



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2015/16 SESSION

29 April 2016

Third Sitting of the Fifth Meeting

**Hon Juliana Y O'Connor-Connolly, JP, MLA,
Speaker**

Disclaimer: The electronic version of the *Official Hansard Report* is for informational purposes only. The printed version remains the official record.

PRESENT WERE:

SPEAKER

Hon Juliana Y O'Connor- Connolly, JP, MLA
Speaker of the Legislative Assembly

MINISTERS OF THE CABINET

Hon Alden McLaughlin, MBE, JP, MLA	<i>The 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 Marco S Archer, MLA	Minister of Finance and Economic Development
Hon Osbourne V Bodden, MLA	Minister of Health, Sports, Youth and Culture
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 Manderson, JP	Deputy Governor, ex officio Member responsible for the Civil Service
Hon Samuel W Bulgin, QC, JP	Attorney General, ex officio Member responsible for Legal Affairs

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Mr Roy McTaggart, MLA	Second Elected Member for George Town
Mr Joseph X Hew, MLA	Sixth Elected Member for George Town

OPPOSITION MEMBERS

Hon. W. McKeeva 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

Hon Anthony S Eden, OBE, MLA	<i>Deputy Speaker</i> , First Elected Member for Bodden Town
Mr Alva H Suckoo, MLA	Fourth Elected Member for Bodden Town
Mr Winston C Connolly, Jr., MLA	Fifth Elected Member for George Town
Mr D Ezzard Miller, MLA	Elected Member for North Side
Mr V Arden McLean, JP, MLA	Elected Member for East End

**OFFICIAL HANSARD REPORT
FIFTH MEETING OF THE
2015/16 SESSION
FRIDAY
29 APRIL 2016
10:34 AM
Third Sitting**

[Hon. Juliana Y. O'Connor-Connolly, Speaker, presiding]

The Speaker: Good morning.

I will call on the Sixth Elected Member for George Town to grace us with prayers this morning.

PRAYERS

Mr. Joseph X. Hew, Sixth Elected Member for George Town: Good morning. 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 Premier, the Speaker of the Legislative Assembly, the Leader of the Opposition, Ministers of the Cabinet, ex-officio Members 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.

The Speaker: Please be seated.

**ADMINISTRATION OF OATHS
OR AFFIRMATIONS**

The Speaker: None.

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

APOLOGIES

The Speaker: I have received apologies from the Honourable Leader of the Opposition.

PRESENTATION OF PETITIONS

The Speaker: None.

**PRESENTATION OF PAPERS
AND OF REPORTS**

The Speaker: None.

**QUESTIONS TO HONOURABLE
MINISTERS AND MEMBERS
OF THE CABINET**

**QUESTION NO. 45—CONDITIONAL RELEASE
LAW AND DEPARTMENT OF COMMUNITY
REHABILITATION**

The Speaker: The Elected Member for East End.

Mr. V. Arden McLean, Elected Member for East End: Good morning. Thank you, Madam Speaker.

Question 45, standing in my name is asked of the Honourable Premier, Minister of Home Affairs, Health and Culture: Can the Honourable Minister say if the Department of Community Rehabilitation has been fully resourced to carry out the requirements of the Conditional Release Law?

The Speaker: I recognise the Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, the answer: The Department of Community Rehabilitation (DCR) has a current staff complement

of 33 including a full time Probation Officer in Cayman Brac. The Director, DCR advised the Ministry of Home Affairs of the need for additional staffing to meet the growing demands for service, both for incarcerated offenders as well as those being supported and supervised in the community.

This was highlighted by the Chief Officer at the Strategic Budget Retreat held by the Ministry of Finance in October last year, where it was explained that additional staff are required in order for the DCR to effectively meet the existing needs and to enable them to respond to the increased demands for service that are anticipated, following the implementation of the Conditional Release Law and Regulations.

As a result, the DCR's personnel budget for upcoming budget year has been increased by half a million dollars which will enable them to increase their staff complement by four.

