



The Cayman Islands
Law Reform Commission
1 April 2008/31 March 2009

**FOURTH ANNUAL REPORT OF THE
LAW REFORM COMMISSION**



It is with pleasure that I present to the Honourable Attorney-General the Fourth Annual Report of the Law Reform Commission. The Report covers the activities of the Commission from 1st April, 2008 to 31st, March 2009.

The past year has been a productive and vibrant one for the Commission. It was one in which, despite some challenges, we have continued to strive towards formulating legislative proposals to modernise laws of the Cayman Islands.

In executing our statutory mandate of reform, over the past four years we have relied on public consultation mechanisms in the conduct of our research. This approach has proven to be an invaluable tool in attaining our goals given that it affords the public an opportunity to inform the laws which impact upon their daily lives.

We are particularly pleased to note that in this early stage of our development, involvement in this process has culminated in the Legislature accepting our recommendations in the area of corporate insolvency and landlord and tenant regulation.

As we seek to conclude current projects and undertake future reforms such as strata title review and family law reform, we intend to employ existing and new methods that will ultimately enhance the law reform process.

As Chairman, I thank all who have been involved in a most productive year's work-my fellow Commissioners, the legal and administrative staff and all those who have so generously allowed us the benefit of their expertise, advice and time on a voluntary basis in working groups, consultations and meetings.

While the Commission acts independently in making recommendations for reform it values the ongoing exchanges it has with Government Departments and other agencies to further the contribution it can make to that process.

The Commission also wishes to thank the Office of the Attorney-General for its very valuable support to the Commission in doing its work.

We look forward to another dynamic year as we review the very diverse areas of the law set out in this Report in an effort to maintain consistency with modern legislative trends.

Langston R.M. Sibblies
Chairman

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A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission was established by the Law Reform Commission Law No. 6 of 2005 and commenced operation on 16 September, 2005.

In accordance with the Law, the Commission's mandate is to study and keep under constant review the statutes and other laws comprising the law of the Cayman Islands with a view to its systematic development and reform, including in particular -

- the modification of any branch of the law as far as that is practicable;
- the elimination of anomalies in the law, the repeal of obsolete and unnecessary enactments and the simplification and modernisation of the law;
- the development of new areas in the law with the aim of making them more responsive to the changing needs of Cayman Islands society;
- the adoption of new or more effective methods for the administration of the law and the dispensation of justice; and
- the codification of the unwritten laws of the Cayman Islands.

The Commission, in the performance of its functions, may-

- review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
- prepare and submit to the Attorney-General from time to time, a programme for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform;
- initiate and carry out or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the law;
- undertake, pursuant to any such recommendation approved by the Attorney-General, the formulation and preparation of drafts in the form of Bills or other instruments for consideration by the Governor in Cabinet and the Legislative Assembly;
- provide, at the instance of Government departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law; and
- with the approval of the Attorney-General, appoint or empanel committees, whether from among members of the Commission or from among persons outside the Commission or both, to study and make recommendations to the Commission on any aspect of the law referred to it by the Commission.

The work of the Commission is carried out by five part-time Commissioners and three full time legal staff. The Commission is a department of the Portfolio of Legal Affairs but

it acts independently in its review of matters. Its recommendations are based on its own research and analysis of ideas submitted by stakeholders and by the public.

The Attorney-General refers matters to the Commission but the Commission may initiate and carry out studies and research necessary for the improvement and modernisation of any area of the law based on comments from the public, interest groups or on its research.

The law reform process is a time consuming one and comprises extensive consultation, legal research and writing. The Commission usually prepares two publications during the course of a project. The first publication, the Discussion or Consultation Paper, sets out the Commission's preliminary suggestions for reform. The preliminary suggestions are usually made after legal research is carried out by the staff of the Commission and after such research has been considered by the Commissioners. The Commission either publishes the Discussion or Consultation paper on www.gov.ky or the www.caymanjudicial-legalinfo.ky or it submits the consultation paper to identified stakeholders for comments.

The second publication is a Final Report, which is submitted to the Attorney-General. It contains the final recommendations of the Commission and, in all cases to date, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion or Consultation Paper. Since its establishment the Commission has produced several project reports and three annual reports which are listed in Appendix A.

