



# Constitutional Commission Annual Update

3 JULY 2023



# The Governor's Constitution Day Message

It is both a privilege and an honour to have been appointed Governor of the Cayman Islands. I am greatly looking forward to working with the Government and the broadest possible spectrum of society, to ensure that the relationship between Cayman and the United Kingdom continues to grow and bring benefits for both sides.

In all things I will be guided by The Cayman Islands Constitution and will focus on those areas where I have special responsibilities, in particular internal security and the promotion of good governance across our islands. The Constitution and its recent amendments provide vital checks and balances for us all to work within, as we strive to create the right policies and solutions for a resilient future.

The Constitutional Commission has an important role to play, both in advising on the constitution itself and its application in all areas of public life, as well as in informing the public about how our governance works in practice. I am particularly pleased to hear of plans to introduce more information about our constitution into schools, and engaging with young people.

The Public Administration and Constitutional Affairs Committee of the British Parliament is currently conducting an enquiry into [The Status of the UK's Overseas Territories in the 21st Century](#). I strongly encourage people across Cayman to participate and have their voices heard. I look forward to the Committee's findings and anticipate that it will inform my role going forward.

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





## Foreward

In recent years the Constitutional Commission has established a standard practice of publishing an Annual Update to coincide with the Constitution Day Public Holiday, which this year occurs on Monday, 3 July 2023. I am pleased that the Constitutional Commission has been able to continue this practice with the publication of this 2023 Update and honoured to provide this message as a foreward to the same.

As the contents of this Update illustrate, the preceding year has witnessed a number of important constitutional events, not least the appointment of a new Governor and a new Chief Justice. On behalf of the Constitutional Commission, I would like to place on record the Commission's gratitude to the outgoing Governor, Martyn Roper OBE, and Chief Justice, Sir Anthony Smellie KCMG KC, for their support of the work of the Constitutional Commission and for their contributions to the development of the Constitution that are referenced in this Update. Similarly, the Constitutional Commission extends a warm welcome to Her Excellency, Governor Jane Owen and the Hon. Chief Justice Margaret Ramsay-Hale and wishes them every success in their new constitutional roles. I must also extend my sincere thanks to the new Governor for agreeing to provide a Constitutional Day message for this Update.

This past year has also seen the appointment youngest ever Speaker of the Cayman Islands Parliament, when, on 25 November 2022, the Hon. Katherine Ebanks-Wilks MP was elected in a special sitting of the House. Notably, the new Speaker is also the fifth woman to assume this high office in the Cayman Islands. On the other side of the ledger, the Constitutional Commission would also like to record its thanks to Dr. Christopher Williams, who completed his term as a Member of the Constitutional Commission at the end of 2022 and whose valuable insight and perspective will be missed.

Other constitutional milestones also encompassed in this Update include the adoption of a Ministerial Code of Conduct; developments with the introduction of a Parliamentary Code of Conduct; and the landmark visit of the Judicial Committee of the Privy Council to the Cayman Islands. In order to present this range of events in an accessible manner, the Constitutional Commission has decided to place them in chronological order in this Update, concluding with the recent announcement of a call for evidence in connection with the constitutional arrangements of the UK's Overseas Territories from the United Kingdom Parliament's Public Administration and Constitutional Affairs Committee.

Many of these events have already been addressed by the Constitutional Commission for educational purposes with the publication of explanatory and guidance notes; and this Update also takes the opportunity presented by the appointments of the new Governor and Chief Justice to highlight the key features of these positions in the respective “Did You Know” sections. It is, however, unfortunate that the Constitutional Commission’s capacity to engage with other events and to pursue its educational agenda in general have been undermined by two issues: firstly, the prolonged vacancy in the Public Relations and Education Coordinator post in the Commissions Secretariat that supports the Constitutional Commission, which it is understood should shortly be filled after a lacuna of approximately seven months; and secondly, and perhaps more fundamentally, the failure to appoint a new Constitutional Commissioner, which has left the remaining two Constitutional Commissioners unable to effectively conduct the Constitutional Commission’s business since the turn of the year. In these circumstances, I am particularly grateful to Ms. Annikki Hill for her work as the other remaining Constitutional Commissioner and for her continued support.

Nonetheless, the Constitutional Commission has sought to overcome these challenges as best it can in the circumstances. Building on the on-line publication of the Constitutional Commission’s Comic Book in October, the Constitutional Commission has latterly sought to partner with school competitions, beginning with the Conyers Inter-School Debate Tournament, to instil a greater awareness of the Constitution in our young people. The importance of constitutional education was noted by the Constitutional Commission in its letter to the departing Governor, when the Constitutional Commission emphasised that:

[W]hen you pass on the baton to your successor, if there is one message that could be conveyed at this time on behalf of the Constitutional Commission, it would be to highlight the importance of constitutional education and the need to conserve, collate and construct locally relevant resources in order to help relay important constitutional principles to our young people in a way that they will recognise as being relevant to them.

It is my hope that this Update and the continuing efforts of the Constitutional Commission can contribute towards the realisation of this objective.

**Vaughan Carter**  
Chair, Constitutional Commission

# Publication of Cabinet Manual

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August 2022

In its 2022 Update, the Constitutional Commission noted that the adoption of a Ministerial Code of Conduct was an important landmark; but nevertheless, went onto identify that there were other opportunities for further improvements to the operations of the Executive branch of Government, which included the much-anticipated introduction of a Cabinet Manual.

