NOMINATED MEMBERS:
TO BE, OR NOT TO BE, THAT IS THE QUESTION!

The House of Assembly is the place where the will of the people of Anguilla is expressed, and where the direction of our country is decided. It is the place where the highest level of political accountability exists. There, the decisions of the people to elect a government based on its proposed programme or manifesto are transformed into legislation, and other aspects of the country’s well-being are debated and decided. It is the place where the highest standards of leadership in national affairs are expected. It must therefore be a place of integrity and authority. It must also be a place of legitimacy, a place of representatives.

It is therefore not surprising that so much public discussion in Anguilla revolves around those who sit in the House of Assembly and their actions, or lack of actions as the case may be. And the debate about whether the House should continue to have nominated members is no less heated, particularly since there has been so much controversy over the appointment of nominated members following the last two elections in Anguilla. Notwithstanding the controversy, there is widespread belief that the appointment of nominated members can bring to the House of Assembly specialist expertise, independent perspective, and able and talented people from different backgrounds and with different skills. Accordingly, public opinion seems to be balanced between retaining or abolishing this method of membership in the House of Assembly. Even the constitutions of the British Overseas Territories do not agree on the need for these members, so there is no obvious answer to the question.

The purpose of this presentation is therefore to stimulate reasoned debate on the question of the nominated members so that the people can gain a better understanding on the rationale for having them in the past and can make informed recommendations on their continued existence or otherwise in future constitutional arrangements for Anguilla. Some of the questions which the presentation will raise, and I trust will elicit answers for, are:

- Is it un-democratic to retain nominated members in the House today?
- Is there a need to continue the practice of appointing nominated members to the House?
- If it is agreed that there is a need, should their role be changed i.e. should there be a possibility to have nominated members sit in Executive Council, or be a Minister of Government? Should the nominated members function only when House meets? Should there be a limitation on their vote?
Should their method of appointment be changed, such as by a Nominating Commission, in which case who nominates the nominators? For example, in the UK, a House of Lords Appointments Commission has been appointed. Should appointments be party-political, non-party political, or mixed?

Should there be nominated members in a separate chamber, and if so should their term be for a longer period?

It should be obvious that there are a host of options available to the framers of our future constitution. I am mindful, not only that the objective of the Constitutional and Electoral Reform Committee is to educate and stimulate public discussion out of which the people will propose the constitutional arrangements they desire, but also that if I appear to support one option or the other, fully half the population will be opposed to my suggestion. I will therefore endeavour to present this as a research paper, out of which I invite you, my audience, to make your own conclusions and recommendations.

HISTORICAL BACKGROUND

The presence of nominated members in the Anguilla House of Assembly has its origin in the House of Lords in the United Kingdom’s Westminster Parliament, and so it is necessary to briefly examine that institution at some length to guide any discussion on their continued existence, and if so, their method of appointment, their role and their powers. Further, recent reforms to the House of Lords may prove helpful to us as we discuss this vexed question.

The House of Lords had its origins in the medieval royal practice of summoning the great landowners (both lay and ecclesiastical) to offer counsel and provide resources. As such it predates the House of Commons by centuries and it was long the pre-eminent House in the Parliament. However, with the growth in the numbers of persons entitled to vote and consequently the perceived legitimacy of the Government and its popular support reflected through the ballot box, there were changes in the balance of power between the two Houses. The contrast between a House of Commons which reflected changes in the political will of the electorate and a House of Lords whose membership has been of hereditary peers and (since 1958) life peers appointed by previous governments, inevitably led to conflict and to pressure for reform. A century of attempted and actual reforms to the House of Lords reached their zenith with the House of Lords Act 1999 which removed the automatic right of hereditary peers to sit and vote in the House of Lords. Transitional arrangements are being made for the phasing out of the hereditary peers and for the nomination of non-party political life peers in addition
to nominations by political parties.

Before turning to the relevance of all this to the Anguilla experience, I wish to note that the years since the introduction of life peerages have seen considerable changes in the composition of the House of Lords; in its workload and work rate; and in the way it has gone about discharging its responsibilities. Walter Bagehot, in the 1867 Classic The English Constitution, divided the institutions of the British state into two categories: the “dignified parts……, which excite and preserve the reverence of the population” and the “efficient parts……, those by which it, in fact, works and rules.” The House of Lords, it is believed, has in many respects made the transition from the first to the second over the past 40 years.