B. THE COMMISSIONERS AND STAFF OF THE LAW REFORM COMMISSION

1. The Commissioners are-
 - Langston Sibblies, Chairman
 - Mrs. Eileen Nervik
 - Mr. Andrew Jones, Q.C.
 - Ms. Cheryll Richards, Solicitor General
 - Mr. Ian Paget- Brown

2. The members of staff of the office of the Commission are-
 - Ms. Cheryl Ann Neblett, Director
 - Mr. Jose Griffith, Legislative Counsel
 - Ms. Kimberly Ebanks, Executive Officer.

3. Ms. Kimberly Ebanks joined the staff of the Commission on 1st September 2008 on a part time basis as an office assistant. She was appointed as Executive Officer II on 31 December, 2008.

C. YEAR IN REVIEW- PROJECTS OF THE LAW REFORM COMMISSION FROM 1 APRIL 2008 TO 31 MARCH 2009

4. The Commission met four times between 1 April 2008 and 31 March 2009 on the following dates-

- 15 April, 2008
- 30 September, 2008
- 9 December, 2008
- 26 March, 2009.

5. A sub-committee of the Commission met with the Cabinet, the Caymanian Bar Association and the Cayman Islands Law Society on 8 April, 2008 with respect to outstanding issues under the Legal Practitioners Bill, 2008.

6. During the past year the Commission completed two projects and commenced six others, together with other legal work.

COMPLETED PROJECTS

Review of the legal aid system

7. The review of the legal aid system which the Commission was directed to prioritize in June 2007¹ was completed in June 2008 and the final report was submitted to the Attorney-General on 15 July, 2008. The Commission conducted a substantive review of the legal aid system in the Cayman Islands and it also investigated how other countries provide legal aid.

8. The recommendations for reform contained in the report were the culmination of in-depth legal research and deliberations as well as extensive consultation with critical stakeholders. The stakeholders who responded were the Honourable Chief Justice Smellie, the Cayman Islands Criminal Defence Bar Association (CDBA), the Cayman Islands Law Society (CILS) and Dr. John Epp².

9. The report of the Commission was also informed by the examination of several legal aid models originating from other common law jurisdictions. These included the UK, New Zealand, Bermuda, Barbados, Canada and Jersey (Channel Islands).³

¹ See Third Annual Report of the Commission 2007/8

² In his personal capacity, having written on legal aid in Commonwealth jurisdictions e.g. "Legal Aid Provision in the British Overseas Territories and the Commonwealth Caribbean, 2002", John Epp, Derek O'Brien and Terence Caudeiron

³ See Legal Aid Final Report and Third Annual Report of the Commission

10. The Commission made several recommendations and these may be summarised as follows-

- A modern and transparent system of legal aid is required for the administration of, and access to, justice in the Cayman Islands. While this may not necessarily result in reduced costs, it could serve to more readily demonstrate that legal aid funds are being appropriately spent thereby satisfying the objective of accountability inherent in the legislators' concerns.
- The concerns expressed by the legislative and executive arms of government focused mainly on excessive costs and the fact that too many of the services are being provided by foreign counsel. While the Commission agreed that the containment of excessive legal aid costs is in the public interest the Commission considered that the present system of provision of legal aid services by the private bar in general offers good value for money.
- An independent Legal Aid Commission may add to the costs of legal aid and is not needed. The current court-administered model of legal aid should be maintained but efficiency can be improved by the appointment of a specially designated Legal Aid Administrator, with adequate support staff and resources, to undertake the task of administering legal aid. The Administrator should be part of the judicial administration for accountability purposes but would be solely responsible for deciding on the grant of legal aid subject to an appeal by applicants to the Grand Court.
- The provisions of the Legal Aid Rules 1997 relating to eligibility criteria are imprecise and greater clarity could be established by the provision of additional details on these concepts and how they are to be determined in practice.
- The Legal Aid Law and Rules should be revised to make it clear that contributions may be required of persons above a certain specified income, that the Government may require a charge on property as a condition of legal aid in certain circumstances and that such contributions will be recoverable and enforceable by the Attorney-General in a court of competent jurisdiction.
- A public defenders scheme would involve significant expense, going beyond just the salaries of the lawyers, to include secretaries and paralegals expenses which the private practitioners must currently assume as part of their own costs of doing business. The current legal aid system, the judicare model, provides a high calibre of service and is far less expensive ultimately than a public defender's scheme.
- A legal aid clinic could assist in civil cases and the cost of civil legal aid could be reduced by the introduction of at least one legal clinic modeled along those which are operated by the Hugh Wooding and the Norman Manley Law Schools located in Trinidad and Tobago and Jamaica respectively.