On 9 August 2022, the first ever Cabinet Manual for the Cayman Islands was published, following its approval by Cabinet on 27 July 2022. The Cabinet Manual, which is available at: <https://www.gov.ky/publication-detail/cabinet-manual>, is a guide to laws, conventions and rules on the operation of Government.

In his Foreward to the Cabinet Manual, the then Governor, His Excellency, Martyn Roper, states:

In my constitutional role as Chair of the Cabinet, it is my duty to ensure that all Cabinet related business is conducted in observance of the principles and procedures set out in this Cabinet Manual. I applaud the Premier and his Cabinet for agreeing the Cabinet Manual and making it a public document, which will, for the first time, allow the public to gain a clearer understanding of the inner workings of

their Government.

This monumental step combined with the elected Government's continued commitment to transparency, strengthens the Cayman Islands' solid reputation for being a mature, well run and stable jurisdiction which is governed by the rule of law. The evolution from Executive Council to Cabinet and the willingness to make necessary changes to our system of governance are signs of a healthy and thriving democracy, playing a crucial role in the Cayman Islands' success story.

The Hon. Premier, Wayne Panton, in his Foreward to the Cabinet Manual, further explains the background to and significance of the publication of the Cabinet Manual:

History will show that the work to create a Cabinet Manual began in 2004 as part of an effort to update the 1995 Guide to the Operations of the then Executive Council. This was classified as a Restricted document and essentially remained in effect despite many of its provisions and references having long been superseded by a number of Constitutional amendments. During my first term as an elected Minister, I volunteered to work with the Cabinet Office in updating the Cabinet Manual and I am pleased that many of these changes have been incorporated.

The Cabinet Manual is a dynamic, living document which should, from time-to-time, be updated as we

continue to improve our processes and procedures. However, any changes can only be approved by the Cabinet. In closing, I acknowledge the incredible effort of the Cabinet Office which has worked assiduously over multiple administrations to finalise the Cabinet Manual. By making this document accessible to the public, it is my hope that the people of the Cayman Islands will gain greater insight into the work of the Cabinet.

Notably, the Cabinet Manual also responds to the other opportunity for further improvement in the operations of the Executive branch of Government referenced in the Constitutional Commission's 2022 Update. This was the need for policies and provisions for a period of pre-election sensitivity, in respect of which the Cabinet Manual advises, under the heading Cabinet and Ministers' decision making before an election, that:

- Before a general election there is a period of election sensitivity from the dissolution of the Parliament until the swearing in of a new Government, during which it may be difficult for the Cabinet and Ministers to take decisions. This period of sensitivity is usually characterised by reduced decision-making capacity at the ministerial and the Cabinet level, while Ministers are occupied with the election campaign.
- An additional practical consideration is to avoid making major financial commitments after the publication of the pre-election economic and

financial update in the gazette, which the Financial Secretary is required to prepare under the Public Management and Finance Act.

- Special arrangements should apply in the period immediately before a general election, in recognition of the considerations that - (a) with the dissolution of the Parliament, there is no Parliament to which the Executive is collectively responsible; and (b) every general election brings with it the possibility of a change of government.
- As a general rule the Cabinet should avoid, whenever possible, making appointments of significance during the period of sensitivity. Factors in deciding whether or not a particular appointment is significant include the degree to which it may be a matter of disagreement between the major parties contesting the election, as well as the position's inherent importance.
- As a rule, significant appointments by the Cabinet dated to commence after polling day would not be made during the period of sensitivity.
- Where it is necessary for a significant appointment to be made during the period of sensitivity, usually for reasons associated with the proper function of the agency concerned, there are several options available, such as - (a) provisions for an acting appointment, where available, are used to avoid the need for a substantive appointment; or (b) provisions for a short-term

appointment, normally a duration of up to three months is made.

- The broad rule is that government should avoid implementing new policies, or entering into major contracts or undertakings, during the period of sensitivity. This includes commitments which could bind an incoming government. Major contracts or undertakings should not only be considered in terms of their monetary commitment, but should also take into account other relevant factors such as the nature of the undertaking and the level of bipartisan support.
- Consistent with this requirement, major project approvals within government programmes are normally deferred by Ministers during the period of election sensitivity.
- Adherence to the conventions and practices (which have no formal legal standing) is ultimately the responsibility of the Premier. Where Ministers are in doubt about a particular matter, they should raise it with the Governor, Premier or the Cabinet Secretary.

Referencing Chapter Six of the Cabinet Manual in New Zealand, which deals with Elections, Transitions and Government Formation, and Chapter Two of the Cabinet Manual in the United Kingdom, which also addresses Elections and Government Formation, the Constitutional Commission had also recommended in its 2022 Update that:

[A] Cayman Islands Cabinet Manual

should incorporate a similar chapter on the formation of the government, which accounts for peculiarities of the local political landscape, the preponderance of independent candidates and the absence of two dominant political parties that often exist in Westminster styled constitutions like our own.