POWERS AND FUNCTIONS OF THE HOUSE OF LORDS

The Parliamentary functions of the Lords are, broadly defined, fourfold:
- to generate, debate, amend and approve proposed legislation;
- to scrutinise government actions by Parliamentary Questions to Ministers and debates;
- to undertake specialist investigation through their select committees;
- to act as a general forum for debate on matters of public interest.

The House of Lords is distinct from the House of Commons in four key areas:
- the House of Lords has no influence over the choice of who is to form the government;
- the House of Lords has no powers over taxation and spending, which are the exclusive preserve of the House of Commons;
- the House of Lords has no constituency representative functions;
- the House of Lords' powers over legislation are constrained by the Parliament Acts.

The British Government has been vigourously proposing changes to the composition and functioning of the House of Lords with a view to making the House a more legitimate entity. A Royal Commission has been appointed, and has taken into account those characteristics which are widely regarded as among its more attractive features. These include the cross-bench element of the chamber, and the expertise and experience of individuals of distinction, from the professions, business and industry, the arts, and those who have given distinguished public service as politicians or public servants at a national or local level. The proposed measures include:
the removal of the purely hereditary basis of the majority of the House;
• improved arrangements for the nomination of life peers in the transitional House; and
• further longer-term reform, following the recommendations of a Royal Commission.

They amount to a comprehensive and radical programme of reform, which the Government believes will be widely welcomed and widely supported across the country, will modernise the House of Lords and give the House of Lords a new legitimacy.

THE ANGUILLA EXPERIENCE

The Anguilla Experience where there were nominated persons involved in Government will include systems of governance in earlier periods such as the Vestry, but for the purposes of this presentation will deal only with the events commencing with the Anguilla Revolution of 1967. I will further divide the treatment of the last 35 years into three sections: 1) 1967-1976; 2) 1976-1990 and 3) Post-1990.

a) The first Anguilla Government under this period was the Peace-Keeping Committee formed on May 30th 1967 under the chairmanship of Mr. Walter Hodge. It was entirely nominated, there being an immediate need to establish some form of governing authority with the expulsion of the St. Kitts police and with them the last vestiges of the Central Government.

The Peace-Keeping Committee arranged for the first local elections to be held in October 1967. This election was held under an Anguilla Constitution drafted in July 1967 by Roger Fisher, a professor of international law at Harvard, to provide for a seven seat Legislative Council, made up of five elected and two nominated members.

The only five candidates proposed were returned unopposed, and these five persons under the chairmanship of Mr. Ronald Webster nominated two additional persons to make up the Anguilla Council: Messrs. Campbell Fleming and Bob Rogers.

There was another election on 30th July 1968 for the seven seat Council, again providing for five elected members and two nominated members, however seven persons were elected and there were no nominated members. Clearly, this meant that the Constitution was ignored. This was the first, but
certainly not the last, time that the nominated members were to feature in a Constitutional issue in Anguilla.

When the British forces invaded Anguilla in March 1969, this was the Council that was in place. The Caradon Declaration of March 30th 1969 which established peace after the invasion stated that “The administration of the island shall be conducted by Her Majesty’s representative in full consultation and cooperation with representatives of the people of Anguilla. The members of the 1968 Council will be recognized as elected representatives of the people and will serve as members of a Council to be set up for the above purposes. This Council may be expanded, if so desired, by election or co-option” Her Majesty’s Commissioner John Cumber increased the Council to fourteen, allowing each elected person to nominate one. The Nominated Members were back BIG-TIME, moving from total exclusion to an equal presence to those elected! Those so nominated were Messrs. Russell Webster, Reuben Hodge, James Woods, Winston Harrigan, Hugo Rey, Camille Connor, and Samuel Fleming.

