



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2013/14 SESSION

29 January 2014

First Sitting of the Fifth Meeting

(pages 543–562)

Hon Anthony S Eden, JP, MLA, Deputy Speaker

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PRESENT WERE:

SPEAKER

Hon Anthony S Eden, OBE, JP, MLA
Deputy Speaker

MINISTERS OF THE CABINET

Hon Alden McLaughlin, MBE, JP, MLA	<i>Premier</i> , Minister of Home and Community Affairs
Hon Moses I Kirkconnell, JP, MLA	<i>Deputy Premier</i> , Minister of District Administration, Tourism and Transport
Hon D Kurt Tibbetts, OBE, JP, MLA	Minister of Planning, Lands, Agriculture, Housing and Infrastructure
Hon Osbourne V Bodden, MLA	Minister of Health, Sports, Youth and Culture
Hon Marco S Archer, MLA	Minister of Finance and Economic Development
Hon G Wayne Panton, MLA	Financial Services, Commerce and Environment
Hon Tara A Rivers, MLA	Minister of Education, Employment and Gender Affairs

EX OFFICIO MEMBERS OF THE CABINET

Hon Franz I Manderson, Cert. Hon, JP	<i>Deputy Governor</i> , ex officio Member responsible for the Civil Service
Hon Samuel Bulgin, QC	Attorney General, ex officio Member responsible for Legal Affairs

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Mr Roy McTaggart, MLA	Second Elected Member for George Town
Mr Winston C Connolly, Jr, MLA	Fifth Elected Member for George Town
Mr Joseph X Hew, MLA	Sixth Elected Member for George Town
Mr Alva H Suckoo, MLA	Fourth Elected Member for Bodden Town

OPPOSITION MEMBERS

Hon. W. McKeever Bush, OBE, JP, MLA	<i>Leader of the Opposition</i> , First Elected Member for West Bay
Mr Bernie A Bush, MLA	Third Elected Member for West Bay
Capt A Eugene Ebanks, JP, MLA	Fourth Elected Member for West Bay

INDEPENDENT MEMBERS

Mr D Ezzard Miller, JP, MLA	Elected Member for North Side
Mr V Arden McLean, JP, MLA	Elected Member for East End

APOLOGIES

Hon. Juliana Y O'Connor-Connolly, JP, MLA *Speaker*, Second Elected Member for Cayman Brac and
Little Cayman

OFFICIAL HANSARD REPORT
FIFTH MEETING OF THE 2013/14 SESSION
WEDNESDAY
29 JANUARY 2014
10:30 AM
First Sitting

[Hon. Anthony S. Eden, Deputy Speaker, presiding]

APOLOGY

The Deputy Speaker: I will ask the Honourable Minister of Education to say Prayers.

The Deputy Speaker: There are no messages or announcements; just to give apologies for Madam Speaker who is not feeling well this morning.

PRAYERS

Hon. Tara A. Rivers, Minister of Education, Employment and Gender Affairs: Let us pray.

Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Legislative Assembly now assembled, that all things may be ordered upon the best and surest foundations for the glory of Thy Name and for the safety, honour and welfare of the people of these Islands.

Bless our Sovereign Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established among us. Especially we pray for the Governor of our Islands, the Speaker of the Legislative Assembly, Official Members and Ministers of Cabinet and Members of the Legislative Assembly, that we may be enabled faithfully to perform the responsible duties of our high office. All this we ask for Thy great Name's sake.

Let us say The Lord's Prayer together: *Our Father, who art in Heaven, Hallowed be Thy Name. Thy Kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the Kingdom, the power and the glory, forever and ever. Amen.*

The Lord bless us and keep us. The Lord make His face shine upon us and be gracious unto us. The Lord lift up the light of His countenance upon us and give us peace, now and always. Amen.

The Deputy Speaker: Please be seated.
 Proceedings are resumed.

**READING BY THE HONOURABLE
 SPEAKER OF MESSAGES
 AND ANNOUNCEMENTS**

**PRESENTATION OF PAPERS
 AND OF REPORTS**

**PORTFOLIO OF LEGAL AFFAIRS—FINANCIAL
 STATEMENTS 30 JUNE 2013**

The Deputy Speaker: I now call on the Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Mr. Speaker.

Mr. Speaker, I beg to lay on the Table of this House the [financial statements](#) for the Portfolio of Legal Affairs for the period ending 30 June 2013.

The Deputy Speaker: So ordered.

Does the Honourable Member wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: No, Mr. Speaker. Thank you.

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS—FINANCIAL STATEMENTS 30 JUNE
 2013**

The Deputy Speaker: Once again, I call on the Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Mr. Speaker.

Mr. Speaker, I beg leave to lay on the Table of this House the [financial statements](#) for the period ending 30 June 2013, for the Office of the Director of Public Prosecutions.

The Deputy Speaker: So ordered.

Does the Member wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: No, Mr. Speaker, thank you.

MOODY'S CREDIT ANALYSIS OF THE CAYMAN ISLANDS—REPORT DATED 5 DECEMBER 2013

The Deputy Speaker: I call on the Honourable Minister of Finance and Economic Development.

Hon. Marco S. Archer, Minister of Finance and Economic Development: Thank you, Mr. Speaker.

On behalf of the Government I beg to lay on the Table of this honourable House the Moody's Investor Services Credit Analysis for the Cayman Islands Government, issued on the 5 December 2013.

The Deputy Speaker: So ordered.

Does the Minister wish to speak thereto?

Hon. Marco S. Archer: Yes, Mr. Speaker, thank you.

Mr. Speaker, in a glowing [report](#) released on the 5 December 2013, Moody's Investor Service reaffirmed the Cayman Islands double A-3 Government Bond Rating and Stable Outlook. Our sovereign rating remains in the top tier of the rating matrix and is only three notches below the highest rating of triple A (AAA).

While the Government welcomes the publication of this report, as it solidifies Cayman's stability and credit worthiness on a global context, our excellent rating should not encourage us to become complacent.

Moody's outlook reflects the evaluation of the economic and financial performance of the Cayman Islands against the number of criteria. Therefore, our positive rating is a result of the following key drivers:

1. A comparatively low debt burden.
2. A very high per capita income—one of the highest amongst rated sovereigns—which Moody's attributes to prudent macroeconomic management and a well-functioning legal system.
3. A strong institutional framework, including a long history of policy consensus on basic macroeconomic policies and institutional oversight from the United Kingdom.

Despite the fact that our per capita GDP is a key support for the rating we have received, limited economic diversification and any erosion of public finances could adversely affect our rating in the long term.

Mr. Speaker, the core of Moody's sovereign rating methodology continues to focus on an assessment of sovereign credit risk based on the interplay of four key factors: 1) economic strength; 2) institutional strength; 3) fiscal strength; and 4) susceptibility to event risk.

I will now briefly explain the significant indicators impacting each factor. Moody's determination of economic strength is reflected in the economy's wealth, size, diversification and long-term potential.

The economic strength of the Cayman Islands was rated moderate plus. Being the twelfth wealthiest rated sovereign in terms of GDP per capita positively compensated for our limitations as a small two-pillar economy currently experiencing slow growth. However, the Government's diversification efforts towards health tourism as well as planned public/private initiatives aim to bring our capital infrastructure up to world class levels, and are likely to boost long-term growth in our economy and eventually advance our ratings.

Mr. Speaker, institutional strength reflects a country's governance model, the quality of its institutions and the predictability of its policies. Moody's ranks the Cayman Islands institutional strength as very high on its global scale. Using the World Bank's governance indicators as a proxy of institutional strength across nations, Cayman is number one in the region for this category and ranks in the top 20th percentile of all rated sovereigns.

The World Bank's governance indicators measure the quality of governance in over 200 countries, capturing six key dimensions of governance, those being voice and accountability, political stability, and lack of violence, government effectiveness, regulatory quality, rule of law and control of corruption. Moody's credits our relationship with the United Kingdom for enhancing the stability of our government and facilitating the success of our offshore financial services industry.

With respect to fiscal strength, Mr. Speaker, Moody's defines the fiscal strength of a country based on the overall health of government finances, particularly with regard to its debt levels. The fiscal strength of the Cayman Islands was rated as high positive. Although the Cayman Islands debt burden has increased since 2007, Moody's acknowledges that our government debt is still relatively lower than rating peers.

More importantly, Mr. Speaker, Moody's highlighted Cayman's recent commitment to improving government's fiscal position, noting that this Government's goal of balancing the budget by reducing expenditure and restricting new long-term borrowings will contribute positively to Cayman's debt matrix while other sovereign countries steer in the opposite direction towards mounting debt. In light of this, Mr. Speaker, I am again reinforcing this Government's commitment to reducing our public sector debt over the next three financial years and to minimise or eliminate future operating overdrafts.