While the Cabinet Manual does speak to the Appointment and Role of Ministers, it does so predominantly with reference to sections 49 and 50 of the Constitution and does not, as the Constitutional Commission has suggested, provide any additional commentary on what should occur where there is a hung Parliament following a General Election and it is not clear who should form the Government. Notwithstanding that the Cabinet Manual is undoubtedly a major achievement for the jurisdiction, it is a document that will still benefit from on-going review – something that the Constitutional Commission would like to see established as a standard commitment on a specific date – and should therefore be subject to further improvements over time.

## On-Line Publication of Comic Book

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October 2022

On the 24 October 2022, the Cayman Islands Constitution Comic Book was published on-line to augment the hard copies that the Constitutional Commission

was pleased to deliver to all schools and public libraries. The Comic Book was conceived to convey the contents of our Constitution to a younger audience in an accessible and engaging way. The Comic Book can be accessed at: [https://issuu.com/commissionssecretariat/docs/the\\_cayman\\_islands\\_constitution\\_-\\_children\\_s\\_comic\\_](https://issuu.com/commissionssecretariat/docs/the_cayman_islands_constitution_-_children_s_comic_)

# Appointment of Chief Justice

October 2022

The Hon. Margaret Ramsay-Hale was sworn in as the new Chief Justice of the Cayman Islands on 25 October 2022. Chief Justice Ramsay-Hale replaces the retiring Chief Justice, Sir Anthony Smellie KCMG KC and is the first woman to be appointed to this office.



*Swearing in of Chief Justice (Photo Credit: Bina Mani, Department of Communications)*

Commenting on the appointment of Chief Justice Ramsay-Hale, His Excellency, the Governor, Martyn Roper, noted that she had previously served as Chief Justice in the Turks and Caicos Islands before

returning the to Cayman Islands as a Grand Court Judge in 2020, had impressed the Judicial and Legal Services Commission (“JLSC”) with her “vision, passion and commitment to strengthening our judicial system and rule of law in line with the Cayman Constitution”, and that it is “a signal of strong confidence in the Judiciary in the Cayman Islands that the JLSC recommended an appointment from the bench in Cayman”. His Excellency, the Governor, also noted in connection with the importance of this post that: “A high quality and fully independent judiciary is one of major strengths of our jurisdiction supporting the rule of law and our prosperity”.

## Did You Know?

The Chief Justice is the head of the judiciary of the Cayman Islands (section 95(6) of the Constitution).

The Chief Justice has responsibility for and management of all matters arising in judicature (section 95(6) of the Constitution), including responsibility— (a) for representing the views of the judiciary to the Government and the Legislative Assembly, including, where appropriate, through the Attorney General; (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary within available resources; (c) subject to paragraph (d), for the maintenance of appropriate arrangements for the deployment



# Judicial Committee of the Privy Council

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November 2022

Between 15 November 2022 and 18 November 2022, the Judicial Committee of the Privy Council (“JCPC”) adjudicated upon three cases, sitting in the Cayman Islands. This was the first time that the JCPC, which is the final court of appeal for the Cayman Islands, had sat in any Overseas Territory. To record this landmark, the Constitutional Commission published its Judicial Committee of the Privy Council Explanatory Notes ([https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommission-JCPCExplanatoryNotesFinal\\_151122\\_1668522406\\_1668522407.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommission-JCPCExplanatoryNotesFinal_151122_1668522406_1668522407.pdf)) on 15 November 2022. These JCPC Explanatory Notes cover a range of topics, including:

- The JCPC and the Court Hierarchy
- The History of the JCPC
- Appealing to the JCPC from the Cayman Islands
- Composition of the JCPC
- Alternatives to the JCPC
- The JCPC and the Cayman Context
- The JCPC and the Cayman Islands: An Enduring Relationship

of the judiciary and the allocation of work within courts; (d) after consultation with the President of the Court of Appeal who shall be responsible for the allocation of work within the Court of Appeal, for the maintenance of appropriate arrangements for the work of that court.

On the retirement of the outgoing Chief Justice, His Excellency, the Governor, highlighted Sir Anthony’s “successful legacy”, referencing his “strong leadership and services to law and justice in the Cayman Islands and the wider Caribbean over the last 30 years as a judge, with nearly 25 years as chief justice”; and the contributions of Sir Anthony were subsequently and duly recognised in a Valedictory Ceremony held in his honour on 16 January 2023. Following that Ceremony, a Festschrift (a collection of learned papers presented as a tribute) was also held to celebrate the work on Sir Anthony, which included a presentation from the Hon. Justice Ian Kawaley and commentary from the Chairman of the Constitutional Commission on Sir Anthony’s contribution to the Constitution and to its associated jurisprudence. The Constitutional Commission intends to showcase this contribution when the Festschrift papers are published in due course.

- JCPC Decided Cases
- Significance of JCPC Case Law
- JCPC Cases to be Decided in the Cayman Islands



JCPC & group outside the Courts Building (Photo Credit: Bina Mani, Department of Communications)



JCPC in sitting in Courtroom 1 (Photo Credit: Bina Mani, Department of Communications)



"Ask a Justice" session with law students at the Truman Bodden Law School (Photo Credit: JCPC)

Commenting on the landmark visit of the JCPC to the Cayman Islands, Lord Reed, the President of the Supreme Court observed that:

It is a privilege for us to serve as the final court of appeal for the Cayman Islands. That means serving every one of the people of the islands. Our work is important to life on the islands, and to the prosperity of the islands. That is a heavy responsibility and one we take extremely seriously.