- It is very difficult to compare costs in the Islands with costs in other jurisdictions as it will be necessary to compare not only the type of cases dealt with but also the number of cases within any particular period and how the services are delivered. Overly simplified comparative calculations may be unhelpful or, worse, misleading. It is not useful to use other overseas territories as comparators as most of them do not have a tradition of providing a structured legal aid scheme. The Commission nevertheless did examine the cost of legal aid in Bermuda, Barbados, Gibraltar as well as other jurisdictions and was not persuaded that the costs of legal aid for standard cases in the Islands are unduly high. The local rates are lower than in Bermuda and the cost per person is only marginally higher.
- Notwithstanding the fact that the Commission was of the view that local legal aid costs are not excessive, the Commission believed that costs can be better contained by capping the costs of long and complex cases. This could be effected by implementing a tendering process and selecting specially qualified attorneys to undertake such cases. The alternative would be to impose fixed fees for such cases and provide that there is a right to request a review of a decision for remuneration only in extraordinary or exceptional circumstances. The Commission also believed that fixed fees could be implemented for duty counsel at police stations.
- With regard to eligibility for legal aid, the Government needs an approach that strikes a balance between the provision of legal aid in criminal cases generally with the need to ensure that those who face serious sentences have legal representation. Most jurisdictions apply limits to the offences legal aid can cover. This is done sometimes by specifying the types of offences but the modern trend is towards merits tests. A merits test similar to that adopted in the United Kingdom could be used.
- The provisions regulating taxation of bills of costs under the Legal Aid Rules are adequate to ensure that bills of costs are taxed in accordance with accepted standards and no amendment thereof is necessary.
- While pro bono work does assist a jurisdiction in ensuring that those who are unable to afford legal representation have a wider access to legal services, the Commission does not believe that the Islands should seek to reduce legal aid costs by making pro bono work mandatory. The Commission however strongly urged that pro bono work should be more actively promoted by the associations representing lawyers. All of the responders to the consultation agreed that mandatory pro bono work was not the solution to legal aid problems.⁴

⁴ See post for follow-up on the report

Review of landlord and tenant legislation in the Islands

11. The Commission concluded its review of landlord and tenant legislation⁵ on 11 August, 2008 and submitted its final report and draft Bill to the Attorney-General on that date.

12. In its report the Commission made the following recommendations-

- The Landlord and Tenants Law, Cap 80 (1998 Revision) which was enacted in 1838 does not provide modern regulation of tenancies and should be repealed.
- The common law rules governing the relationship between landlords and tenants of commercial property operate satisfactorily even in the unprecedented circumstances of Hurricane Ivan. The Commission recommended the enactment of legislation dealing only with the regulation of residential tenancies and proposed that those provisions of the Registered Land Law (2004 Revision) which relate to such tenancies be repealed.
- Any law regulating tenancies should clearly provide for the maintenance of rental accommodation. The Commission however did not support calls for the establishment of a housing authority⁶ as it is of the opinion that the Public Health Law (2002 Revision) and regulations thereunder can be modernized to deal more effectively with unfit premises.
- Minimum standards for rental premises should be imposed. Thus, while a landlord will be under no obligation to repair premises which have been wholly or substantially destroyed the landlord will be required, in normal circumstances, to provide the tenant with premises which are in a reasonable state of cleanliness and fit for human habitation.
- Many of the problems brought to the attention of the Commission were problems which the Commission believed did not warrant court action but rather mediation. The Commission believed that a mediator such as a Residential Tenancies Commissioner would not only bring speedy, affordable and amicable resolutions to matters but would be of assistance in promoting a better understanding of the legal relationships between landlords and tenants.
- The Commission did not support rent control but was of the view that the power to increase rent should be transparent and more closely regulated.
- In order to ensure that parties fully understand their rights and obligations under a tenancy agreement, all such agreements should be in writing. Every tenancy agreement should have certain minimum information for example, the full name and contact address of the landlord; the tenant's address for service; the amount of

⁵ See Second and Third Annual Reports

⁶ See Discussion paper, October 2006

any security deposit; the amount of the rent payable and the frequency of the rent payments. The Commission was also of the view that all tenancy agreements should be subject to certain terms which cannot be amended or excluded.