With respect to susceptibility event risk, the final factor in Moody's risk rating methodology, Mr. Speaker, is a country's susceptibility to event risk, which evaluates a country's vulnerability to any risk which may severely strain public finances. The Cayman Islands susceptibility to event risk is very low as our strong economy and stable politics outweigh any difficulty resulting from hurricanes or the possible loss in competitiveness in our tourism and our financial services sectors in the long run.

Mr. Speaker, while I welcome Moody's recent analysis of our country's credit standing, I would like to reiterate that the aforementioned good news should not be taken with a complacent attitude. Although various factors contribute to Moody's risk rating matrix, the issue of debt management is one that our government will continue to take most seriously.

Just last year Moody's stripped Britain from its triple A (AAA) rating and downgraded it to AA1 as a result of its ongoing debt position. Closer to home, we saw Bermuda also being downgraded in 2013 from double A-2 (AA2) to double A-3 (AA3) and placed with a negative outlook primarily due to the rise in Bermuda's Government deficits and debt.

Moody's expect sovereign credit quality to continue deteriorating in the Caribbean region. Defaults by Belize, Jamaica and Grenada over 2013 are seen as being part of a broader debt crisis in the Caribbean. The risk of sovereign debt in the Caribbean region is likely to persist since countries are increasingly unable to service their debt. Therefore, Moody's considers the Caribbean's debt difficulties to be a result of a combination of poor fiscal discipline and unproductive investment. Although Cayman is not part of this debt concern, this issue serves as a stark reminder of the ramifications of inadequate fiscal governance.

Mr. Speaker, Moody's rate over 120 sovereign nations and has rated our country in the top tier. The Moody's report is important for Cayman's continued growth in attracting investment and creating jobs. Therefore, it is imperative that this Government remain committed to the objective of consistently improving our economic and financial performance.

Cayman's credit outlook reflects Moody's confidence in our country's economic financial and institutional strength. Our rating proves that Cayman's general fiscal fundamentals are strong and that government's finances are stable and prudent.

Thank you, Mr. Speaker.

The Deputy Speaker: Thank you Honourable Minister. That is certainly some positive news for these Islands.

[Inaudible interjections and laughter]

HUMAN RIGHTS COMMISSION 2013 ANNUAL REPORT

The Deputy Speaker: I call on the Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Thank you, Mr. Speaker.

I beg to lay on the Table of this Honourable House the fourth [Report of the Human Rights Commission](#).

The Report covers the period of the 11th January 2013 to the 31st December 2013, in line with the constitutional mandate found in section 116(8) of the Cayman Islands Constitution Order 2009.

The Deputy Speaker: So ordered.

Does the Honourable Deputy Governor wish to speak thereto?

The Deputy Governor, Hon. Franz I. Manderson: Yes, Mr. Speaker. Thank you.

Mr. Speaker, the 2013 Report brought with it the final implementation of the Bill of Rights, Freedoms and Responsibilities. All rights in our Bill of Rights are now enforceable for the first time in our history. And for the first time in our history the people of the Cayman Islands have unprecedented access to the local courts in which to file alleged complaints of breaches of or infringements of human rights.

The Commission has continued to work to promote, protect and preserve the integration of human rights values into everyday life by continuing to monitor human rights in policy, practice and legislation. They have also developed innovative strategies to build awareness through education, events and presentations, investigating alleged breaches or infringements of human rights by public officials, and engaging with civil society and the media.

Mr. Speaker, in the statement from the Chairman, he does highlight a concern, which I want to also highlight and address. He says: **"While the HRC has had a very successful year in its ability to be active, disappointedly, it must highlight its concern regarding the unfortunate trend among various public authorities to not respond to official correspondence issued by the Human Rights Committee.**

"Such instances of non-responsiveness have created delays related to research, investigation, communication and decision-making; all of which negatively impact the ability of the HRC to efficiently respond (and provide resolutions where applicable) to complainants' allegations of human rights breaches or infringements.

"Although the Constitution stipulates that public authorities ' . . . must respond in writing within a reasonable time to the Human Rights Commission', it is seemingly the case that various public authorities are either unaware of the duty or blatantly disregarded. In either case, the HRC continues to urge those in senior positions within the public service to set the example for developing a human rights compliant organisational culture across the Cayman Islands Government by demonstrating a co-operative spirit with the HRC for the benefit of protecting the public's fundamental rights."

Mr. Speaker, that, in my opinion, is a serious complaint and is something that has been brought to

my attention. I want to ensure this honourable House and the public that we have done everything in the Civil Service now to ensure that that complaint is not voiced again.

I should also say that one of the agencies that did not respond to the Commission in a timely manner was my office, and I have to take responsibility for that. Although the matter has now been resolved I do accept that we did not respond in a timely manner. But I do want to assure all Members of this House and the public that in the Civil Service we have addressed this matter and it will not be a complaint again.

Mr. Speaker, I want to encourage Members of the House and the public to read the report. It is available online on the Human Rights Commission website.

I think we all owe a debt of gratitude to the outgoing chairman, Mr. Richard Coles, and outgoing members, Ms. Sara Collins and Bishop Nicholas Sykes for having served on the Commission for the past four years. I am grateful, and I'm sure all Members here are grateful for their dedication and commitment to improving these Cayman Islands.

Thank you, Mr. Speaker.

The Deputy Speaker: Thank you, Mr. Deputy Governor. It's good to hear you're leading by example.

QUESTIONS TO HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

QUESTION NO. 1— SALE OF ESSO TO SOL PETROLEUM

No. 1: Hon. W. McKeeva Bush, Leader of the Opposition, the First Elected Member for West Bay asked the Minister of Planning, Lands, Agriculture, Infrastructure and Housing if the Government, the Ministry or the Minister had any involvement or knowledge of the sale of ESSO to SOL Petroleum.

The Deputy Speaker: Honourable Minister responsible for Planning, Lands, Agriculture, Housing and Infrastructure.

Hon. D. Kurt Tibbetts, Minister of Planning, Lands, Agriculture, Housing and Infrastructure: After hearing a rumour that ESSO, Grand Cayman, was sold or being sold, the Government contacted the ESSO's Country Manager to learn that Simpson Oil Ltd. (SOL) was in negotiations with Exxon Mobil (ESSO) to purchase its remaining assets in the region.

A subsequent announcement by ESSO on the 28th of June 2013, stated that ESSO's management had signed a sale purchase agreement in the UK with SOL Investment Ltd. based out of Barbados for the

sale of its business. Again, the Government was not informed that the deal between ESSO and SOL was finalised and learned of this by rumours.

Through the Government's own investigation it learned that in the deal completed in January 2014, SOL had acquired the assets of Grand Cayman along with the Bahamas, Barbados, Bermuda and the Dominican Republic. However, before this information was released publicly, neither the Ministry nor the Chief Petroleum Inspector were formally advised of this transaction. In fact, the Chief Petroleum Inspector read the news of the recent sale via SOL's website and subsequently contacted ESSO regarding the matter.

ESSO confirmed that the negotiations are now completed. The Country Manager apprised the Chief Petroleum Inspector that an application has been made for changes to the legal structure of the company here in Grand Cayman (that is, name change at bank accounts and stationery, et cetera). Other formalities that need to be completed locally are the rebranding of fuel trucks, the aviation fleet and terminal offices by the end of January.

The Deputy Speaker: Honourable Leader of the Opposition.

SUPPLEMENTARIES

Hon. W. McKeeva Bush, Leader of the Opposition: Mr. Speaker, can the Minister say whether they are having any discussions on how the company . . . in fact, this could be asked of both companies in regard to their pricing structure, in regard to their environmental policy, such as, Mr. Speaker, the oil that leaks or spills and sits in the earth around the station, or around the terminal?

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, the Government has met with both of the new companies (that is, Rubis and SOL), and we have had a myriad of discussions surrounding many issues.

So, that the Honourable Leader of the Opposition and everybody can understand, because both local companies control licenses for both of the bulk distributors have very similar terms, when we learned of the later sale (because the other one had gone through already with Rubis) progressing, we understood very clearly that it was not going to be easy to expect any change of the terms of the LCCL [Local Companies (Control) Licence] that ESSO has because it would put one company at a disadvantage to the other, that is, in the immediate. So, it was not something that could be dealt with by looking to try to deal with one company rather than the other.