## JCPC Updates

### **Appointment of Commonwealth Judges to the JCPC**

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.

It is relevant to note that this is an issue that Lord Reid, the President of the Supreme Court, has addressed. 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 (<https://committees.parliament.uk/oralevidence/10084/pdf/>), Lord Reid advised:

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.

The Constitutional Commission understands that there have not been any further developments in this regard in the interim and it therefore remains an issue that the Constitutional Commission will continue to monitor.

### **Appeals to the JCPC in Criminal Cases**

In the section of the JCPC Explanatory Notes on Appealing to the JCPC from the Cayman Islands, the Constitutional Commission dealt in detail with appeals in civil cases. The rules for appeals in criminal cases have recently been clarified by the Cayman Islands Court of Appeal in Wayne Carlos Myles (Applicant) v His Majesty the King (Respondent) Criminal Appeals 11/2021, 13/2021 & 14/2021, judgment delivered 17 May 2023, where Birt JA confirmed that the Cayman Islands Court of Appeal does not have any jurisdiction to grant leave to appeal in criminal cases and that, accordingly, the Applicant must pursue any application for leave to appeal in a criminal case directly with the JCPC.

### **JCPC Judgments**

The judgments in two of the three cases heard by the JCPC in the Cayman Islands have now been handed down and are available on the JCPC's website:

- HEB Enterprises Ltd and another (Respondents) v Bernice Richards (as Personal Representative of the Estate of Anthony Richards, Deceased) (Appellant), [2023] UKPC 7, judgment date: 21 February 2023 (<https://www.jcpc.uk/cases/docs/jcpc-2020-0087-judgment.pdf>)
- Justin Ramoon (Appellant) v Governor of the Cayman Islands and another (Respondent) [2023] UKPC 9, judgment date: 3 March 2023 (<https://www.jcpc.uk/cases/docs/jcpc-2022-0066-judgment.pdf>)

The judgment in FamilyMart China Holding Co Ltd (Respondent) v Ting Chuan (Cayman Islands) Holding Corporation (Appellant) remains pending.

## Parliamentary Code of Conduct

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January 2023

The Constitutional Commission has previously published a Guidance Note on Parliamentary Codes of Conduct, with particular reference to their enforcement ([https://www.constitutionalcommission.ky/upimages/publicationdoc/GuidanceNoteonParliamentaryCodeofConductandEnforcement\\_080322FINAL\\_1656078949\\_1656078949.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/GuidanceNoteonParliamentaryCodeofConductandEnforcement_080322FINAL_1656078949_1656078949.pdf)). In this Guidance Note, the Constitutional Commission concluded that:

1. There were a range of potential sanctions available to ensure that a Parliamentary Code of Conduct is effectively upheld; and that
2. Independence was a key component in any enforcement mechanism.

In the course of the last year, there have been some significant developments surrounding the adoption and implementation of a Parliamentary Code of Conduct in the Cayman Islands. In November 2022, a Code of Conduct for Members of Parliament, referred to as Version 1 and dated 10 October 2022,

was signed by the Government and its backbench; and in December 2022, the Official Members (the Hon. Deputy Governor and the Hon. Attorney General) also signed this Code of Conduct. In so doing, these Members all agreed to be bound by the terms and standards expressed therein, which notably make it clear that:

- The obligations apply to the private life of Members of Parliament as well as their official role;
- Members of Parliament should behave with probity and integrity at all times;
- Any conflict a Member of Parliament faces between personal and public interest should always be resolved in the public interest; and
- Members of Parliament cannot act as paid advocates in parliament or accept bribes or gifts.

On 3 January 2023, the Hon. Premier, Wayne Panton, announced that the Code of Conduct had been signed by the Government and Official Members and advised that his “preferred approach” would be for all Members of Parliament to sign the Code of Conduct, and thereafter it would be tabled in Parliament by way of a motion to be voted on. At this announcement, the Hon. Premier further explained that:

The Parliamentary Code of Conduct outlines the minimum ethical standards of behaviour that Caymanians can expect from their MPs. This



is an important milestone in our democratic process, and I am proud that all Government members have demonstrated their commitment to the Code and to abiding by the Nolan Principles, central to the Standards of Public Life. .... Leaders must hold themselves to the highest standards of ethics and accountability. It is essential for good governance, strong institutions, and more importantly for the stability and prosperity of these Cayman Islands.

On 4 January 2023, the Hon. Leader of the Opposition, Roy McTaggart, issued a statement in which he advised that the Opposition Members of Parliament would not be signing the Code of Conduct because:

[T]here are significant failures of substance which mean that the proposed Code would be ineffective and inappropriate. It fails the basic test that such a Code should both ensure that Parliamentarians are properly held to account for their conduct and also guarantee an impartial process through which that accountability should be achieved.

The Constitutional Commission has not been in a position to review the Code of Conduct advanced by the Government or to consider the criticisms levied by the Opposition due to the deficit in its membership. However, a Parliamentary Code of Conduct is an important element of an ethics and integrity regime and any progress made, together with any limitations, are matters that fall squarely

within the remit of the Constitutional Commission. The Constitutional Commission therefore looks forward to reviewing and commenting on the Parliamentary Code of Conduct once it has its full complement of three members in place.