- A Residential Tenancies Bill should contain provisions outlawing forcible entry and harassment. Section 84 of the Penal Code (2007 Revision) which prohibits forcible entry of premises should be included in such legislation.
- The payment and retention of security deposits should be regulated by legislation and the terms upon which landlords retain deposits should always be stated in a tenancy agreement.
- One of the proposals submitted to the Commission was that landlords should be legally obligated to insure their premises. This proposal was considered by the Commission but while the Commission agreed that there was merit in the proposal, the Commission was concerned about the possible social consequences. Apart from the difficulty in enforcing such a provision the Commission believed that this measure could have the effect of reducing the number of premises which are available on the rental market and could as a result, cause some persons to become homeless, temporarily at least. The Commission was of the view that an impact study to assess the effect on the property market would have to be carried out by the Government to determine whether such a provision should be brought into force.

13. The Residential Tenancies Bill which accompanied the final report and which seeks to give effect to recommendations therein was approved by Cabinet on 5 March, 2009 and enacted by the Legislative Assembly on 19 March, 2009.

Legal Practitioners Bill

14. The Legal Practitioners Bill and a report thereon were submitted to the Attorney-General in May 2007.⁷ The Bill was then submitted by the Attorney-General for further public consultation in August 2007. Subsequently, in light of responses sent by the Cayman Islands Law Society and the Caymanian Bar Association, the Commission was invited by the Attorney-General to consult once again with the associations. The Commission met with the Cabinet and with representatives of the associations on 8 April 2008. There was a subsequent meeting held on 15 April 2008 at which all outstanding issues were resolved. These issues related to the proposed code of conduct for attorneys-at-law and certain definitions in the Bill. A revised draft Bill was drafted and sent out for final comments on 22 April, 2008. The Commission concluded its role in this matter in April 2008. The Bill is still however the subject of consultation between the associations and the Attorney-General's office.

⁷ See Second Annual Report

CURRENT PROJECTS

Enduring power of attorney

15. On 14 February, 2007 the Chairman of the Society of Trust and Estate Practitioners, (“STEP”) Mr. Andrew Miller, wrote the Attorney-General and requested that the Government consider the enactment of an Enduring Powers of Attorney legislation. According to Mr. Miller, such legislation was needed as the present lack of such legislation causes difficulties in proper estate planning for both residents and non-residents who have assets in the Islands. He felt that the Cayman Islands could better promote itself as an ideal jurisdiction through which to conduct estate and trust planning by having such legislation. A draft Bill was provided.

16. The Attorney-General referred this matter to the Commission on 15 February, 2007 and the Commission agreed to the referral pursuant to its legislative function to develop new areas in the law to respond to the changing needs of the society.

17. The Commission carried out research in this matter and submitted a preliminary discussion paper on 12 January, 2009 to the following stakeholders-

- the Legal Department of the Portfolio of Legal Affairs
- the Law Society
- the Bar Association
- the Medical and Dental Council
- the CMO and the Medical Director of the Health Services Authority
- the Ministry of Health
- the Department of Children and Family Services
- the Chief Justice and the Clerk of the Court, and
- the Chairman of STEP.

18. The Chief Justice⁸, the Assistant Solicitor-General⁹ and STEP¹⁰ responded to the consultation.

19. In carrying out its research the Commission, in accordance with its usual practice, investigated how enduring powers are dealt with in other jurisdictions and the success or failures such jurisdictions have had in this area. The preliminary discussion paper contained a discussion of the merits and disadvantages of an enduring power of attorney and posed a number of questions.

20. An enduring power of attorney (“EPA”) is a variation on the ordinary power of attorney. It is a creature of legislation and permits a donor to grant a power of attorney

⁸ E-mail to the Commission dated 22 January 2009

⁹ Memorandum dated 3 February, 2009

¹⁰ Letter dated 9 March 2009

that *continues* in force despite the donor's later mental incapacity, or that *springs* into force on the donor's mental incapacity.¹¹ It is seen by some as being a useful tool in estate planning and caring for the mentally and physically incapacitated. An enduring power of attorney has the following advantages-

- a) it allows an individual to choose the person or persons who will look after the individual's affairs if the individual becomes incapable of doing so;
- b) it avoids expensive and embarrassing court proceedings for the appointment of a trustee to look after the individual's affairs; and
- c) it provides an efficient and cost-effective way of administering an individual's property.