But in our negotiations and utilising the offices of the CPI (Chief Petroleum Inspector) we have been

doing regular checks, and recommendations have been made to both parties with regard to safety features that the Honourable Leader of the Opposition was questioning, with fuel spills, et cetera. And both companies are taking instructions, so to speak, and taking remedial action.

Now, in regard to his question about speaking to both companies on their pricing structure, we have spoken to them. We understand that it is not a simple situation to solve. But the Government has taken a policy position that competition is perhaps in the very short term the best effort in order to be able to regularise prices to the point where the public benefits more.

The Government is presently looking earnestly to allow that competition to exist. We are not in a position to disclose any specific details because there are none to disclose at present. But I am comfortable (and the Premier is not uncomfortable with me saying) that we are actively seeking for that to be the case.

The Deputy Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: Thank you, Mr. Speaker. I thank the Minister for that information.

When he says “competition” does he mean competition between stations, the petrol stations, or is he talking about competition between companies—the two companies? Because, right now it is competition or should be competition, as it is two companies. But you are talking about allowing—

Hon. D. Kurt Tibbetts: Well, if you let me answer it.

Hon. W. McKeeva Bush, Leader of the Opposition: Well, that is what I want to find out.

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, just to be very clear, and I heard another question across . . . just so that it is understood very clear (and then I will answer the Leader of the Opposition’s question), when it comes to the LCCL, the LCCL by law, while they exist, you can’t simply change conditions. You have to negotiate or impose other conditions upon renewal, or when a new one is being sought.

With regard to “competition” that the Leader of the Opposition is asking about, we know that both bulk distributors now compete. And I am not talking about the stations. The stations will naturally compete amongst themselves. And by them having to display their prices for the various types of fuel, people now know before they go and ask for fuel what the prices are. So, that has helped, but the competition that we speak to means another party being involved to compete, besides the two bulk distributors that are here now.

Let us not forget that while there is the retail side of it, a huge portion of fuel is consumed (that is diesel) via Caribbean Utilities. And at some point in time both of those bulk distributors supply Caribbean Utilities with diesel fuel. So perhaps, without saying much more, the competition might well begin at the point where CUC gets its supply.

SUSPENSION OF STANDING ORDER 23(7) AND (8)

The Deputy Speaker: We have now reached the hour of 11:00 am. Is there a motion to suspend Standing Order 23(7) and (8)?

Honourable Premier?

The Premier, Hon. Alden McLaughlin: Mr. Speaker, I move the suspension of the applicable Standing Order in order that question time can continue beyond the hour of 11:00 am.

The Deputy Speaker: The question is that Standing Order 23(7) and (8) be suspended to allow question time to continue beyond the hour of 11:00 am. All those in favour, please say Aye. Those against, No.

Ayes.

The Deputy Speaker: The Ayes have it.

AGREED: STANDING ORDER 23(7) AND (8) SUSPENDED.

The Deputy Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: Mr. Speaker, I did not quite understand what the Minister elaborated on in regard to CUC. Is the Minister saying that the Government will facilitate competition to the extent that competition will not be inhibited by the two companies? For instance, we know they have the mooring and the distribution to CUC from that point, but is the Minister saying that the Government will facilitate competition as wide as possible, as reasonable as possible?

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, the answer to that question is ‘yes’.

The Deputy Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: That was sort of part B to the question.

Part A is: What was he saying in regard to CUC and competition, in regard to how competition will flow? I didn't quite get it.

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, not for a minute trying to curtail, but I prefaced all that I was saying that the Government at this point in time was not at liberty to disclose much detail because there is not much detail to disclose. So—

Hon. W. McKeeva Bush, Leader of the Opposition: I understand that.

Hon. D. Kurt Tibbetts: So, once we understand that now I will answer the Leader of the Opposition's question.

If I understand him correctly, he is asking whether the Government will facilitate within reasonable terms, competition which would allow for CUC to purchase their diesel fuel cheaper, if possible, from another source. And I understand how CUC gets their diesel now, but I am saying to you, Honourable Leader of the Opposition, that the Government will facilitate that to the best of their ability in the future, once any interested party, or parties, wants to participate in that supply.

The Deputy Speaker: Honourable Leader of the Opposition, I will allow two more supplementaries.

Hon. W. McKeeva Bush, Leader of the Opposition: Mr. Speaker, thank you.

Can the Minister say whether the distribution that happens now from the mooring point is controlled on the licence by the companies or who . . . CUC or by Government?

The Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: That facility is owned by, as I understand, one of the companies, and there is an arrangement between them for both to have the usage of it. But there is a clear understanding that while that is the only one that exists presently, it is not the only one that can exist.

The Deputy Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: Thank you, Mr. Speaker, I suspect this is the last one.

Is the Minister saying that the Government does not own the mooring and distribution point? Is the Government saying that they have some control over it since it sits on the Queen's bottom and whether there, in fact, is any licence to that regard?

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: There is no specific licence to that regard.

The equipment is owned by one of the fuel suppliers. The Government does not have any control over that.

And just to make it very clear and hope that this answers enough, understanding what the position is presently, when I say that it does not mean that that is the only one that can be supplied, it perhaps can be done at another location while that one exists also, which would allow for the competition to be more seamless.

The Deputy Speaker: Honourable Member for East End, I didn't catch your eye.

Mr. V. Arden McLean, Member for East End: Thank you, Mr. Speaker.

Mr. Speaker, in all of the substantive answers and the supplementaries, I didn't hear the Minister say whether or not or under what structure will SOL be operating the EXXON terminal here and supply of fuel.

[Inaudible interjection]

Mr. V. Arden McLean: Under what structure; that is, what kind of operational business structure in accordance with the laws of this country?

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, as I understand it, the same terms and conditions of the LCCL which ESSO had are being bought by SOL, which means SOL will continue to operate under the same terms and conditions of the licence that exists.

The Deputy Speaker: Honourable Member for East End.

Mr. V. Arden McLean: Thank you, Mr. Speaker.

Mr. Speaker, has the Government considered whether or not SOL should independently have an LCCL? Or are we going to, like the Minister says, allow them to operate under EXXON's LCCL? How will that work?

[Inaudible interjection]

Mr. V. Arden McLean: No control over 'em!

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, as I understand, it is a commercial arrangement between the two entities which includes the assets. I understand the Mem-

ber's question. Now, the Government will have to be informed once there is a name change to the Local Companies Control Licence. But in normal circumstances that is simply a matter that is handled through an application to the Trade and Business Licensing Board and there is the normal course of action.

If the Member is asking if there is any special circumstances, we do not foresee that because, like I said earlier, we recognise from the beginning that if we were to make any attempts along those lines we would certainly put the new entity at a disadvantage bearing in mind the LCCLs for both entities have very similar terms and conditions at present. So, to go at one would not be seen as fair if we are seeking any different terms and conditions from what exist presently.

The Deputy Speaker: Honourable Member for East End.

Mr. V. Arden McLean: Thank you, Mr. Speaker.

Mr. Speaker, I wonder if the Minister can tell us if those LCCLs were issued specific to entities, and whether or not they are transferrable.

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: I don't wish to go beyond my own personal knowledge at this point in time. I certainly will seek an answer to make sure I give the correct answer to the Member for East End. But if I had to answer in the immediate, I would simply say this, as I have said before in my answers: There is an LCCL which exists, which was in the name of EXXON (or whichever name it was in or whether it was the local name ESSO) and SOL have purchased, as I understand it, the assets and in the agreement, the licence.

Now, there can be a name change to an LCCL, and there is an application which goes to the board that allows for that change because the assets have changed hands. Now, I'm trying to grasp what is so difficult about that, but I don't see a difficulty. It is just like a company being bought by another company. An LCCL is an LCCL; but it also represents a company, an entity, that owns assets—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: The LCCL.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That goes through the Trade and Business Licensing Board. It is not a new LCCL; it is a name change. But before . . . us getting into this is not going to solve the problem. I will determine that and certainly let the Member for East End know because I don't want to say something that is not a total fact. And I am not 100 per cent sure of what the ar-

rangement calls for and what has to happen by way of completing the transaction.

The Deputy Speaker: A last supplementary.

Mr. V. Arden McLean: Thank you, Mr. Speaker.

Mr. Speaker, I'm trying to assist us as a country to see if someone is trying to circumvent us having control over them, and EXXON still operating in this country but sold out all of its assets and operating under a different local licence through SOL, which is a completely different entity.

We know nothing about them, but certainly we know EXXON and these people coming here. And I'm just trying to ensure that we are not holding the wrong end of the stick when something happens. I hope the Minister understands where I am coming from, and I'm sure he will look into it and we have the Attorney General and all of those corporate l-a-w-y-e-r-s out there. They would know how to do that.

