nine months, the various entities targeted provided their responses to the requests, with the last final response received from the FCDO in December 2023. These responses are all available in full on the Constitutional Commission's website [here](#).

Insofar as the local entities are concerned, the Constitutional Commission's attempt to obtain additional documentation relating to the 2020 Amendment proved unsuccessful. While the Portfolio of Legal Affairs advised that the records requested were not within its remit, both the Office of the Premier and the Cabinet Office reported that their Offices did not hold any records that were relevant to the requests. The net result therefore was that, notwithstanding that the Constitutional Commission had been invited to propose potential amendments to the Constitution, none of these local entities possessed any relevant records.

The Governor's Office did indicate that it had some records that were responsive to the request, but, despite the Commission having been tasked by the former

Governor in connection with research on amendments that were already being considered, the Constitutional Commission was notified that these records could not be made available because they belonged to another jurisdiction (namely the UK) or were claimed to be exempt for another reason.

Any hope of obtaining additional information regarding the 2020 Amendment therefore rested on the final response from the FCDO, which arrived on 14 December 2023; and, although the FCDO did release some correspondence, the content of the documentation released was still disappointing. The correspondence provided was heavily redacted and none of the attachments referenced in the correspondence were released. Moreover, there were apparently no records of the constitutional talks at all, which took place between the Governments of the UK and the Cayman Islands, and which resulted in the 2020 Amendment, that could be released.

The only information of any note that was released by the FCDO was a draft Parliamentary Statement concerning the Overseas Territories, which reads:

*I wish to give the following assurance to the Governments of the British Overseas Territories. Before it is proposed*

*to legislate for an overseas territory by Act of Parliament or Order in Council, or to impose an international obligation on an overseas territory, the United Kingdom Government will normally consult the Government of that territory unless circumstances make it impracticable to do so. The United Kingdom Government will take due account of any views expressed by the Government of the territory concerned.*

Unfortunately, the Constitutional Commission was not able to consider pursuing appeals of the final decisions of any of the entities targeted in these requests for records because it has not been properly constituted since January 2023. It may be that in due course, once the Constitutional Commission is reconstituted, this is a matter that could be revisited. In any event, what the limited responses to the Commission's request do nevertheless indicate is that there is clearly a need for greater transparency in the process by which the Constitution is amended.

The Constitutional Commission's full report on its Freedom of Information Requests pertaining to the 2020 Amendment of the Constitution, including the correspondence received in reply to the requests and the responsive records provided, can be accessed on the Constitutional Commission's website, [here](#).



## Did You Know... about the Freedom of Information Act?

- The right to access information held by public authorities is referenced in section 122 of the Constitution.
- Further provision for the right to access information held by public authorities is contained in the Freedom of Information Act (2021 Revision).
- The Freedom of Information Act was passed on 19 October 2007 and first came into effect in the Cayman Islands in January 2009.
- Freedom of information promotes government accountability, transparency, and public participation in national decision-making by granting the public a general right of access to records held by the Cayman Islands Government.
- The Freedom of Information Act does not apply to certain public functions or records – including the judicial functions of a Court, strategic or operational intelligence-gathering activities of the security or intelligence services, and private holdings of the National Archive – and does not override other legislation that restricts access to records.
- The general right of access in the Freedom of Information Act is also subject to limited exemptions which balance the right of access against the public interest in not disclosing information that would prejudice governmental or commercial interests or constitute an unreasonable disclosure of personal information of a third party.
- Information requests can be made anonymously and without need to provide a reason.
- The Ombudsman is the supervisory authority for freedom of information in the Cayman Islands.
- The Ombudsman is an impartial and independent office of Parliament, which is also referred to as the Complaints Commission in section 120 of the Constitution.
- In the context of freedom of information, the Ombudsman handles complaints and appeals, monitors and reports on compliance, makes general or specific recommendations for reform, and is responsible for public education.
- The Ombudsman also reports to Parliament on the operations of the Freedom of Information Act and may undertake investigations, either proactively or in response to a complaint.