(See <https://cnslibrary.com/wp-content/uploads/Parliamentary-Code-of-Conduct.pdf>)

## Constitutional Commission Partners with School Competitions

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March 2023

One creative way in which the Constitutional Commission has been able to advance its educational agenda during the time in which the post of Public Relations and Education Coordinator has been vacant in the Commissions Secretariat, has been to partner with inter-school competitions to highlight the importance of the Constitution.

The first such partnership – with the Conyers Inter-School Debate Tournament – proved to be a huge success, in which high schools from across Grand Cayman and Cayman Brac debated various topical constitutional motions involving:

- Whether the Governor’s reserved

powers in section 81 of the Constitution should be removed;

- Whether permanent residents should be allowed to stand for election;
- Whether the Speaker should necessarily be a Member of Parliament; and
- Whether amendments to the Constitution should be approved by a majority in a referendum.

Tournament Founder and Director, Ian Whan Tong, noted that:

This Tournament had now completed seven years, during which time there have been fourteen events and over 300 different student competitors, but this particular event is special because all of the debates have focused on constitutional issues. Debating promotes the “5Cs”: Confidence, Communication Skills, Collaboration, Clarity of Thought, and Critical Thinking. For this round of debate, I am pleased that we incorporated a “6thC” – the Constitution. We are pleased to shine a spotlight on this incredibly important topic with the Islands youth, and to support the work of the Constitutional Commission.

Conyers Partner, Cora Miller, underscored the importance of debating topical constitutional issues, with the following instructive comments on the event:

Conyers is honoured to continue to

sponsor the Conyers Inter-School Debate Tournament in the Cayman Islands. The tournament’s focus on the Cayman Islands Constitution was a thought provoking and important topic for the students, who are future leaders of the Cayman Islands. Debating constitutional issues undoubtedly helped the students understand the system of governance and the cornerstone of our democracy. We saw a very talented pool of student debaters from both Grand Cayman and Cayman Brac immerse themselves in learning various tenets of the Constitution with passion and present well-reasoned and diverse arguments. I am confident this experience and guidance received from the Constitutional Commission has enriched their knowledge of the intricacies of the Constitution and the Cayman Islands Government’s powers.

The Constitutional Commission would like to record its thanks to the Hon. Mr. Justice David Doyle on behalf of the Cayman Islands Grand Court for agreeing to judge the final open debate to a packed hall; to all of the other judges, including past members of the Constitutional Commission who volunteered their time and expertise; to Ian Whan Tong, the Tournament Founder and Director, for agreeing to partner with the Constitutional Commission and for working so hard to make the joint venture a success; to Conyers for its long-standing support for the competition and thereby facilitating this partnership; to the schools who all welcomed the Constitutional Commission

with both warmth and appreciation in advance of the competition, when the Constitutional Commission delivered educational presentations on the Cayman Islands Constitution; and, most importantly, to the student debaters, who embraced the constitutional topics with a commitment and passion that bodes well for the future.

## 2023 Conyers Inter-Schools Debate Tournament Results

### Open Division

Top Team Results:

1st Place: Clifton Hunter High School  
(Aleque Benjamin Bennett / Chad Powell, Jr)

2nd Place: Cayman International School  
(Natalia Cugliari / George Zimmermann)

3rd Place: Cayman Prep & High School  
(Justin Wright / George Green)

Individual Results:

1st Place: Natalia Cugliari (Cayman International School)

2nd Place: Aleque Benjamin Bennett (Clifton Hunter High School)

3rd Place: Chad Powell Jr (Clifton Hunter High School)

4th Place: Lulu Jones (Cayman Prep & High School)

5th Place: George Green (Cayman Prep & High School)

### Novice Division

Top Team Results:

1st Place: John Gray High School (Jordan McDonald / Sienna Jack)

2nd Place: Cayman International School  
(Mateus Rocco / Rhea Swaminathan)

Individual Results:

1st Place: Jai Grinberg (Hope Academy)

2nd Place: Olivia Cain (Grace Christian Academy)

3rd Place: Mateus Rocco (Cayman International School)

4th Place: Areini Joseph (Cayman International School)

5th Place: Sienna Jack (John Gray High School)



*2023 Conyers Inter-Schools Debate participants including the Clifton Hunter High School Team (1st Placed Team in the Open Division), with (left to right) Hon. Mr. Justice David Doyle, His Excellency the Former Governor, Mr. Martyn Roper, Hon. Minister, Andre Ebanks MP, Mr. Vaughan Carter, Chair of the Constitutional Commission (Photo: Supplied)*

Building on the success of the partnership with the Conyers Inter-School Debate Tournament, the Constitutional Commission is now working with the Collas Crill Moot - a similar annual inter-school competition - to include a constitutional law problem for one of the rounds of that competition in 2023.