Now, Mr. Speaker, here is the next question I would like to ask the Minister. He spoke about competition, and I know he cannot disclose very much about it, but he also talked about CUC's fuel, which is primarily diesel, and the possibility of other people selling to CUC for reducing electricity cost. Can he tell us if there is any intent in all of that?

He also mentioned it could be unloaded from different locations. Can he tell us if there is any intent in there for them to set up new terminals? And I ask that because of the provisions for electricity in this country with CUC having a certain amount of storage and them having others and extending the lead time to have fuel in the country. Because if they are coming by ship—

[Inaudible interjection]

Mr. V. Arden McLean: Well I would like to know if there is any intent of giving them another terminal operation in this country to ensure continuity of electricity in this country.

The Deputy Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Mr. Speaker, I think I know the answer to the earlier question, but I will get it in writing to ensure that it is correct.

To what the honourable Member for East End is asking about, that is all in the early mix of what we are looking at, but we have nothing concrete. We recognise that it is in the country's interest for there to be a larger supply on hand of fuel—not only for CUC but for local consumption given the elements and what could possibly occur and experiences that we've had before. So, all of that is being considered. It is not something that we are hiding why I am a little bit careful how I answer. It is simply that at this point in time any answer I give would be speculation.

But we will continue to inform this honourable House in regard to any progress along those lines. But I wanted everyone to understand that it is the Government's intention to do everything that is possible to bring the price of fuel down to the consumer. That was the intent.

The Deputy Speaker: Madam Clerk.

STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

The Deputy Speaker: I have no notice of statements.

GOVERNMENT BUSINESS

BILLS

FIRST READINGS

POLICE (AMENDMENT) BILL, 2014

The Clerk: The Police (Amendment) Bill, 2014.

The Deputy Speaker: The Bill is deemed to have been read a first time and is set down for second reading.

CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2013

The Clerk: The Criminal Procedure Code (Amendment) Bill, 2013.

The Deputy Speaker: The Bill is deemed to have been read a first time and is set down for second reading.

STANDARDS IN PUBLIC LIFE BILL, 2013

The Clerk: The Standards in Public Life Bill, 2013.

The Deputy Speaker: The Bill is deemed to have been read a first time and is set down for second reading.

BILL

SECOND READING

POLICE (AMENDMENT) BILL, 2014

The Clerk: The Police (Amendment) Bill, 2014.

The Deputy Speaker: I now call on the Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Mr. Speaker.

I beg to move the Second Reading of a Bill entitled a Bill for a Law to amend the [Police Law, 2010](#), Law 36 of 2010, to make the procedure following on the detention of persons in section 65 consistent with section 5(5) of the Cayman Islands Constitution; and to provide for incidental and connected purposes.

The Deputy Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Mr. Speaker. Thank you.

Mr. Speaker, the trigger for this Bill is a ruling last year by the Grand Court in a case called [Canute Nairne](#), in which he challenged the compatibility of section 65 of the Police Law, with section 5 (which some people call article 5) of the Bill of Rights provision in our 2009 Constitution, which deals with the issue of right to personal liberty.

The issue under consideration in that case was generally for what period of time may a person who is arrested be held in custody before being brought before the court in circumstances where the Constitution states that a person so detained must be brought promptly before a court.

Mr. Speaker, the current Police Law, 2010, provides that, generally, where there's "**reasonable grounds for believing that the detention . . . without charge is necessary**" (among other things) "**to complete the investigation**" the arresting officer may detain a person for an initial period of up to 72 hours. Thereafter, Mr. Speaker, a Chief Inspector or above may authorise a further period of detention for 24 hours.

However, if a further period of detention is required, the Law provides that an order from the Magistrates Court is required, and the person ought to be so ordered to be detained by a Magistrate. And that can be for a period not exceeding 72 hours. Of course, in the event that there are some other exceptional circumstances, for a further period of 24 hours.

The Law also provides in section 65 that the application to the Magistrate shall be heard in chambers.

If, after all of these periods of remand, the person is not charged the Law requires that the person shall be released. But, of course, he may be re-arrested if new information justifying further arrest comes to light since his release.

Mr. Speaker, in the case of Mr. Nairne, he was detained first for 72 hours and then for a further period of 24 hours on the authorisation of a senior police officer. Thereafter, the Magistrate's Court order

¹ The Police Law 2010, section 65(3).

was obtained to detain him for a further 72 hours. The problem with this court order was that it was obtained *ex parte*, meaning that the person was not actually taken before the court. This, however, seems to have a reason, Mr. Speaker, because of a possible misunderstanding . . . well, a clear misunderstanding of section 65(6) of the Police Law, which states that the application to the courts shall be heard in chambers. Apparently, this has been misunderstood to mean that it can be done *ex parte*.

"In chambers" simply means that it is done in chambers, but not in the glare of the public (the opposite to that is in open court); but it does not mean that it must be done *ex parte*. But obviously that practice has developed over a period of time where it was construed and applied as an *ex parte* application.

In the end, Mr. Nairne was held in custody for some six days and five and a half hours.

Mr. Speaker, the period of detention, of course, is no fault of the RCIP. They were simply following the existing provisions in the Law. In the end, the court ruled that a detention period before the person was taken before the court was inconsistent with the requirement in the Constitution. In other words, the court had no problem with the initial period of detention, which was 72 hours. What the court frowned upon and ruled as unacceptable and inconsistent with the Bill of Rights was the second period of detention for 24 hours on the authorisation of a Chief Inspector of Police. The court said that second 24 hour period should have been done by a court.

In dealing with the matter, Mr. Speaker, the Grand Court adopted the following approach: It considered a number of questions. One was: Was the applicant's detention unlawful? That was the question the court posed. The second the court asked itself was whether section 65 of the Police Law or any material part of it is in conflict with the Bill of Rights provision in the Constitution. And the court also asked itself whether, if section 65 of the Police Law is unlawful, can that provision be read and given effect in a way that makes it compatible with the Bill of Rights, or whether a declaration of incompatibility had to be made.

After careful consideration of all the circumstances the court ruled that any application to the Magistrates Court for further detention must first of all be made in the person's presence. In other words, the person who is in detention must be taken to the court and be physically present when the application is being made. And, therefore, any application, as in case of Mr. Nairne, that was made *ex parte* was unlawful.

The court, in this instance, in my view, basically clarified the position because it was always meant that it would be in the presence of the defendant, as I said. It says "in chambers"; the Law did not say "*ex parte*." But it was being dealt with in an *ex parte* fashion.

The court also ruled, Mr. Speaker, that the first appearance before the court by a detained person some four days after his arrest is not considered as having been made promptly as required by section 5(5) of the Bill of Rights provision in the Constitution. And therefore, section 65(4) of the Police Law, which allows us this further detention of 24 hours on the authorisation of a Chief Inspector or above (after an initial period of 72 hours) was incompatible with the Bill of Rights.

Mr. Speaker, in the United Kingdom, as in the Cayman Islands, a court can make a declaration of incompatibility as it relates to primary legislation. However, the court does not have the power to strike down the legislation. The court does not have the power to amend the legislation which simply makes a declaration of incompatibility. And it is up to the legislature to make the necessary amendment to the Law, which, as a matter of course, is expected to happen for the purpose of good administration as well as ensuring that the Law is obeyed and followed.

In the UK Ministers have the power to make what is called remedial orders, which would act as a sort of interim amendment to the law until parliament can meet to amend or approve an amendment. Our Constitution does not have any such provision, so there is no ability for an interim order. It therefore falls on the Legislative Assembly to amend the Law to address the incompatibility that has been declared by the court.

So, Mr. Speaker, the Bill before this House seeks, amongst other things, to repeal section 65(4) and, with it, the ability to remand the person for 24 hours more after the initial 72 hours without a court order. Indeed, what the Bill is seeking to do overall is to change the initial period of detention after arrest from 72 hours down to 48 hours, and thereafter a person can be detained on authorisation of the court for a further period not exceeding 72 hours.

It also provides that this is only possible after an officer of the rank of Superintendent or above (and I intend to bring a committee stage amendment to say "Chief Inspector and above") determines that a further period of detention is necessary to, among other things, preserve or collect evidence.

Mr. Speaker, the Bill also clarifies that a detained person must be taken before the court and be allowed to make submission as to why he should not be further detained.

Finally, Mr. Speaker, the Bill seeks to address some other matters. It provides, for example, that a custody officer must make a determination at the beginning of each shift regarding the progress of an ongoing investigation of a person who is in custody; and must make a determination on whether continued detention is justified. And must, of course, inform the detainee of the outcome of that determination. In the meanwhile, of course, in doing all of that, the detainee has the right to make representation about his contin-

ued detention and insist that it be recorded by the custody officer.