## Unofficial Consolidated Constitution

Another example of the Constitutional Commission responding to public queries – and successfully in this instance – has been the creation of an unofficial consolidated version of the Constitution. When the Chair of the Constitutional Commission appeared on Radio Cayman to discuss the last Annual Update, one of the listeners to the show rang in to explain that he was experiencing frustration at having to refer to three separate statutory instruments, from 2009, 2016 and 2020, to understand certain provisions in our Constitution. In response to this concern, the Constitutional Commission resolved to make enquires regarding a consolidated version of the Constitution.

The main body of the Constitution is contained in the Cayman Islands Constitution Order 2009 (“the 2009 Constitution”). This was a new constitutional settlement and, accordingly, the 1972 Constitution and the numerous amendments thereto were repealed. For a while, the entire Constitution was therefore readily accessible in one single document; that was until the 2009 Constitution was itself subject to amendment.

The 2009 Constitution has now been amended twice; first by the Cayman Islands Constitution (Amendment) Order 2016 (“the 2016 Amendment”); and secondly by the Cayman Islands Constitution (Amendment) Order 2020 (“the 2020 Amendment”)

### In the 2016 Amendment:

- the tenure of judges of the Grand Court is extended from the age of 65 to 70;
- the Governor’s power to exercise disciplinary control over the Chief Justice and the President of the Court of Appeal is removed; and
- the power to exercise disciplinary control over magistrates and judges of the Grand Court is

transferred from the Governor to the Chief Justice whereas the power to exercise disciplinary control over judges of the Court of Appeal is transferred to the President of the Court of Appeal.

### In addition, the 2020 Amendment:

- changes the name of the Legislative Assembly to “Parliament”;
- abolishes the power of the disallowance of laws by the monarch and introduces instead the ability for pre-legislative reviews by UK representatives;
- clarifies where the Cayman Islands Cabinet can independently manage domestic affairs;
- changes the circumstances in which the Governor must consult the Cabinet;
- provides for Parliamentary Secretaries and a Police Service Commission; and
- requires a UK Secretary of State to notify the Premier of proposed Acts of the UK Parliament, or Orders in Council, that would apply directly to the Cayman Islands.

In the absence of an official consolidated version of the current Constitution, the Constitutional Commission has produced an unofficial version, which is for informational purposes only, and is not intended to replace the official documents. It is, however, hoped that the unofficial consolidated version of the Constitution will help to make the Constitution more accessible.

The full consolidated Cayman Islands Constitution, which is clearly stated to be “unofficial and for informational purposes only”, may be accessed on the Constitutional Commission’s website [here](#).

## United Kingdom Parliament Review of the Constitutional Arrangements of Overseas Territories

In the 2023 Annual Update, the Constitutional Commission highlighted that the United Kingdom Parliament's Public Administration and Constitutional Affairs Committee had issued a call for evidence in connection with the constitutional arrangements of the UK's Overseas Territories, including the Cayman Islands. Submissions addressing any or all the following questions were invited:

- Are the UK's current constitutional arrangements as regards the overseas territories satisfactory and appropriate in the 21st Century?
- What is the UK Government's relationship with the overseas territories?
- What is the UK Parliament's relationship with the overseas territories?
- How is legislation made in the overseas territories and what role does the UK Government and UK Parliament have in these processes?

- Are effective mechanisms in place for the interests of the Overseas Territories to be represented internationally?
- Are the rights and interests of British overseas citizens effectively protected by the current constitutional arrangements?

To assist the public in the Cayman Islands with making submissions, which were initially due on 4 September 2023, the Constitutional Commission provided links to examples of previous similar exercises and to other relevant documentation. While, for reasons already traversed, the Constitutional Commission was unable to make its own submission, the Constitutional Commission recommends that persons interested in the Constitution continue to monitor this process.

Following an extension to the deadline, 73 submissions were ultimately received by the Public Administration and Constitutional Affairs Committee from various Overseas Territories. All the written evidence submitted is available on the United Kingdom Parliament's website [here](#).



## Appointment of Overseas Judges to the Judicial Committee of the Privy Council

Ending the period covered by this Annual Update on a more positive note, the Constitutional Commission was pleased to receive a communication on 2 May 2024 from the Chief Executive Officer of the Judicial Committee of the Privy Council, providing an update on developments relating to the appointment of overseas judges to the Judicial Committee of the Privy Council (“JCPC”).