The next change to the provisions for the Council’s composition was the 1971 Administration Order, which provided for a Council of seven elected and up to six nominated members. Accordingly, after the 1972 elections, one Nominated Member was named – Mrs. Idahlia Gumb. This was the Council that took Anguilla to 1976, which takes me to Section 2, 1976-1990.

b) In 1976, a new Constitution was introduced which provided for a House of Assembly to consist of seven Elected and two Nominated Members, as well as Ex-officio Members. In the 1976 Elections, Mrs. Idahlia Gumbs was elected, as such she is one of only two persons to have served in the Council (at different times) both as a Nominated Member and as an Elected Member. Those nominated were Messrs. Everett Romney and Clive Smith.

In September 1977, after a Motion of No Confidence brought about a change in the Administration, Mr. Atlin Harrigan replaced Mr. Everett Romney as a Nominated Member.

After the 1980 Elections, those named as Nominated Members were Messrs. Euton Smith and Connell Harrigan.

After the 1981 Elections, those named as Nominated Members were Messrs. Euton Smith and Oneal Levons.
In 1982, a new constitution was introduced as the Anguilla Constitution Order 1982, which maintained the provision for two nominated members. The Assembly was to include, according to Section 35. (2) (d) two nominated members, being persons who belong to Anguilla of the age of twenty-one years or upwards, appointed by the Governor by instrument under the public seal in accordance with subsection (3) of this section. Subsection (3) states “Of the two nominated members, one shall be appointed by the Governor acting in accordance with the advice of the Chief Minister, and the other shall be appointed by the Governor acting after consultation with the Chief Minister and the Leader of the Opposition, if any. It is noteworthy that the 1982 Constitution provided, for the first time, for the appointment of a Leader of the Opposition.

Those named as Nominated Members after the 1984 Elections were Messrs. Clive Smith and John (Bob) Rogers.

The last nominations to be considered under this Section were those made following the 1989 elections, when Messrs. David Carty and Claudel Romney were appointed.

c) The next Section deals with the post 1990 period, since it takes into account the effect of the 1990 changes to the Anguilla Constitution. The new Constitution continued to provide for seven elected and two nominated members in the House of Assembly (as well as Ex-Officio Members) but there were changes which impacted on the functions of the Nominated Members. Most significantly, the amended Constitution provides that the Governor may appoint a Parliamentary Secretary from among the elected or nominated members of the Assembly, and that the Deputy Speaker may be elected from among the members of the Assembly other than an elected member.

Accordingly, those appointed as Nominated Members in 1989 assumed additional responsibilities, Mr. David Carty became Parliamentary Secretary for Education and the Environment, and Mr. Claudel Romney became Deputy Speaker. This practice has been followed subsequently in every Assembly, i.e. the First Nominated Member has been appointed as Parliamentary Secretary and the Second nominated Member elected Deputy Speaker.
Following the 1994 Elections, there was considerable controversy over the appointment of Nominated Members under the new provisions of the 1990 Constitution. The Governor objected to the Chief Minister’s choice of Reverend John Gumbs as First Nominated Member on the grounds that the Constitution prevented Ministers of Religion from serving in the House of Assembly, and Chief Minister Hubert Hughes objected to the Governor’s appointment of David Carty as Second Nominated Member on the grounds that the Governor had not consulted with him on the appointment as required by the Constitution. Eventually Rev. Gumbs was appointed and took up his seat in the House and responsibility as Parliamentary Secretary for the Environment, while the Speaker refused to swear in David Carty as Second Nominated Member. Mr. Carty took the matter to the High Court, which ruled that while he had been properly appointed, the Court could not force the Speaker to swear him in. Accordingly, the House met for the full term without the presence of a Second Nominated Member.

After the 1999 Elections, Mr. Walcott Richardson was appointed as First Nominated Member and Parliamentary Secretary for the Environment, while Mr. Claudel Romney was appointed Second Nominated Member.

After the 2000 Elections, Mr. Samuel Connor was appointed as First Nominated Member and Parliamentary Secretary for the Environment, while Mr. Claudel Romney was appointed Second Nominated Member. It is noteworthy that the appointment of the second nominated member was delayed by several months, reportedly because of the lack of agreement between Government and Opposition as to who should be so appointed.

Some questions come to mind concerning the Anguilla experience over the past 35 years. These include a) Are there any trends which can be deduced from the that could establish a rationale for the selection of persons appointed as nominated members?; b) Has the experience provided any compelling reason either for or against the continued existence of nominated members?; and c) Has the method of appointment or selection evolved to a satisfactory point, or is there room for improvement in the selection process?