With the additional funding, two Caymanian Government Scholarship recipients currently completing their university studies in related fields will be hired as Probation Officer Graduates. This will bring the total number of probation officer graduates to seven. In addition, the DCR will hire a Deputy Director and a Senior Probation Officer through an open recruitment exercise.

The Speaker: If there are no supplementaries . . .
Elected Member for East End.

SUPPLEMENTARIES

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

I noticed (and this is just for clarity, really) that it didn't say that that would bring it up to full complement. Is this full complement or just what they believe they can work with?

The Speaker: Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, you know that old Rolling Stones song, *You can't always get what you want, but if you try sometimes you just might find you get what you need?* I think that's where we are at, because, like every other—and I mean this, every other—department in government, DCR are not satisfied that the numbers that they are funded to employ are adequate. But that is true whether it is the police or the prison or the fire service or HSA. It doesn't matter. So government always has to do its very best exercise in judgment while at the same time trying to ensure that the objectives and purposes of the various departments and units are able to be achieved. So that's where we are at.

If DCR is . . . this is not all that they would like, but they are satisfied, as we are, that this will allow them to be able to function and to actually implement the Conditional Release Law and Regulations.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller, Elected Member for North Side: Madam Speaker, I wonder if the Minister could tell us what is the estimated number of persons that are likely to be conditionally released from prison that these officers will have to add to their present workload?

The Speaker: Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, if I may have a moment to consult.

The Speaker: Certainly.

While he is consulting, may the record reflect that the Honourable First Elected Member for West Bay, Leader of the Opposition, is now present.

Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I am advised that its near impossible to be able to say in the longer term because there are different eligibility dates, depending on the sentence that has been imposed on prisoners. But over the course of this fiscal year there are two who will become eligible.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, isn't the Conditional Release Programme applicable to all prisoners and not just those who have life sentences? And we have 240 or something like that, in prison, and only two are going to be eligible . . . oh, you're talking about this month. Two months left in this financial year.

[Inaudible interjection]

The Speaker: Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, the confusion arises because the Conditional Release Law doesn't operate, as I understand it, retroactively. So it only applies to persons who were sentenced since the Law actually came into effect, except for lifers. It applies retrospectively for lifers. That's why the projected numbers are as small as they are.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, that was not the impression, I got, when the Law was being presented here.

But, Madam Speaker, the Minister says "In addition the DCR will hire a Deputy Director and Senior Probation Officer through an open recruitment ex-

ercise.” When you say “recruitment exercise” do you mean worldwide? Is there no succession planning there that these two people have been . . . people are being groomed for these positions from existing staff?

The Speaker: Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I am advised that it is expected that they should be able to fill the Deputy Director post from the existing staff complement. But the rules with respect to recruitment of the public service require that all these positions have to be advertised, although only locally.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, this is not really a question, but this is the problem I have with the civil service promoting succession planning and insisting . . . because I can't find this clause in the Public Service Management Law that requires open recruitment be on succession planning because it's oxymoronic if you have succession planning in an organisation, grooming individuals for higher positions and they meet the competencies but they have to compete with people from Timbuktu.

The Speaker: Member for North Side, can you please turn it into a question?

Mr. D. Ezzard Miller: Yes, Madam Speaker.

The question is why has the department not developed a succession plan that would allow these probation officers to be given the opportunity to acquire the competencies for senior director and senior promotion officer from existing staff, many of whom are academically qualified and have multiple years of experience in the department already?

The Speaker: Honourable Premier, I am sure you're cognisant that that is a section 55 of the Constitution question. You may so answer it if you wish, through consultation, or redirect, or not at all.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker. I am advised that they have had this experience and training. It is simply that the rules for recruitment for the public service require an open recruitment process, a competitive process. Whether I agree with that or not, it's not a rule I made.

The Speaker: Elected Member for East End.

Mr. V. Arden McLean: Madam Speaker, I am trying to clarify something with regard to whether or not the law applies retroactively. I'm wondering if the Minister is telling us that prisoners that were sentenced prior to

the enactment of the law, upon release, will not be monitored by this law.