So the Bill, just for completeness, speaks about one other thing, that is, where a person is taken into custody or detention, for that matter, and is being taken to or from hospital, for example, for medical attention, any questioning by the police during that journey to and fro, or even if he is in the hospital, whilst he is being questioned and interviewed by the police, that period also counts as part of the detention period. It is calculated as part of the detention period. So that's to clarify the thing as well because you might have instances where a person might very well be in the hospital and the police can't ask any questions or do anything, can't conduct an investigation because the person is incapacitated and so, in which case that period would not count.

So, the Bill in its purest form is a very simple Bill. It seeks to address the weaknesses identified by the Grand Court ruling in section 65 of the Police Law. I therefore commend the Bill to honourable Members of this House. Thank you.

The Deputy Speaker: Does any other Member wish to speak?

Honourable Member for North Side.

Mr. D. Ezzard Miller: Thank you, Mr. Speaker.

Mr. Speaker, I support the Bill as I always try to do when it comes to providing the Police and the Director of Public Prosecutions with tools, resources and laws to counter crime. However, Mr. Speaker, there comes a point in time when one has to question some competencies around here someplace, because almost every time you pick up the newspaper there is some story about the Director of Public Prosecutions or the judge throwing out some case because of some act, or lack thereof, by the police investigating officer, the person preparing the file to present to the court, and crime continues to increase.

This Parliament, certainly, for the last four years that I've been here, has amended every law that I can think about in order to, we all hope, or certainly I did, make the police more effective in combating crime.

In my community, of course, we do not have any police, we're not likely to get any police, and nobody wants to give us any police. So, we don't have any chance. And, Mr. Speaker, sometimes it borders on . . . I'm trying to be careful here in choosing my words, but it is ridiculous. I've tried to assist the police by writing letters as a representative from the community to express the concern of the community of the repeated burglaries and break-ins by the same people.

And you get people who have . . . several cases have been convicted several times for burglary and we get some new magistrate and somehow, between them and the person who is presenting the file

or something, the person winds up with community service. And certainly, Mr. Speaker, that cannot be seen as a deterrent to crime. And we need to at least have the belief in our own convictions that what we are doing here is helping.

All that the Honourable Attorney General has said this morning about the court decision gives me no comfort in the competence of the people doing this stuff, because, certainly, they should have known what the Bill of Rights and what the Constitution says and we should not have to amend the Law now to protect them from this kind of ruling. I don't know how it is going to work, but I am a little concerned about reducing the period from 72 hours to 48 hours on the weekend. Are the courts going to meet on the weekend to continue the detention for somebody who was arrested six o'clock Friday evening?

Mr. V. Arden McLean: Absolutely! They'd better.

Mr. D. Ezzard Miller: Or is that going to be another case that, *Well, somebody forgot to do something and we could not find the relevant judge or magistrate because they were up in Rum Point or they were in Cayman Brac or Little Cayman or off the Island on some vacation* and we get another ruling?

Mr. Speaker, while I support the legislation I would ask the Government to have a look at what's happening in the Office of the Director of Public Prosecutions and in the Police, and somehow try to give the public the assurance that it is not a situation of incompetence that is causing these problems, and why people are not getting the maximum penalty for these crimes that the legislation provides.

So, Mr. Speaker, while I am going to support the Bill, I have some serious concerns that almost every time we meet we are amending some police law or penal code law or something else to help the police and my community has no police and the criminals are running wild. So, thank you, Mr. Speaker.

The Deputy Speaker: Does any other Member wish to speak?

Member for East End.

Mr. V. Arden McLean: Thank you, Mr. Speaker. I could not afford to let this one pass.

Mr. D. Ezzard Miller: *Unna* forgot that *unna* won't prosecute [Archbold], and he comes down here and commits perjury. Wouldn't even answer me on that one.

Mr. V. Arden McLean: Mr. Speaker, I am going to take a different approach than my good friend from North Side.

Mr. Speaker, with the amount of abilities that we have in this country, and the amount of abilities, with the exception of me, that we have in this Parlia-

ment, and in the Judiciary and in the Chambers of the Attorney General and in the Legal Drafting Department, we missed it all. How do we do that?

As much ability as the Premier has . . .

Mr. D. Ezzard Miller: He's in charge of police now nah? I forgot that.

Mr. V. Arden McLean: The Cayman Islands Constitution Order 2009 made on the 10th day of June 2009—please take note of the year—laid before Parliament (that is England) 17th day of June 2009, and enacted, coming into force here, on the 8th day of November 2009. And we are here today [with a Bill] called “A Bill for a Law to amend the Police Law, 2010.”

Watch the years.

[Inaudible interjection]

Mr. V. Arden McLean: The court has found it to be incompatible with the rights of the people of this country. True.

Mr. Speaker, the Constitution says that the courts cannot strike down anything that parliament makes, but it can make recommendations like they just did. It can rule that it is incompatible with the rights of the people of this country. And with all of this ability we have in this country . . . the Constitution was enacted, came in force in November 2009, and by 2010 we are making laws that are incompatible with the Constitution.

[Inaudible interjection]

Mr. V. Arden McLean: No, Mr. [Speaker] I am not blaming the Premier. This is one time I can't put any blame on his shoulders.

[Laughter]

Mr. V. Arden McLean: I am just merely saying that, really, when we did the Constitution he was the one who was, on behalf of the Government, heading it up, as you well know, Mr. Speaker. He sat in the Opposition—and I am talking about that competence—and we didn't see it. And I don't care what you all say about these things are sometimes overlooked. We don't respect the laws of this country and the rights of our people.

Mr. Speaker, when this Police Law was coming into place, fortunately or unfortunately, I recall I was off island because my sister was sick. And when I came back I went to the last meeting they had in there, and, whilst I don't see it in the Minutes, I raised this same question on more than one occasion. How are we going to detain people for so long and not lay any charges on them? Of course, non-lawyer me did not understand the consequences of it. But here we are today.

Mr. Speaker, how many times have I stood on this floor since November 2009 and questioned whether or not . . . and, Mr. Speaker, I want you to know that the Premier and I stood on this floor many, many, many times since 2009 and questioned the UDP Government concerning confirmative with the Constitution and the Bill of Rights—that same Premier now. We have even submitted questions. The Premier! I ain't blaming him, I'm saying, Mr. Speaker, we have brought it to the attention of those who need to change the laws.

Mr. Speaker, I am going to question some of it under existing laws in the new Constitution; section 5—[Existing Laws]—(1).

Mr. D. Ezzard Miller: Every time you turn around they are bringing in a QC to do this and a QC to do that and they still lose—

Mr. V. Arden McLean: It says: “ (1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

“(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for brining that law into conformity with the Constitution or otherwise for giving effect to the Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.”

Somebody needs to tell me what that means.

[Inaudible interjection]

Mr. V. Arden McLean: You will? Thank God you will because you haven't been doing it.

[Inaudible interjection]

Mr. V. Arden McLean: You have not told us what it meant, but I have questioned it over and over and over and over and over about the laws of this country, right here. And we constantly hear that—

Mr. D. Ezzard Miller: ‘We're dealing with it.’

Mr. V. Arden McLean: Mr. Speaker, a simple example: the Premier and I . . . and what he got, lands nah?

The Deputy Speaker: Minister.

Mr. V. Arden McLean: The Minister of Lands. Your good self and the Deputy Premier have questioned in here—in particular, the Premier—about the phrase or

the nomenclature of “Governor in Cabinet.” We questioned it for four years and nothing was done. As soon as the Premier gets in there, now we say “Cabinet.” And at the time we were questioning it . . . I don’t know if it is because of which Government is in power. At the time we were questioning it the Premier in particular—

Hon. W. McKeeva Bush, Leader of the Opposition: That’s not what it was.

Mr. V. Arden McLean: It was because of you, yes.

[Laughter]

Hon. W. McKeeva Bush, Leader of the Opposition: No, it was because we loved the Governor so much.

Mr. V. Arden McLean: Oh, you loved him. Okay. Well go Argentina with him now.

Mr. D. Ezzard Miller: Mexico.

Mr. V. Arden McLean: Mexico or wherever. Watch out for the bullets down there though.

Hon. W. McKeeva Bush, Leader of the Opposition: We love the system.

Mr. V. Arden McLean: Don’t worry. That’s a good place for all of us.