21. However our research shows that in the jurisdictions¹² in which they are used they can bring a lot of problems including the following-

- a) abuses in relation to the initial granting of the power, including failures to explain and explore options alternative to a grant of general and unqualified powers to a single attorney;
- b) abuses in the procuring of execution of powers of attorney in situations where the donor is unduly influenced by the attorney or where the donor lacks capacity;
- c) high-handedness, bullying and failure to consult (selling the home of an institutionalised donor, for example, without the donor's knowledge) by attorneys;
- d) embezzlement of moneys and theft of goods by attorneys;
- e) neglect of the donor by the attorney (failure, for example, to institutionalise the donor where this is warranted because of the anxiety of the attorney as an ultimate beneficiary of the donor's estate not to see the estate whittled away); and
- f) ineffective monitoring of attorneys.

22. The response from the Legal Department and the Chief Justice was that if such powers of attorney are introduced effective monitoring and other safeguards must be in place in order to avoid the pitfalls faced in other jurisdictions. Such safeguards would include the oversight of attorneys by a public body similar to a public guardian; execution safeguards; codification of the nature of the duties owed by attorneys and recognition by third parties of the instrument creating the power of attorney.

23. STEP responded by stating that in light of the potential for abuse associated with EPAs as highlighted in the preliminary discussion paper that it could no longer support the introduction of EPA legislation.

24. A final report setting out the issues relating to enduring powers of attorney, the responses from stakeholders and the final recommendations of the Commission on this

¹¹ "Enduring Powers of Attorney: Areas for Reform"-Western Canadian Law Reform Agencies, Final Report 2008

¹² Jurisdictions looked at include UK, USA, Hong Kong, Canada and New Zealand

matter was submitted to the Commissioners on 12 March, 2009. The report was discussed on 26 March, 2009 and will be submitted to the Attorney-General by 30 April, 2009.

Charities Bill, 2009

25. In April 2006 the Attorney-General referred the Charities Bill for review by the Commission. A Bill had previously been prepared by the Legislative Drafting Department in 2002.

26. The regulation of charities was first placed on the legislative agenda in 2002 by the then Minister of Education, Human Resources and Culture. The proposals for legislation were made against the background of a Private Member's Motion in 1994 (No. 25 of 1994),¹³ moved in the Legislative Assembly to amend the 1958 Gambling Law. At that time, the issue was whether the Gambling Law should be amended to allow the conduct of raffles for the purpose of fund-raising by charitable and non-profit organisations, associations, clubs and fraternities which were registered with the Government.

27. A Select Committee of the Legislative Assembly¹⁴ was established to review the Private Members Motion. Among the areas targeted for deliberation was the need to define a charitable organisation, the creation of a register identifying charitable organisations, the establishment of mechanisms to hold charitable organisations accountable for donations received and distributed and facilitating the oversight of the operations of charitable organisations.

28. In its final report¹⁵ the Committee determined that in order to deal with the issues attached to the regulation of charitable organisations, it was more appropriate for a charities law to be formulated as opposed to an approach which relied on amending the Gambling Law.

29. Accordingly, it was recommended that a new law include provisions for the establishment of a permanent charities register in which all charitable and non-profit organisations, associations, clubs and fraternities should be registered. In relation to accountability for funds and donations, the charitable organisations would be liable to maintain and present to the Registrar an account of the funds raised.

¹³ The motion was moved by the then Second Elected Member for Cayman Brac and Little Cayman, Mr. Gilbert A McLean. The motion read as follows:

"WHEREAS large numbers of charitable and non-profit organisations, associations, clubs and fraternities engage in raffles as a means of fund raising;

AND WHEREAS the Gambling Law, Law 6 of 1958, makes a raffle for any purpose illegal;

BE IT NOW RESOLVED THAT the Gambling Law be amended to allow charitable and non-profit organizations, associations, clubs and fraternities, registered as such with Government, to raffle for the purpose of fund-raising."

¹⁴ The Committee was chaired by the then Honourable Second Official Member of the Legislative Assembly, Richard H. Coles, Attorney-General.

¹⁵ 9th May, 1996

30. In formulating the necessary legislation to deal with the regulation of charitable non-profit organisations, the Commission was also directed to take into account the Financial Action Task Force¹⁶(FATF) recommendations¹⁷ which relate to the establishment and implementation of a comprehensive legislative framework to combat money laundering and terrorist financing activities. Any charities legislation must provide measures designed to prevent the use of charitable organisations as a conduit through which terrorism and money laundering is facilitated.

31. The draft Bill which was referred to the Commission already had input at the time of referral from the Attorney-General, the Chief Justice, the Deputy Financial Secretary, Ms. D. Drummond and the Cayman Islands Law School. The staff of the Commission first reviewed the Charities Bill in 2006 and then again in June 2008. After deliberation by the Commissioners between September and December 2008 a draft discussion paper and Bill were submitted for public consultation on 26 January, 2009.