### Constitutional Resources

The Constitutional Commission provided links to the following resources to assist the Schools in their preparation for the 2023 Conyers Inter-Schools Debate Tournament:  
Background: [https://www.constitutionalcommission.ky/upimages/educationdoc/TheCaymanIslandsConstitution - AReflectionofWhoWeAre\\_2008\\_1534438473\\_1534438473.PDF](https://www.constitutionalcommission.ky/upimages/educationdoc/TheCaymanIslandsConstitution-AReflectionofWhoWeAre_2008_1534438473_1534438473.PDF)  
<https://www.constitutionalcom->

mission.ky/upimages/education-  
doc/6939922\_1488351260\_1488351260.  
PDF

The Constitution:

[https://www.legislation.gov.uk/  
uksi/2009/1379/pdfs/uksi\\_20091379\\_  
en.pdf](https://www.legislation.gov.uk/uksi/2009/1379/pdfs/uksi_20091379_en.pdf)

Letter of Entrustment:

[https://www.constitutionalcommis-  
sion.ky/upimages/publicationdoc/  
FutureAmendmentstotheConstitu-  
tion\\_1509220779\\_1509220779.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/FutureAmendmentstotheConstitution_1509220779_1509220779.pdf)

The First Amendment to the Constitu-  
tion: [https://www.legislation.gov.uk/  
uksi/2016/780/contents/made](https://www.legislation.gov.uk/uksi/2016/780/contents/made)

Impetus for Further Constitutional  
Reform: [https://www.constitutionalcom-  
mission.ky/upimages/publicationdoc/  
ConstitutionalCommissionsResponse-  
stoRequestsforCommentsonPotential-  
RevisionstotheCaymanIslandsConstitu-  
in2009\\_270618\\_1543527160\\_1543527201.  
pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionsResponsestoRequestsforCommentsonPotentialRevisionstotheCaymanIslandsConstitution2009_270618_1543527160_1543527201.pdf)

Proposed Further Amendments: [https://  
www.constitutionalcommission.ky/upimag-  
es/publicationdoc/ConstitutionalCommis-  
sionCoverLetterExplanatoryNotetoCIG\\_1  
70220\\_1582828896\\_1582828903.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionCoverLetterExplanatoryNotetoCIG_170220_1582828896_1582828903.pdf)

Proposed Further Amendments: [https://  
www.constitutionalcommission.ky/upimag-  
es/publicationdoc/ConstitutionalCommis-  
sionCoverLetterExplanatoryNotetoCIG\\_1  
70220\\_1582828896\\_1582828903.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionCoverLetterExplanatoryNotetoCIG_170220_1582828896_1582828903.pdf)

The Use of Reserved Powers: [https://  
www.constitutionalcommission.ky/](https://www.constitutionalcommission.ky/)

upimages/publicationdoc/AnExplana-  
tionoftheConstitutionalIssuesArising-  
fromtheDayandBoddenBushLitigation\_FI-  
NAL\_1623105592\_1623105603.pdf

The Second Amendment to the Consti-  
tution: [https://www.legislation.gov.uk/  
uksi/2020/1283/made](https://www.legislation.gov.uk/uksi/2020/1283/made)

Other Constitutional Issues:

[https://www.constitutionalcommis-  
sion.ky/upimages/publicationdoc/Constitu-  
tionalCommission-ExplanatoryNoteson-  
theAppointmentsofthePremierandMinis-  
tersandtheElectionoftheSpeakerofParli-  
ament\\_20042021\\_1618953125\\_1618-  
953142.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommission-ExplanatoryNotesontheAppointmentsofthePremierandMinistersandtheElectionoftheSpeakerofParliament_20042021_1618953125_1618953142.pdf)  
[https://www.constitutionalcommission.  
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[https://portal.elections.ky/files/downloads/  
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sion.ky/upimages/publicationdoc/  
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## Freedom of Information Requests

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March 2023

The Constitutional Commission has previously noted that one of the main concerns raised by the general public in the Cayman Islands regarding the Constitution is greater transparency surrounding the way in which the Constitution has been amended. As a result, the Constitutional Commission has endeavoured to obtain more information and documentation in connection with the negotiations that gave rise to the most recent amendment of the Cayman Islands Constitution – the Cayman Islands Constitution (Amendment) Order 2020 (<https://www.legislation.gov.uk/uksi/2020/1283/made>) (“the 2020 Amendment”).

There are a number of relevant documents and commentary pertaining to the 2020 Amendment already available at: <https://www.explore.gov.ky/constitutionalreform>. However, there are no records equivalent to those of the negotiations that took place in 2008 and 2009 and which resulted in the main body of our current Constitution ([https://www.legislation.gov.uk/uksi/2009/1379/pdfs/uksi\\_20091379\\_en.pdf](https://www.legislation.gov.uk/uksi/2009/1379/pdfs/uksi_20091379_en.pdf)).

Following initial enquiries, the Constitutional Commission was advised that the Foreign, Commonwealth and Development Office had taken the view that no additional documents relating to the 2019/2020 constitutional negotiations can be shared other than those that are already in the public domain; and having received this response, the Constitutional Commission resolved to submit requests for information under the relevant freedom of information legislation in the Cayman Islands and in the United Kingdom. Accordingly, the Constitutional Commission has now submitted requests for information to the Governor’s Office, the Attorney General’s Office, the Office of the Premier and the Cabinet Office in the Cayman Islands and the Foreign, Commonwealth and Development Office in the United Kingdom, with the following covering explanation:

In 2018, the Cayman Islands Constitutional Commission (“the Commission”) was invited by the then Premier and then Leader of the Opposition to make additional suggestions for amendments to the 2009 Cayman Islands Constitution (“the Constitution”) to supplement certain potential amendments that were already under discussion. At approximately the same time, the Commission was also tasked by the then Governor to provide research and context into those potential amendments being considered.