The Speaker: Honourable Premier.

[Inaudible interjection]

The Speaker: Members, I think we can expedite the process. I've requested the Conditional Release Law so that I can get a copy for the Chair and this side as well. So I beg your indulgence . . . unless, of course, if there are other supplementaries not dealing with that.
Elected Member for North Side.

Mr. D. Ezzard Miller: This is completely out in left field, and you might rule me out of order, but I wonder—

The Speaker: Just keep it in the field.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I know I can do a lot of things, but I am trying to obtain the answer for the last question; I can't entertain another question while I'm doing that.

The Speaker: I think in fairness we ought to acquiesce to the request of the Premier so that he can give his full attention to the question on the floor.

[Pause]

The Speaker: Honourable Deputy Governor, would you be so kind as to direct the Chair to the provision dealing with non-retroactive? Thank you.

[Inaudible interjection]

The Speaker: Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, this is somewhat unconventional, but I would like to ask you, Ma'am, and the Member asking the question if we could defer this question until Monday, because there is something plainly wrong with the information I have been given.

The Speaker: By virtue of Standing Order 23(5) you may so defer.

[Inaudible interjections]

Mr. V. Arden McLean: I'm sorry, Madam Speaker, it's a supplementary. So maybe if he provides the information in writing that would be the only requirement of the Minister, unless he wants to correct what he said.

The Speaker: Member, it is also a course that you could take, but I was minded to follow the course that the Premier was going, mainly because it was of substance and importance and there was information on

the floor that needed to be corrected. And rather than put the Premier or his technocrats in that position at this time, I will follow this course.

I put the question that the supplementary which was asked of the Honourable Premier, in respect of Question No. 45, be deferred until another date.

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

AYES.

The Speaker: The Ayes have it.

Agreed: Supplementary question posed by the Elected Member for East End to Parliamentary Question No. 45, was deferred.

The Speaker: Member for North Side, did you have a follow up that was not relating to the issue at hand? I think you did just before we sent for the legislation.

Mr. D. Ezzard Miller: It could probably be called the thirty-first cousin. What I wanted to ask the Deputy Governor was if he would be willing to supply us with a copy of the policy that requires open recruitment in spite of succession planning.

The Speaker: Member for North Side, seeing that it's the Honourable Premier that the question is directed to, it is obviously completely discretionary, otherwise you have the alternative of submitting a substantive question.

Madam Clerk, next question.

QUESTION NO. 46—PRISON SERVICES, INVESTIGATION SURROUNDING CAMERA RECORDING

The Speaker: Elected Member for East End.

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

Question No. 46, standing in my name, is asked of the Honourable Deputy Governor, ex officio Member responsible for the Civil Service, and it reads: Can the Honourable ex officio Member say, what was the outcome of the recent investigation in the Prison Services surrounding the camera recording?

The Speaker: Honourable Deputy Governor.

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

The answer: On 14 April 2015, a Supervisor and a Junior Officer of HMCIPS were placed on Required Leave and Suspension respectively.

Following a thorough investigation into the matter, the Supervisor was dismissed for Gross Misconduct by the Chief Officer of the Ministry of Home

Affairs. It is expected that the disciplinary proceedings related to the conduct of the Junior Officer involved in this matter will be concluded by the end of May 2016.

Disciplinary proceedings were also instituted against a Senior Officer which resulted in her dismissal.

The decisions to dismiss have both been challenged and one is under Judicial Review and an appeal is pending for the other. I am therefore unable to comment further on these matters.

SUPPLEMENTARIES

The Speaker: Elected Member for East End.

Mr. V. Arden McLean: Madam Speaker, with all due respect to *sub judice*, I wonder if the Deputy Governor can tell us if there is any reconsideration of the reviews. Has there been any consideration of whether or not we challenge the review . . . we defend our position in the review?

The Speaker: Honourable Deputy Governor.

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

Both matters are proceeding and the civil service is defending its decisions, one in the court; and one through the appeals system.

The Speaker: If there are no more supplementaries, we will go to the next question.