[Laughter]

Mr. V. Arden McLean: And the Premier, we questioned it so many times and they told us, *Oh, well, that is what it means.* I recall the Leader of the Opposition getting up in here and chastising us—

Hon. W. McKeeva Bush, Leader of the Opposition: No, no, no.

Mr. V. Arden McLean: —for bringing it. The records will reflect. And [it was] the Attorney General too; not you alone, don’t worry about that. I ain’t going to get on top of your back too much.

Hon. W. McKeeva Bush, Leader of the Opposition: Well, you can go ahead. I don’t care.

The Premier, Hon. Alden McLaughlin: Relevance.

Mr. V. Arden McLean: You can holler ‘relevance’ as much as you want; ‘bout relevance. I know you couldn’t behave yourself, you know.

[Laughter]

Mr. V. Arden McLean: Mr. Speaker . . . and the Premier gets in there and he changes it. We are here today . . . and the relevance is that we are not touching the laws that are necessary to do this. And we hope the court says, *Okay, don’t worry about it; we are going to read it as if it was changed.* We are five years on with a new constitution and no one has done anything about it! Or somebody needs to show me what they did because I haven’t seen anything come here to change them.

There are consequential changes to all of our laws, and when we question it we get a slap on the wrist and are told to sit down.

Mr. D. Ezzard Miller: *You’re not lawyers, sit down.* That is what they tell—

Mr. V. Arden McLean: And here we are, making laws after the fact, which are incompatible with the Bill of Rights! Or, as it is ruled by the court. The Court can be wrong too. But at least they are the ones who have to rule on it.

And then, Mr. Speaker, you hear about them ruling on it. Mind you, I am no lawyer. The Premier brags that he has nine of them out there.

Mr. D. Ezzard Miller: No wonder they can’t get anything for them.

Mr. V. Arden McLean: No wonder they can’t get anything done.

Mr. Speaker, section 27(1) says, under “Remedies”: **“In relation to any decision or act of a public official which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.”**

I wonder how this confirms with what just happened now. Is it only if you beat somebody over the head?

But a decision has been made. Who is to blame for that officer making that decision? It is us. And it is us who must ensure that the laws conform with the Constitution. And we still put it in place after the fact. And it is not an operational decision; it’s a policy decision. The policy was born here and we allowed it to happen.

And we like to say that people like me do not know what we are talking about. Absolutely! But that is why we have “supposedly” lawyers and advisers.

Mr. D. Ezzard Miller: They don’t read the bill.

Mr. V. Arden McLean: They lead us down the path and all we can ever hear is that this is the way it is done in England. We are unique to ourselves. England does it because of terrorism. They have to put it in place. The police are not supposed to wear guns in this country, but I just came from England and I had to

dodge M-16s. They are knocking you down with them in the airport. But we're not supposed to do it. Why? Because we are different.

You see that duck out there about 'relevance'? You waddle like a duck, look like a duck, you *ga* be a duck.

Mr. Speaker, my relevance is . . . you know people hate the truth. I'm not trying to blame . . . the Minister of Finance, he looks like a pig. You know, when you throw a rock and it hits something and somebody squeals. I'm not trying to blame him. I am saying what is this Government going to do now, or the Attorney General Chambers? He is responsible to ensure that all of our laws conform to the Constitution and the Bill of Rights.

[Inaudible interjections]

Mr. V. Arden McLean: Mr. Speaker, I know the Attorney General will respond. I hope he answers some of these questions because it is necessary for us to ensure that we do not have the courts full of people having to go to challenge these things.

Now, one of the things in this amendment, Mr. Speaker, is that the custody officer needs to make the suspect know and log what he has informed him. Now, Mr. Speaker, I recall this Parliament, Finance Committee, giving the police money for video evidence, taking evidence by video so that it can protect the police and protect the perpetrator, the accused, as well. Are we going to employ that here? Will that be employed to ensure . . .

You see, you're not listening, you'd better listen because you have to respond. And if you do not respond you are going to take the licks for it.

[Laughter]

Mr. D. Ezzard Miller: They don't pay us any mind at any time.

Mr. V. Arden McLean: They don't pay us any mind. That is the problem here, and no respect.

Mr. D. Ezzard Miller: They're on their Blackberries, they are doing this and they are doing that.

[Inaudible interjection]

Mr. V. Arden McLean: That's unfair? What you're doing is unfair.

[Inaudible interjection]

Mr. V. Arden McLean: It's difficult, what? It's difficult not to hear me! But he asked me what I said. We need to invest in a pair of hearing aids then.

Mr. Speaker, what I am asking the Attorney General to respond to is: Now that we have this situa-

tion where everybody knows that if your rights are encroached by the police, you may very well get off by appealing to the court. We have given the police force monies to take evidence through video by physically recording evidence taken. Will that be employed? Because the first thing the accused is going to say is, *They did not tell me, or didn't inform me, of it.* It is important because once we touch one of these things it escalates and this is all operational. You cannot afford to have the custody officer not dotting the 'i's and crossing the 't's because we are going to be here again amending this law.

It's all about operational policies and procedures and how they need to go about it to prevent this.

Mr. Speaker, I heard the Attorney General talk about if someone is in the hospital all that time would be counted. The provisions are here. I want to know if this means that we will get the magistrates out on weekends to go to the hospital. I hope so. Because that is the last thing that needs to happen, if you arrest that person and on the way to the police station he goes to the hospital and they have to keep him there and it is over the weekend that the 48 hours come due—

Mr. D. Ezzard Miller: And why you reducing it?

Mr. V. Arden McLean: —and he needs to . . . his application has to be made in front of a judge or a magistrate and a magistrate is not available. You need to leave him in the hospital unconscious, or the infirmary and release him.

Mr. Speaker, it is very important that we cover all of our bases now. I hope that is the case, and I am sure the Attorney General will do that. But he needs to also answer us and tell us what progress has been made on the amendment to the laws to conform with this Constitution.

Thank you, Mr. Speaker.

The Deputy Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause].

I now call on the mover of the Bill to exercise his right of reply.

I acknowledge the Honourable Premier.

The Premier, Hon. Aiden McLaughlin: Mr. Speaker, I just wish to say a few words, particularly given the long lament of my colleague for East End.

Mr. Speaker, the Constitution itself, I believe, is working precisely as we envisaged it would in this respect. We had long discussions about what the effect of a finding by the court of unconstitutionality with respect to any legislation would be. And in some jurisdictions the court has the ability to strike down the offending piece of legislation or at least to strike out the offending provision.

We felt collectively that the ultimate authority for making legislation should remain with the Legislative Assembly of these Islands. Therefore, the provision simply provides for the court to be able to declare a particular bit of legislation to be incompatible (section 23 of the Constitution).

In all countries that have a system of laws and a constitution, challenges to the constitutionality of legislation are very common. It is common in the United Kingdom that does not have a written constitution. It's even more common in places like the United States where there is one. So, I wish I could offer the Member for East End some comfort in saying that going through our legislation with a fine-tooth comb and trying to determine what parts of it are compliant with the Constitution and not, and having completed that exercise, that that would resolve forever any of these issues. The reality is that as long as the United States Constitution has been around, there are still challenges to the constitutionality of laws.

[Inaudible interjections]

The Premier, Hon. Alden McLaughlin: So, I don't think it is fair, really, to blame the Attorney General, or the Solicitor General, or the legal drafts people for not having made every piece of legislation compliant with the Constitution. And, as I pointed out when the particular law in question was actually passed in 2010, I was sitting on the same side with the Member for East End. We all sat here and debated the legislation, and, ultimately, the bill that was passed was a bill passed by the whole House, though proposed by the Government.

I think we have to acknowledge that we have now a written constitution with a Bill of Rights. And the Bill of Rights affords anyone who is unhappy or who contends that their rights—in this case, the right to liberty—is being infringed upon or impinged upon, the right to challenge it. And in this case the challenge was upheld and a declaration of incompatibility has been made by the court. It is now the duty of this legislature to take the necessary steps, which is the process that the Constitution envisages, and that is what we are doing.

So, I don't think that it really is fair to complain bitterly about legislation not being compliant and we ought to have known. I suspect that as long as the Constitution exists, from time to time there are going to be these sorts of challenges made in the court and there will be, on occasions, findings of incompatibility. And the House, comprised of whoever happens to be around at that time, will find itself in this situation where they have to take necessary steps to bring the legislation into accord with what the court has declared ought to be the constitutional position with respect to this matter.