The Commission was pleased to provide this input and did so in its Paper dated 27 June 2018. It is not clear to the Commission

what, if anything, happened with its recommendations therein. The Commission has consequently followed up repeatedly with all relevant parties in the interim period, in order to ascertain not just what happened with its recommendations, but also in an effort to obtain all relevant records relating to the ensuing process that ultimately resulted in the amendment of the Cayman Islands Constitution (The Cayman Islands Constitution (Amendment) Order 2020).

Most recently, these requests were encompassed within the Commission's correspondence of 15 October 2021, which dealt with a range of important constitutional matters, and which was, by convention, addressed to His Excellency, the Governor, the Hon. Premier and the Hon. Leader of the Opposition. On 1 November 2022, the Commission received a reply from His Excellency, the Governor, which in this regard advised that: "there is no additional documentation about the 2019/20 Constitutional negotiations from the UK or Cayman Governments that can be shared other than that which is already in the public domain."

The Commission believes that it has a legitimate interest in what happened to the recommendations that it was requested to provide by Cayman representatives. The Commission further maintains that this interest is underscored by the express engagement of the Commission by the UK's representative in the Cayman

Islands in certain matters that were in fact subsequently the subject of constitutional amendment. Moreover, and in light of the sentiments regularly expressed to the Commission from members of the general public, the Commission takes the view that the people of the Cayman Islands ought to have access to all relevant documentation relating to an amendment of their Constitution and the Commission has therefore resolved to submit the following requests for information in an effort to finally gain access to the same.

#### Request

Therefore, the Commission requests 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 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.

These requests were submitted on 16 March 2023. To date, no additional documentation has been released. In many cases, however, the relevant entities have requested additional time and so it remains possible that new information will become available. As and when any new information is provided, the Constitutional Commission will make all documents available to the general public via its website.

## Appointment of Governor

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April 2023

As the Governor's Office notes (<https://www.gov.ky/governor>):

- The Governor is His Majesty The King's representative in the Cayman Islands and acts as the de facto Head of State.
- The Governor also has key reserved areas of responsibility which contribute to the overall safety and wellbeing of the Cayman Islands (these reserved areas are defence, external affairs, internal security (including the Police and Regiment) and good governance).
- The Governor also appoints the Head of Government and other senior officials to public office.

Between 29 October 2018 and 29 March 2023, Martyn Roper OBE served as Governor of the Cayman Islands, during which time he oversaw the amendment of the Cayman Islands Constitution. On 21 April 2023, Her Excellency, Jane Owen took up post as the new Governor of the Cayman Islands.

Prior to his departure, the Constitutional Commission wrote to the outgoing Governor ([https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionLettertoHisExcellency\\_230323\\_1687964764\\_1687964764.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionLettertoHisExcellency_230323_1687964764_1687964764.pdf)), to highlight on-going issues for his successor and to thank him for his engagement with the Constitutional Commission. Encouragingly, the Constitutional Commission has already had an opportunity to meet with the new Governor, at which meeting, the Chairman of the Constitutional Commission was able to raise the following matters:

- The Constitutional Commission's letter to the previous Governor, which followed up on the outstanding issues in the Constitutional Commission's letter of 15 October 2021 (<https://www.constitutionalcommission.ky/upimages/publicationdoc/>

[Letter to Governor, Premier and Leader of Opposition re Supplementary Legislation 151021\\_163814176\\_1643814176.pdf](#)

- The deficit in the membership of the Constitutional Commission;
- The submission of freedom of information requests, with particular reference to the last constitutional discussions and how the constitution is amended;
- The importance of the Commissions Secretariat support for constitutional education and public information; and
- The United Kingdom Parliament's Public Administration and Constitutional Affairs Committee's Call for Evidence on the Status of the UK's Overseas Territories in the 21st Century.

in his or her discretion or judgement or in pursuance of instructions addressed to him or her by or on behalf of Her Majesty;

(b) any function conferred by this Constitution or any other law which the Governor is empowered or directed, either expressly or by necessary implication, to exercise without consulting the Cabinet or to exercise on the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; or

(c) the special responsibilities of the Governor set out in section 55, other than external affairs.

Where the Governor is required to consult with Cabinet, the Governor will act in accordance with that advice, but the Governor may act against the advice given by Cabinet (section 33(2) of the Constitution):

(a) if he or she is instructed to do so by Her Majesty through a Secretary of State; or

(b) if, in his or her judgement, such advice would adversely affect any of the special responsibilities of the Governor set out in section 55.

The special responsibilities reserved for the Governor in section 55 of the Constitution are:

(a) defence;

(b) external affairs, subject to subsections (3) and (4);

(c) internal security including the police, without prejudice to section 58; and

(d) the appointment (including the appointment on promotion or transfer, appointment on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment,

## Did You Know?

The Governor is appointed by Her Majesty and holds office during Her Majesty's pleasure (section 29 of the Constitution)

The Governor generally consults with Cabinet, but the Governor is not obliged to consult with the Cabinet (section 32(2) of the Constitution) in the exercise of—

(a) any function conferred by this Constitution which the Governor is empowered to exercise



# Constitutional Relationship with the United Kingdom

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April 2023

On 20 April 2023, the United Kingdom (“UK”) Parliament’s Public Administration and Constitutional Affairs Committee (“the Committee”) issued a call for evidence in connection with the constitutional arrangements of the UK’s Overseas Territories, including the Cayman Islands. The Constitutional Commission has responded to this initiative, by publishing some explanatory notes ([https://www.constitutionalcommission.ky/upimages/publicationdoc/FeedbackRequestedonUK-OTsRelationship\\_160623\\_1686944020\\_1686944020.pdf](https://www.constitutionalcommission.ky/upimages/publicationdoc/FeedbackRequestedonUK-OTsRelationship_160623_1686944020_1686944020.pdf)) to highlight this exercise and the reasons for its instigation.