32. The draft Bill proposes the establishment of a Charities Commission; it defines charitable purposes and public benefit and provides for the registration of charitable organisations the regulation of public charitable collections and fundraising activities; and the conduct of charitable trust proceedings.

33. The discussion paper and Bill were published in the various media outlet and the deadline for responses was 13 March, 2009. The documents were also sent to the following stakeholders-

- The Hon. Attorney-General
- The Hon. Financial Secretary
- The Deputy Financial Secretary
- The Hon. Chief Justice
- The Principal, Cayman Islands Law School
- Cayman Islands Law Society
- The Cayman Bar Association
- Cayman Islands Society of Professional Accountants (CISPA)
- Society of Trust & Estate Practitioners
- Cayman Islands Chamber of Commerce
- Cayman Islands Bankers' Association
- Cayman Islands Compliance Association
- Cayman Islands Financial Services Association
- Cayman Hospice Care
- Cayman Islands National Recovery Fund
- Mr. Huw Moses

¹⁶ The Financial Action Task Force (FATF) is an inter-governmental body founded by the G7 whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a "policy-making body" created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 + 9 Recommendations in order to meet this objective.

¹⁷ See *post at p.11*

- Cayman Islands Ministers Association
- Cayman Drama Society
- Cayman Islands Red Cross
- Cayman Island Humane Society
- The National Council of Voluntary Organisations
The Rotary Club of Grand Cayman
- Kiwanis Club of Grand Cayman
Lions Club of Grand Cayman
Cayman Aids Foundation
- Cayman Wildlife Rescue
- National Trust for the Cayman Islands

34. The Commission has received many responses to the Bill and will take them into account in its ongoing deliberations on the Bill. Further discussions with stakeholders are planned for April 2009 as the Commission seeks to reach its goal to complete this review by 30 June, 2009.

FUTURE PROJECTS

Arbitration review

35. The Attorney-General in 2006 referred the review of the Foreign Arbitral Enforcement Law (1997 Revision) and the Arbitration Law (2001 Revision) to the Law Reform Commission.

36. The staff of the Commission commenced its research in January 2007 and an issues paper was submitted to the Commissioners for their consideration on March 16th 2009. The objectives of the review are threefold:

- (i) to determine whether a single regime of arbitration should be formulated on the basis of the UNCITRAL Model Law on International Commercial Arbitration¹⁸ (“Model Law”) for all types of arbitration;
- (ii) to ensure that the law on arbitration is responsive to the issues surrounding the resolution of domestic and transnational commercial disputes by enabling the business community and arbitration practitioners to operate in a regime which is consistent with acceptable international arbitration practices and developments; and
- (iii) to position the Cayman Islands as a jurisdiction which attracts organisations in their choice of venue to conduct arbitral proceedings and thus continue to

¹⁸ UNCITRAL Model Law on International Commercial Arbitration (United Nations documents A/40/17, annex I and A/61/17, annex I) (As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

promote the Islands as a regional and international centre for legal services with the added dimension of dispute resolution.

37. The Commission intends to proceed with this review after it has concluded its review of the Charities legislation.

Review of the Strata Titles Registration Law

38. This project was referred to the Law Reform Commission on 31 July, 2006 by the then Chairman of the Cayman Islands Law Society. The Chairman stated that many local practitioners were of the view that the present Law was unworkable in the case of the destruction of condominium buildings.

39. On 20 January, 2009 the Commission, by press release, invited members of the public to submit their comments on any aspect of the regulation of strata on the Islands or to highlight any issues or problems which have arisen in this area of the law. The deadline for submissions was 6 March, 2009.

40. The Commission has received comments from a wide cross-section of the community and intends to commence its review in April 2009. A sub-committee comprising one Commissioner, attorneys-at-law and other volunteer members of the public will be established to assist the Commission in this review.

Contempt of Court Bill

41. In 2003 the Legislative Drafting Department was directed by the Attorney-General to prepare contempt of court legislation in light of requests for modernisation and codification in this area of the Law. A draft bill was prepared in 2004 and transferred to the Law Reform Commission in 2005 for more in-depth research.

42. The draft Bill was reviewed by the staff of the Commission in February 2009 and a draft bill has been submitted to the Commissioners for their consideration on 5 March, 2009. The Bill will be considered in late 2009.