Now, Mr. Speaker, the point raised by both Members who spoke: the Member for North Side as

well as the Member for East End, about the period of detention being proposed to be reduced from 72 hours, in the first instance, to 48, is also one that raised a question with me. The reason why it is now proposed to come down from 72 to 48 hours with respect to detention in the first instance without a court order is because the period in similar circumstances in most other countries is actually 24 hours. In the UK it is certainly 24 hours. So, even going as high as 48 hours is perhaps pushing the envelope somewhat. But the advice that we have is that this is adequate but just.

The concerns about whether or not we will have a duty prosecutor and a duty magistrate on duty are well founded concerns and those issues are being addressed from an administrative standpoint because we do not want people to be able to complain that their constitutional rights have been breached because they have been kept beyond the allowable time.

So, Mr. Speaker, I think that all Members of this House, and perhaps the wider public, have to come to an appreciation that things are not as they once were, and that Cayman, as a first world country, has got to have a system for the administration of justice which accords with international standards, and that includes the detention, how we manage arrest and detention of prisoners. We already know that we have some major challenges with respect to long-term detention. We have major problems with respect to what we are able to offer in our prison. This Government understands, accepts, those challenges, and is working as fast as we can to address them.

The short-term detention centre is just about ready. We know that for years and years that the cells at the George Town Police Station and the one at the West Bay Police Station have been condemned. We have been forced to use them. It is simply not permissible, and is simply not allowable, for us to continue with the use of those kinds of facilities. And we do understand that if we do not address them we will have increasing challenges on the basis of treatment under the Bill of Rights.

What we are doing here today in the House, Mr. Speaker, is an acknowledgement by all of us that we have to bring our systems (plural) into compliance with generally acceptable international standards, and that is what this Bill, at its core, is seeking to do.

Thank you, Mr. Speaker.

The Deputy Speaker: Does any other Member wish to speak?

Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: Mr. Speaker—

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition:

I think I should leave the Premier alone. I thought he accounted for himself pretty good.

It is those persons, Mr. Speaker, who caused me to get up that I should beat.

Mr. V. Arden McLean: Who that is?

Hon. W. McKeeva Bush, Leader of the Opposition:

But that is not what we are here for, Mr. Speaker.

The Deputy Speaker: That's good.

Hon. W. McKeeva Bush, Leader of the Opposition:

Mr. Speaker, gone should be the days when one gets up and makes all kinds of noise and accusations of people not doing their jobs without being able to account themselves fully except to blame.

[Inaudible interjections]

Hon. W. McKeeva Bush, Leader of the Opposition:

You heard . . . I like the bantering between the Premier and his long lost supporter.

Mr. V. Arden McLean: [INAUDIBLE]

[Laughter]

Hon. W. McKeeva Bush, Leader of the Opposition:

At least you found God.

Mr. V. Arden McLean: And Alden and Kurt [INAUDIBLE].

[Laughter]

Hon. W. McKeeva Bush, Leader of the Opposition:

Mr. Speaker, you heard the Premier—

Hon. D. Kurt Tibbetts: He won't blame me for creating it though. You created it.

Hon. W. McKeeva Bush, Leader of the Opposition:—just said

Mr. V. Arden McLean: I stopped him [INAUDIBLE]

Hon. W. McKeeva Bush, Leader of the Opposition:

You heard the Premier say that not all laws will be entirely compliant with the Constitution for various reasons. And so, Mr. Speaker, the Member who raised this matter and was pointing the fingers this morning in regard to this piece of legislation, ought to understand because he sat in Cabinet for a period, that you listen to your legal advice that sits in Cabinet; the Government's advisor.

[Inaudible interjections]

Hon. W. McKeeva Bush, Leader of the Opposition:

So, Mr. Speaker, when we get advice, and if I have reason to doubt, well I would check it with somebody else. I am not going to stand here to point any fingers. As far as I am concerned this is not a great issue. Why should it be? Unless someone gets up and deliberately tries to make it an issue, it is no issue.

Mr. V. Arden McLean: It is an issue.

Hon. W. McKeeva Bush, Leader of the Opposition:

It is no issue.

What counts with me, Mr. Speaker, is not that we say "Governor-in-Cabinet". So what if we say that? What counts with me is the almighty power that was given to the Governor by this Constitution, by the way, which I did not support! That is what concerns me. Not that we say on the paper "Governor-in-Cabinet." No!

In this day and age we should be concerned about the kind of power that the Constitution gives the Governor that we as elected Members now have to come and report to him but he does not report to anybody. That is what we should be concerned about.

Don't wave at me!

[Laughter]

Hon. W. McKeeva Bush, Leader of the Opposition:

Unna sat there and gave it to him in Lancaster House. I didn't give it to him.

Mr. V. Arden McLean: I wasn't there with *unna*. You carried Ellio.

[Laughter]

The Deputy Speaker: Order.

Hon. W. McKeeva Bush, Leader of the Opposition:

Ellio Solomon didn't vote for it. Don't bring him into this. That man is not here to defend himself.

So, Mr. Speaker . . . Mr. Speaker—

Hon. D. Kurt Tibbetts: Despite your best efforts.

Hon. W. McKeeva Bush, Leader of the Opposition:

The Constitution is what it is. We have it and we are constantly going to find ways and means that we have to work our way around it because no one is infallible. Understand that!

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition:

I know. I can talk in peace now.

[Laughter]

Hon. W. McKeeva Bush, Leader of the Opposition: Nobody is infallible. And I think when it comes . . . because I am no lawyer and the people did not elect McKeeva Bush because he was a lawyer or because I said I know laws. They did not elect me for that. They elected me to try to do some good for them. I follow the advice of the legal people.

So, Mr. Speaker, it is unfortunate that I had to rise—

[Inaudible interjection and laughter]

Hon. W. McKeeva Bush, Leader of the Opposition:—but I would not sit any longer and get fingers pointed at, because really the truth is, it is time that it stops.

The Deputy Speaker: True.

Hon. W. McKeeva Bush, Leader of the Opposition: It is time that that stops. And my good friend from East End ought to understand that there are many situations that this Member . . . because I am not nine years old. I turned 59 last week, Monday. Fifty-nine! And I have a lot of history. In fact, this year is 30 years and five months that I have been in here and so I know the history. I know the laws. I can go back.

You, Mr. Speaker, quite understand because you've been here the next longest, you and the Minister of Planning.

We understand.

You're pointing your finger? You'd better go back and sit in your seat and see what you've done.

Thank you, Mr. Speaker.

The Deputy Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause]

I will now call on the mover of the Bill to exercise his right of reply.

Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Mr. Speaker. I never thought that the Bill would have evoked such passionate and robust debate. But, as the Honourable Premier pointed out, what has happened is that the Constitution is working. It is working for the people we intended to serve and we will have many, many more of these debates.

Without repeating anything, I can also say that I am unable to give any comfort to the honourable Member for East End that we won't have more challenges in court. That is what it is all about. Persons go to court and they look at every [piece of] legislation and try to pick holes in it, all in trying to be acquitted or win points, or so. That is what lawyers do. That is why the court is there.

There are countries that have a constitution as far back as 1960, '58, '62, and their legislation is still being challenged today. We recall the flurry of ac-

tivities in the UK in 2008, 2009, 2010 when the Counter-terrorism Law extended the date from up to 42 days. They have a 1998 Human Rights Act which came into effect in 2000, and until this day, as we speak, there are still challenges to UK legislation going all the way to the European Court of Human Rights.

In this particular case, I can say to the Member that, although the Constitution says that a person who is arrested and detained and is not charged must be brought before a court promptly, the judges from the European Court of Human Rights or the Privy Council anywhere, have studiously stayed away from defining how many days should be regarded as prompt. They have not set a date and said four days is prompt, three days is prompt. They have not done that, because the jurisprudence is evolving as we go along. And what is considered prompt today might be ruled otherwise another 10 years from now. Or, what might be considered a delay today, the court, in another 5, 6, 10 years might say, *Listen, 25, 30 days is reasonable in the circumstances*. So, the jurisprudence is evolving and we will always learn.

There is no need to panic. The Constitution was designed to serve the people and the challenge before the court is just one other way of ensuring that it works. The challenges are not confined to matters of liberty. They are confined to matters of environment; they are confined to other matters. And so, the system is working and we should all encourage the sort of healthy democracy.

Mr. Speaker, the Member asked whether there were going to be challenges to the issue of the video link evidence as well. I will speak to that when I touch on that Bill (which is the next one down on the Order Paper).

We heard the Honourable Premier confirm that there will be administrative arrangements for duty prosecutors, duty judges, and JPs to deal with incidents where the 48 hours expire on weekends or public holidays, for that matter. That is something that the court does now anyhow, if there is a necessity for a judge or prosecutor to be available to deal with matters of emergency. So, that won't really cause any serious issue with us. But the fact is that the declaration has been made and we are required, as a parliament, to address the concerns that have been flagged by the court.