Noting that each of the UK’s OTs are unique, the Committee’s Chair, William Wragg MP, has advised that: “We recognise that there is no ‘one size fits all’ framework for relations between the UK and the Overseas Territories, but by better understanding how existing arrangements operate in practice, we can better assess whether they are satisfactory and appropriate in the 21st century.” In an effort to improve their understanding of how the UK Parliament and the UK Civil Service engages with the Overseas Territories and how the interests of the UK Overseas Territories are represented in the UK Parliament, the Committee has invited

dismissal or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages and pensions) for which financial provision has been made, and the organisation of the public service to the extent that it does not involve new financial provision.

The Governor still has a reserved power to legislate under section 81 of the Constitution, which provides that:

If the Governor considers that the enactment of legislation is necessary or desirable with respect to or in the interests of any matter for which he or she is responsible under section 55 but, after consultation with the Premier, it appears to the Governor that the Cabinet is unwilling to support the introduction into the Legislative Assembly of a Bill for the purpose or that the Assembly is unlikely to pass a Bill introduced into it for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a Bill for the purpose to be published in a Government Notice and may (notwithstanding that the Bill has not been passed by the Assembly) assent to it on behalf of Her Majesty; but the Bill shall be so published for at least 21 days prior to assent unless the Governor certifies by writing under his or her hand that the matter is too urgent to permit such delay in the giving of assent and so informs a Secretary of State.

submissions addressing any or all of the following questions:

- 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?

Submissions can be tendered online at: <https://committees.parliament.uk/call-for-evidence/3109>; and further information on the format and other requirements for submissions can also be found on this website; and the deadline for submissions is 5.00pm GMT, on Monday, 4 September 2023.

With a view to assisting persons interested in making submissions, the Constitutional Commission has also provided links

to similar exercises that have been undertaken previously and to other relevant documentation, gathered together for ease of reference under the following headings:

- UK Government White Papers and Policy Papers

[March 1999 White Paper](#) - The UK Labour Government's White Paper setting out its approach to changes to the UK's relationship with the Overseas Territories, especially regarding British citizenship, good governance and sustainable development.

[28 June 2012 White Paper](#) - The UK Conservative/Liberal Democrats Coalition Government's White Paper on Overseas Territories relationships, especially regarding defence, economic development, environmental issues, good governance, community issues (culture, education, health, labour and sports), international and regional relations, and proposed action points.

[2010-2015 Government Policy: UK Overseas Territories](#) - A policy paper outlining the strategy of the UK Government from 2010-2015 emerging from the 2012 White Paper, with respect to Overseas Territories.

- UK House of Commons Library Research Briefings

The House of Commons Library publishes research papers on a wide range of topics to provide impartial analysis, statistical research and

resources to help MPs and their staff scrutinise legislation, develop policy and support constituents. These papers are made public on their website, where there is an entire section dedicated to [Overseas Territories](#). The following three papers were identified as being particularly relevant for present purposes:

[The Overseas Territories: An introduction and relations with the UK \(20 January 2023\)](#)

[The UK Overseas Territories and their Governors \(30 June 2022\)](#)

[Representing the Overseas Territories in the UK Parliament and Government \(7 February 2023\)](#)

- [Cayman Islands Government UK Relationship Review](#)  
[2011 Cayman Islands Cabinet Relationship Review](#) - This report was published by a Cayman Islands Review Committee established in advance of the 2011 meeting of the Overseas Territories Consultative Council, and in anticipation of a new strategy for the relationship between the Overseas Territories and the UK (later contained as the 2012 White Paper).
- [UK Foreign Affairs Select Committee 2019 Report and Related Documents](#)  
[Global Britain and the British Overseas Territories: Resetting the relationship](#) - A 2019 report examining the role of the then Foreign and Commonwealth Office as the lead department for the Overseas Territories. The passage of the Sanctions and Anti-Money Laundering Act 2018 in the UK, and the subsequent

repercussions, are highlighted; and novel approaches to evolve the ways in which the UK and the Overseas Territories interact are also examined.

[Evidence submitted for the call for evidence in advance of the UK Parliament's Foreign Affairs Select Committee \("FASC"\) 2019 Report: Written Evidence from the Foreign and Commonwealth Office to the FASC](#)  
[Written Evidence from the Government of the Cayman Islands to the FASC](#)  
[Written Evidence from the Cayman Islands Human Rights Commission to the FASC](#)

- [Responses to the FASC 2019 Report: UK Government Response to the FASC Overseas Territories Report](#)  
[Cayman Islands Governor's Office Response to FAC](#)  
[Cayman Islands Government Response to FAC Report](#)