Timeshare legislation

42. In December 2006 the Attorney-General, with the approval of the Leader of Government Business, referred the review of time share legislation to the Commission. This was added to the legislative programme and a draft bill is currently being prepared by the staff of the Commission. Legislative models being considered in the preparation of the draft Bill include the Bahamas Vacation and Timesharing Act, the EU Timeshare Directives 1994 and 2008; the Australian Corporation Act 2001 and the New Jersey Real Estate Timeshare Act.

Matrimonial Causes Law (2005 Revision), Maintenance Law (1996 Revision) and Affiliation Law (1995 Revision)

46. In accordance with its statutory duty to initiate and carry out or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the laws of the Islands the Commission, at its meeting of 9 December, 2008 agreed to commence its review of the Matrimonial Causes Law (2005 Revision), the Maintenance Law (1996 Revision) and the Affiliation Law (1995 Revision) with a view to their reform.

47. The need to review this area of the Law is a very current issue. We take cognizance of the fact that a Privates Members' Motion No. 11/08-09 was passed by the House on 27 February, 2009 relating to the review of the Affiliation Law.

48. The review of the Affiliation Law was one of the first projects listed on the legislative programme of the Commission in March 2006.¹⁹ The staff of the Commission commenced research on this area of law in 2007 and the Commission intends to move ahead this year with this project as a matter of priority together with its review of the Matrimonial Causes Law and the Maintenance Law.

D. LEGISLATIVE DRAFTING PROJECTS OF THE STAFF OF THE COMMISSION

49. The Director and Legislative Counsel, as legal officers of the Portfolio of Legal Affairs, are required, from time to time, to undertake legislative drafting projects on behalf of the Portfolio. In carrying out such duties they liaise directly with instructing officers of the relevant ministry or Portfolio. The Commissioners do not participate in these projects.

50. After the final report relating to the legal aid review was submitted to the Attorney-General, the report was considered by the Cabinet. The Cabinet did not agree with the Commission's recommendation on the issue of pro bono and it was decided that a Legal Aid Bill should be considered which would provide for mandatory pro bono. It was agreed that, as the Commission had completed its review, draft legislation would be prepared by the Director on behalf of the Portfolio and not of the Commission.

51. On 3 October, 2008 the Director submitted a draft Legal Aid Bill and Regulations to the Attorney-General for his consideration. The draft legislation were subsequently submitted to the Chief Justice in 30 January, 2009 who has provided comments on behalf of the judiciary which is currently responsible for the administration of legal aid. Consultation is ongoing.

52. In 2008 Legislative Counsel consulted extensively with the Department of Children and Family Services in connection with the Children (Amendment) Bill and the

¹⁹ See Annual Report 2005/6

Children Regulations. The regulations were completed and sent to the Ministry of Health and Human Services on 15 January, 2009 and the Children (Amendment) Bill which provides, among other things, for the mandatory reporting of child abuse, was finalised on 26 February, 2009. The Legislative Assembly passed the Bill on 19 March, 2009. The Children Regulations submitted to the Ministry are as follows-

- The Arrangement for Placement of Children Regulations, 2009
- The Children (Private Foster Care) Regulations, 2009
- The Children (Secure Accommodation) Regulations, 2009
- The Community Homes Regulations, 2009
- The Contact with Children Regulations, 2009
- The Definition of Independent Visitors Regulations, 2009
- The Disqualification from Providing Private Foster Care Regulations, 2009
- The Emergency Protection Order (Transfer of Responsibilities) Regulations, 2009
- The Foster Placement (Children) Regulations, 2009
- The Guardians Ad Litem (Panel) Regulations, 2009
- The Parental Responsibility Agreement Regulations, 2009
- The Placement of Children with Parents Regulations, 2009
- The Refuges (Children's Homes and Foster Placement) Regulations, 2009
- The Representation Procedure (Children) Regulations, 2009
- The Review of Children's Cases Regulations, 2009
- The Registered Children's Homes Regulations, 2009
- The Voluntary Homes Regulations, 2009.

54. The Director and Legislative Counsel have also drafted or assisted in the drafting of the following-

- National Conservation Bill, 2009
- Animals (Amendment) Bill, 2009
- Marine Conservation (Amendment) Bill, 2009
- Parliamentary Pensions (Defined Contribution) Regulations, 2009
- Anti- Corruption Law, 2008
- Traffic (Amendment) Public Transport Bill, 2008
- Draft Guidelines under Anti-Corruption Law the relating to conflicts of interests.