While it is not my function to provide answers, I trust that these questions and some of my findings will serve to stimulate discussion and provide pointers to the best possible options in the quest for improved governance arrangements.
Some of the more obvious findings are:

- A tradition of having nominated members in the Legislature, dating from the very first Anguilla Day, May 30th, 1967, and to the first Island Council.
- The preponderance of male Nominated Members, with only one female among, by my reckoning, some twenty males.
- Strong party-political linkages. Especially in the early years, it seems as if one of the easiest way to be appointed as a nominated member was to be the person who announced the political meetings and introduced the speakers at meetings of the successful political party. Only with the introduction of the 1990 Constitution with its requirement that there be consultation with both the Chief Minister and the Leader of the Opposition on the appointment of the Second Nominated Member has there been the concept of apolitical Nominated Members. Several of the Nominated Members have contested general Elections, although only Atlin Harrigan and Idahlia Gumbs have won seats. Atlin Harrigan also went on to become Speaker of the House of Assembly. Some of the nominated members were appointed after unsuccessfully contesting the most recent election.
- The development of a trend of bringing technical skills and experience to the post of Nominated Member. This has been particularly so since the 1990 Constitution provided for the possibility of the first Nominated Member serving as Parliamentary Secretary, having de facto Cabinet Level responsibility for a Ministerial Subject while not permitted to sit in the Executive Council. The provisions for the appointment of the Second Nominated Member also have tended to favour the selection of technically qualified persons.
- There has not been any obvious geographic reasoning behind the appointment of nominated persons, for example when the 1994-1999 Administration consisted of the Western-most four seats, there was no effort to appoint someone from the Eastern-most districts to give some input on the Government Side of the House of Assembly from those districts not represented by Ministers of Government.
- There has not been any real attempt to represent any specific demographic group (with the possible exception of men), such as women, where there have only been two representatives in the House of Assembly over the thirty-five year period, or the young (under thirty-fives).

If this address was not being delivered among such a serious forum as this Constitutional Forum, I would have added some more findings, such as a memorable oath of allegiance sworn by one nominated member, and another nominated member’s address after his swearing in which he said that God must
have smiled at his appointment, I guess implying it was divinely inspired, and that it was just revenge that he sit in the land’s highest House. I might even have quoted from some of the very best and very worst verbage (both from, and aimed at nominated members) to have ever come from these halls, but of course I will refrain from so doing in this forum. Suffice it to say that we have had technocrats and party boys over the past thirty five years, we have had court cases and constitutional battles, we have had the term “consultation” queried in the appointment process, and we cannot for one moment deny that the nominated members have been central to the confusion, controversy and contributions to Anguilla’s progress over the past thirty five years.

WHAT APPLIES IN OTHER BRITISH OVERSEAS TERRITORIES?

An examination of what applies regarding the question of nominated members in other British Overseas Territories reveals an interesting variety of provisions. It should be noted that the term appointed member is also used in some constitutions.

There is no provision for nominated members in the constitutions of the British Virgin Islands, Montserrat, the Cayman Islands or St. Helena. In fact, the British Virgin Islands constitution as far back as 1976 made no provision for nominated members.

The Turks and Caicos Islands Constitution Order 1988 provides for thirteen elected members and three appointed members. Appointed members should be “so far as possible from among persons representing shades of opinion which would not otherwise be represented in the Legislative Council, as follows –

a) one shall be appointed by the Governor acting in his discretion;
b) one shall be appointed by the Governor acting in accordance with the advice of the Chief Minister;
c) one shall be appointed by the Governor acting in accordance with the advice of the Leader of the Opposition;

Provided that no person shall be appointed under this section who has unsuccessfully stood as a candidate for election as an elected member at any election since the last dissolution of the Legislative Council.”

An appointed member may be elected by the Council to the position of Speaker or Deputy Speaker.

The Montserrat Constitution Order 1989 provided for seven elected and two nominated members appointed by the Governor, one after consultation with the Chief Minister, and the second acting in accordance with the advice of the Chief
Minister. However, a 2000 Amendment to the Constitution abolished the office of nominated members and increased the number of elected members to nine.