This was a topic that the Constitutional Commission had first raised on the occasion of the landmark visit by the JCPC to the Cayman Islands in November 2022, both in the Explanatory Note on the JCPC published to coincide with the JCPC hearings in the Cayman Islands and, subsequently, in its last Annual Update. In summary, the Constitutional Commission highlighted the following situation:

*In the section of the JCPC Explanatory Notes on the Composition of the JCPC, the Constitutional Commission had raised the question of whether there should be Commonwealth judges appointed to sit on the JCPC. This was also a matter that was raised when the Constitutional Commission appeared on local radio to discuss its work. The Constitutional Commission’s JCPC Explanatory Notes provided some examples where notable Caribbean jurists have previously been appointed as Privy Councillors and where some of these appointees have sat on a JCPC panel but concluded that at the present time the JCPC was composed entirely of Justices of the Supreme Court of the United Kingdom.*

As reported in the 2023 Annual Update, the President of the Supreme Court in the United Kingdom, the Right Honourable the Lord Reed of Allermuir, was already alive to this issue. Responding to a question in the House of Lords Constitution Committee’s annual evidence session with the President and Deputy President of the Supreme Court on 6 April 2022, Lord Reed advised that:

*I am acutely conscious that we are 12 British people from a British culture sitting on appeals from countries that are very different from this one. Sometimes that becomes very obvious. For example, we recently had two cases about same-sex marriage, which is an intensely controversial issue in the jurisdictions that the cases came from. I think that religion generally is of more central significance to society in some of these jurisdictions than it is in this country now. The suggestion I have put forward is that we should be enabled to invite judges who actually have experience of sitting in these countries to sit with us. This used to happen with judges, for example, from India sitting in the Privy Council, and from Ceylon, as it then was. However, it does not happen now. In fact, it cannot happen now because there are none who are Privy Councillors and whom we could invite to sit. I have proposed a way forward on that, which would give the Privy Council a rather different look; it is currently with the Government for consideration.*

At the end of July 2023, the Constitutional Commission was one of several local offices contacted by the Governor’s Office to provide further feedback to Lord Reed on the matter of whether senior judges from jurisdictions that the JCPC serves should be appointed to sit on appeals to the JCPC. In its reply dated 18 August 2023, the Constitutional Commission explained that this was a matter on which the Constitutional Commission already had an established position and so, notwithstanding that the Constitutional Commission was not fully constituted at that time, it was therefore able to advise, in response to the specific questions raised, that:

1. *The matter of the inclusion of senior judges from jurisdictions that the JCPC serves to sit on appeals to the JCPC has been raised by the Constitutional Commission in its publications and presentations;*

2. *The prospect of the inclusion of senior judges from jurisdictions that the JCPC serves to sit on appeals to the JCPC drew favourable comments when the matter was discussed by the Constitutional Commission in a public forum (and no negative comments were received at this time or subsequently); and*
3. *The Constitutional Commission supports the proposal to include senior judges from jurisdictions that the JCPC serves to sit on appeals to the JCPC.*

The recent correspondence received from the JCPC advises that this matter has now progressed significantly. In an important statement before the House of Lords Constitution Committee on 1 May 2024, Lord Reed had announced that the Lord Chancellor had considered and approved the Court's proposal to allow judges from overseas jurisdictions to be appointed to the JCPC; and

that the JCPC is now working with the Ministry of Justice in the United Kingdom to put this into effect.

While this proposal remains subject to the approval of His Majesty the King, it is understood that the intention will be to invite judges from JCPC jurisdictions to sit with the Court over the course of a week, initially in person, with one judge from a JCPC jurisdiction likely to be invited each year, at the start. It is also anticipated that there will be an opportunity for judges from JCPC jurisdictions to engage in activities outside the courtroom.

The Constitutional Commission, which has been advised that Lord Reed sees this as an important and positive way for the JCPC to serve countries who use the JCPC, also welcomes this development and looks forward to seeing judges with experience from our courts sitting in the JCPC in due course.