So, I certainly thank Members for their contribution to the Bill and commend it to this House. Thank you.

The Deputy Speaker: The question is that a Bill shortly entitled The Police (Amendment) Bill, 2014, be given a second reading.

All those in favour, please say Aye. Those against, No.

Ayes.

The Deputy Speaker: The Ayes have it.

The Premier, Hon. Alden McLaughlin: Mr. Speaker, could we have a division please?

The Deputy Speaker: Madam Clerk.

[Inaudible interjections and laughter]

The Clerk:

Division No. 10

Ayes: 14

Hon. Alden McLaughlin
Hon. D. Kurt Tibbetts
Hon. Osbourne V. Bodden
Hon. G. Wayne Panton
Hon. Marco S. Archer
Hon. Tara A. Rivers
Mr. Winston C. Connolly, Jr.
Mr. Roy M. McTaggart
Mr. Joseph X. Hew
Mr. Alva H. Suckoo, Jr.
Hon. W. McKeever Bush
Mr. Bernie A. Bush
Capt. A. Eugene Ebanks
Mr. V. Arden McLean

Noes: 0

Absent: 2

Hon. Moses I. Kirkconnell
Mr. D. Ezzard Miller

The Deputy Speaker: The result of the division is 14 Ayes; 2 absent; and 0 Noes.

**AGREED: THE POLICE (AMENDMENT) BILL, 2014,
GIVEN A SECOND READING.**

BILL

SECOND READING

CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2013

The Clerk: The Criminal Procedure Code (Amendment) Bill, 2013.

The Deputy Speaker: I now call on the Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Mr. Speaker.

Mr. Speaker, I beg to move the Second Reading of a Bill entitled, A Bill for a Law to amend the Criminal Procedure Code (2013 Revision) to make provision for teleconferencing for purposes of mention and remand; and for incidental and connected purposes.

The Deputy Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Mr. Speaker. Thank you very much.

Mr. Speaker, by way of background, the Criminal Procedure Code, section 60, recognises the right of a person charged with a criminal offence to be present for all proceedings relating to that offence. However, the Law also gives the court power to order that the person may appear before the court by way of video link.

The judicial department and others have observed that as presently worded the section of the Criminal Procedure Code is not wide enough to meet the intended purpose and it has been accepted that the law actually requires the court to make a case by case analysis of every single case before it can make an order about whether or not the video link can be used.

Accordingly, the Government has been requested to take a further look at it, and certain stakeholders, including the Judiciary, the Prison Department, the Ministry of Home Affairs, the Attorney General Chambers, the Office of the DPP and the RCIP have all taken a look and agreed, Mr. Speaker, that it is necessary, or desirable, for that matter, to amend the Criminal Procedure Code to further facilitate the courts having wider powers to conduct video link remand.

Mr. Speaker, the ability of the court to conduct remand via video link would be, among other things, a very cost efficient sort of initiative for the administration of justice. It would immediately, for example, reduce the number of remand prisoners who have to be transported from HM Northward to George Town on a weekly basis. It would prove to be a big security initiative in that far less high risk prisoners would need to be physically transported to court for remand hearing and in circumstances where sometimes hearings last for less than five minutes before the court. It would also allow, Mr. Speaker, for a larger number of prison officers to remain at Northward instead of having to accompany prisoners to George Town and often having to remain there for the greater part of the day as long as the court is sitting.

But, Mr. Speaker, the proposed amendment therefore would give the court wider discretion to direct that video link remand be made more routinely instead of having to conduct a case by case analysis in order to make that determination. Of course, Mr. Speaker, the court still retains the jurisdiction to require the physical presence of the accused person where the court considers it necessary; including where there is a request by the accused and the court can see that in the interest of justice it is necessary to do so.

Just for comparative purposes, Mr. Speaker, we have looked at other relevant legislation in places like Western Australia, for example, where the Criminal Procedure Code provides that when the accused appears before the court by means of video link or audio link, the court may, in relation to the charge, exercise any power in the Act and comply with the Bail Act as if the accused person was personally present before the court. Mr. Speaker, we found another similar provision in Ontario, Canada.

The Bill provides in a new section 60A(1) of the CPC which reads: **“Where an accused in custody or detention, whether in relation to the charge before the court or not, is required to appear before a court for purposes of mention and remand, the court shall, if there is a television link or other similar means referred to in section 60(2)(b) between the place of custody or detention and the court, conduct the proceedings by live television link unless – (a) the court, on its own motion, determines that attendance in person is otherwise necessary in the interests of justice; or (b) the court, upon the request of the accused, determines that attendance is otherwise necessary in the interests of justice.”**

So, Mr. Speaker, the simple proposal is that the court be given wider discretion to conduct video link remand and mention, instead of having to truck large numbers of detainees to George Town on a daily basis for the court to say, sometimes in less than five minutes, *Please come back to court next week or come back to court in another two weeks* and so on. So, hopefully the Bill will resonate with honourable Members and they will give it their support.

There are certainly, no human rights concerns as far as the Bill is concerned, as far as we are aware because it provides that the accused person and his attorney will be able to simultaneously participate in the proceedings whilst the court is conducting the proceedings.

[Inaudible interjection]

The Attorney General, Hon. Samuel W. Bulgin: Certainly, it applies to persons on remand who need to be remanded by the court. Whilst not exactly the same thing, this is mutually exclusive to what is being proposed here in this Bill. But the whole purpose of all of this is to improve efficiency and save cost in the administration of justice without in any way doing violence to anybody’s civil liberty. I certainly commend the Bill.

As I said, we can’t predict just about every outcome. We have had the European Convention of Human Rights since after World War II and there are still countries that are being found not in compliance with that Convention, because it is an evolving process and as thinking changes, circumstances change, all sorts of things change, the court takes a different

view and so what is compatible today might not be compatible next week or what might become compatible next week might not become compatible ten years from now. So, we just have to try and do the best we can to remain contemporary.

Thank you. I commend the Bill to honourable Members.

The Deputy Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause].

I now call on the Honourable mover to exercise his right of reply.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Mr. Speaker.

Just to add that in the context of the video link evidence there is a facility for the attorney and his client to also have private conference, and so on, whilst the court is in session. We have tried to put all the necessary safeguards in place to preserve civil liberties. I certainly do thank Members of the House for their support. Thank you.

The Speaker: The question is that a Bill shortly entitled The Criminal Procedure Code (Amendment) Bill, 2013, be given a second reading.

All those in favour, please say Aye. Those against, No.

Ayes.

The Deputy Speaker: The Ayes have it.

AGREED: THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2013, GIVEN A SECOND READING.

The Deputy Speaker: I now call on the Honourable Premier.

ADJOURNMENT

The Premier, Hon. Alden McLaughlin: Thank you, Mr. Speaker.

Mr. Speaker, I should advise Members of the House that Madam Speaker, Mrs. Juliana O’Connor-Connolly is ill with bronchitis and so she is not here today. And to also advise Members that Honourable Deputy Speaker and a number of the other Bodden Town Members have a funeral service which they have to participate in this afternoon. We will be without a Speaker, and so I am going to move the adjournment of the House until ten o’clock tomorrow morning.

The Government intends to proceed with the rest of Government Business, which is The Standards in Public Life Bill and a number of Government Motions tomorrow, very cognisant of the fact that Thurs-

day is Private Members' Motions day. But the Government needs to get through this business.

I have to leave for the UK on Friday evening and I wish to ensure that the Government Business is dealt with prior to my departure. And so, if there is business still outstanding on Friday (that is, the Private Members' Motions), we will simply adjourn the House until I am able to return and we will deal with those then.

So, Mr. Speaker, I move the adjournment of this honourable House until ten o'clock tomorrow morning.

The Deputy Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition:

Mr. Speaker, I quite understand that the numbers will be down, but I also understand that other people will be away as well that would want to participate between now and Friday. And we should have sufficient numbers unless everybody is going to the funeral. If that is so, somebody else can sit in the Chair. We do have quite a bit of business that we would want to deal with unless Members do not want to deal with it and are not going to deal with it until after Friday. But that means some Members then might not be able to get to deal with the business either.

[Inaudible interjection]

The Deputy Speaker: The question is that this honourable House do stand adjourn until 10:00 am, Thursday, 30 January.

All those in favour, please say Aye. Those against, No.

Ayes.

The Deputy Speaker: The Ayes have it.

AT 12:38 PM THE HOUSE STOOD ADJOURNED UNTIL 10:00 AM, THURSDAY, 30 JANUARY 2014.