Bermuda appears to somewhat mirror the British Parliament where there are two Houses, the House of Lords and the House of Commons. In Bermuda, there is a Legislative Council and a House of Assembly which together make up the Legislature. The Legislative Council consists of eleven members appointed by the Governor, four by the Governor acting in accordance with the advice of the Government Leader, two by the Governor acting in accordance with the advice of the Opposition Leader, and five appointed by the Governor acting in his discretion. The House of Assembly consists of forty elected members. The power of the Legislature to make laws shall be exercised by bills passed by both Houses, however the Legislative Council’s power to make bills is limited. Not less than one and not more than two members of the Legislative Council shall be appointed to the Executive Council. Therefore, the nominated member in Bermuda may both sit in the Executive Council and participate independently of elected members in law-making, and therefore possess powers not accorded to nominated members in any other British Overseas Territory.

OTHER QUESTIONS

The analysis of what applies in our sister British Overseas Territories gives rise to even more questions or considerations. For example, the Turks and Caicos Islands Constitution provides that appointed members should be “so far as possible from among persons representing shades of opinion which would not otherwise be represented in the Legislative Council.” Should therefore nominated members represent certain constituents, e.g. youth, women? Then what would happen if majority of house is female, or under thirty? This is a difficulty which would be presented if this is to be a constitutional provision, implying that it cannot be easily changed. This would strengthen the case for an Appointing Commission, which would be governed by guidelines, rather than be bound by dictate. However, how would the Appointing Commission be appointed? What of the TCI provision to have three nominated persons, with the Governor appointing one in his discretion, and one each on the advice of the Chief Minister and the Opposition, which would remove the need for consultation? And what of the Montserrat move to replace the two nominated members with an additional two elected members? Are the two mutually exclusive, i.e. is it desirable to both increase the elected numbers as well as preserve the nominated members? What if one party wins all the seats in the House so that there is no Opposition? Shouldn’t the nominated members provide for some dissenting voice to “keep the government on its toes?”
Clearly, there are advantages and disadvantages to the continued inclusion of nominated members in our House of Assembly. Among the advantages are:

- **Range of representation.** The range of experience of those who enter elected politics is becoming increasingly narrow. If the House of Assembly is to be fully representative of all sectors of the community and talents of the country, there are advantages in some persons being appointed, not elected.

- **Independence.** One of the main purposes of a second chamber (such as the House of Lords) is to allow considered revision of legislation. This process should be enhanced even in a single-chamber House if there is a significant proportion of the House’s membership for whom there is no presumption as to whether they support the Government. Having nominated members can mean that an element of the House of Assembly is both selected and makes its judgements on a basis other than that of party allegiance.

- **Expertise.** The contribution of individuals to the House of Assembly would be enhanced by the presence of people with significant specialist expertise in some areas.

- **Continuity.** Constitutional reform has normally been gradual and incremental, which has contributed to the basic stability of the Westminster system. Continuing with a system which retains nominated members would be more of a gradual and incremental change than doing away with them.

- **Ex-officio members.** The ex-officio membership of the House of Assembly could come from nominated members, increasing the proportion of elected to non-elected members.

Among the disadvantages are:

- **The question of democracy.** Some persons will argue that any system which contains no element of election cannot be democratic or properly representative of society as a whole.

- **Difficulty.** The search for a perfect nominated representative is difficult.

- **Delegates.** Persons chosen as nominated members might find too much pressure to represent a particular constituent group and thus be limited in their effectiveness.

And of course, **cost** may be both an advantage and a disadvantage.
CONCLUSION

Any discussion of any area or aspect of our constitution deserves our most sincere interest, since this document is vital to our future. The discussion of the nominated member in the Anguilla House of Assembly is worthy of no less attention, and I commend to you the information and questions which I have presented. I trust that it has helped to stimulate our thinking and in some way will assist in the formulation of proposals on this subject for a future constitution.

I am deeply honoured to have been asked to be a part of this historic process through service on the Constitutional and Electoral Reform Committee. I am privileged to work with the other members of the Committee and the wider Constitution and Electoral Reform Forum. As I conclude, I ask that we pledge to give this process our fullest support so that when the final report of our work would have been written it would say that we have done our best for our country and for generations of Anguillians yet unborn.

I thank you.

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