E. TRAINING

55. In October 2008 the Director and Legislative Counsel participated in a reform training programme entitled "Changing the Law: Successful Reform". The programme was conducted by Public Administration International, London, UK and lasted from 20 October, 2008 to 24 October, 2008.²⁰

²⁰ Programme Director was Mr. Michael Sayers and programme facilitators were Claire Cameron and Clare Walters

56. Other participants were from Botswana, the British Virgin Islands, Nova Scotia (Canada), Ghana, Malawi, Namibia and Nigeria.

57. The study programme was introduced by its organisers as the first of its kind designed to focus on the issues relating to law reform. Emphasis was placed on the importance of law reform in the light of societies becoming more complex and demanding proactive measures to respond to the legal challenges that continue to emerge in the globalised village. It was indicated that specific measures to achieve successful law reform have to focus on modern approaches to law reform, fairness, simplicity and cost effectiveness while at the same time embracing the achievements of the past and learning from the setbacks. The law reform approach has to be principled, based on sound methods and adopt an all inclusive approach.

58. The principal objectives of the programme were to-

- explore different organisational structures for law reform and how to establish them;
- increase understanding of a variety of methods of achieving successful law reform;
- discover the full value to law reformers of wide consultation and outside expertise;
- consider legislative and other methods of reforming the law;
- enable participants to share their own experiences from different legal and political systems; and
- contribute to the professional development of law reformers.

59. Participants visited the UK Law Commission and the Ministry of Justice and they obtained insight into the processes adopted by the UK Law Commission when conducting law reform and the role of the Ministry of Justice in facilitating the law reform process. The program focused on several aspects of law reform including the features of a law reform commission, the methods of conducting law reform, employing the effective use of consultants, the formulation of a comprehensive law reform report, appreciating the value of broad consultation and the need to implement a system of follow-up after a report is submitted for consideration.

60. It was clear from the interactive discussions amongst the participants that although participants originated from different legal and political systems and adopted varied law reform processes, all experienced similar challenges when seeking to advance successful law reform initiatives. These challenges related to limited human and financial resources, dealing with matters from more of a reactive standpoint, limited time to deal with matters in a holistic manner, referral of matters that may not properly be considered law reform projects, a misunderstanding of the role of a law reform commission, setting unrealistic deadlines and critical attacks when recommendations are contrary to stakeholder views. The programme allowed the participants to focus on those challenges and explore the different approaches to fostering an enhanced law reform process.

APPENDIX

Law Reform Commission Publications/Papers

1. A Review of the legal aid system in the Cayman Islands- A preliminary discussion paper; Draft Legal Aid Bill; Draft Legal Aid Regulations (28 March, 2006)
2. First Annual Report of the Law Reform Commission 2005/6 (31 March, 2006)
3. Final Report- A Review of the Corporate Insolvency Law and recommendations for the amendment of Part V of the Companies Law; Draft Companies (Amendment) Bill (12 April, 2006)
4. Discussion paper- The Law of Landlord and Tenant; Draft Residential Tenancies Bill (30 September, 2006)
5. Consultation paper - A Review of the Law regulating legal practitioners in the Cayman Islands (29 January, 2007)
6. Second Annual Report of the Law Reform Commission 2006/7 (31 March, 2007)
7. Final Report - A Review of the Law regulating legal practitioners in the Cayman Islands; Draft Legal Practitioners Bill; Draft Accountant's Reports Regulations (31 May, 2007)
8. Final Supplemental Report of the Law Reform Commission- Review of Corporate Insolvency Law in the Cayman Islands and Recommendations for the Amendment of Part V of the Companies Law (2004 Revision); Companies (Amendment) Bill (20 July 2007)
9. Discussion paper- A Review of the legal aid system in the Cayman Islands (14 December, 2007)
10. Third Annual Report of the Law Reform Commission 2006/7 (31 March, 2008)
11. Final Report- A Review of the legal aid system in the Cayman Islands (15 July, 2008)
12. Final Report- Review of the Law regulating the relationship of landlords and tenants in the Cayman Islands (11 August, 2008)
13. Preliminary Discussion paper- Is there a need for enduring powers of attorney in the Cayman Islands? (20 January, 2009)

14. Discussion paper- Regulation of Charitable Non-profit Organisations in the Cayman Islands (26 January, 2009); Draft Charities Bill, 2009

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Chairman of the Law Reform Commission
27 March, 2009