QUESTION NO. 47—CAYMANIANS APPLYING FOR PRISON OFFICERS

The Speaker: The Elected Member for East End

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

Question No. 47, standing in my name is asked of the Honourable Deputy Governor: Can the Honourable ex officio Member say how many Caymanians applied during the last recruitment drive for prison officers, and how many were hired?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: As it pertains to the recruitment process to fill the 7 vacancies for Prison Officers at HMCIPS, a total of 457 applications were received, of which 64 were from Caymanians and 59 were from Permanent Residents.

Following a vigorous recruitment process, 7 applicants were selected to commence training from October 21, 2015 thru January 20, 2016. The group was comprised of 5 Caymanians, and 2 Permanent Residents. Six of the 7 recruits successfully completed the six-month training programme. One Caymanian male was unsuccessful.

In summary, of the 457 applicants, 64 were Caymanians and in the end, of the 6 persons hired, 4 were Caymanians and 2 were Permanent Residents.

SUPPLEMENTARIES

The Speaker: Elected Member for East End.

Mr. V. Arden McLean: Madam Speaker, may I ask if we are currently going through the recruitment process again?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Just one minute, Madam Speaker.

[Pause]

The Speaker: Honourable Deputy Governor.

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

We are not aware of any active recruitment going on at the moment.

The Speaker: Elected Member for East End.

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

Can the Deputy Governor commit to this House to inquire into whether or not, those who were shortlisted before, are currently being interviewed over the phone from overseas?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, could I ask the Member to please repeat? I don't understand what he's asking.

The Speaker: Elected Member for East End.

Mr. V. Arden McLean: Thank you.

Madam Speaker, what I am asking the Deputy Governor to do is asking him if he would commit to this honourable House to inquire into whether or not on the previous recruitment drive that some of those people are now being interviewed by telephone for further placement at Northward Prison.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I am happy to inquire into what the Member said and to respond accordingly. I have no knowledge of that, but I certainly can find out.

The Speaker: You're being quite generous, because he asked you to inquire.

[Inaudible interjection]

The Deputy Governor, Hon. Franz I. Manderson: We have nothing to hide, Ma'am, so I am happy to provide whatever information the Member is asking for.

The Speaker: Thank you.
Member for East End.

Mr. V. Arden McLean: Madam Speaker, I am glad to hear the Deputy Governor has nothing to hide, because the next question is going to be very probing.

The Speaker: Please proceed.

Mr. V. Arden McLean: Madam Speaker, first question.

I wonder if the Deputy Governor can say to us what the pass mark is to be achieved by recruits at the prison service.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: I just crave your indulgence for a few minutes, Ma'am.

The Speaker: Certainly.

[Pause]

The Speaker: I recognise the Honourable Premier for the suspension of Standing Order 23(7) and (8).

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

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

I beg to move the suspension of Standing Order 23 (7) and (8) in order that Question Time may continue beyond the hour of 11:00.

The Speaker: The question is that Standing Order 23 (7) and (8) be suspended in order that Question Time may continue beyond the hour of 11:00.

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

AYES.

The Speaker: The Ayes have it.

Agreed: Standing Order 23(7) and (8) suspended.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I don't have the pass mark here with me, but I can certainly get it for the Member.

The Speaker: Do you have a follow up, Member for East End?

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

I would then ask the Deputy Governor: Would it be fair to say that over 60 would be a reasonable pass mark and showing some competencies?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I don't have the facts, and I don't want to start speculating Ma'am. I would really like to get the facts before I respond.

The Speaker: Elected Member for East End.

Mr. V. Arden McLean: Madam Speaker, since there is nothing to hide, but there seems to be withholding, I might as well lay my nothing-to-hide on the table.

[Inaudible interjection]

Mr. V. Arden McLean: The answer is from you.

So, Madam Speaker, of the one Caymanian in that substantive answer given, that failed to be successful to join there, I put it to the Deputy Governor that he was at 62 per cent. Why wasn't this young man hired?

The Speaker: Member for East End, would you be so kind to repeat your question?

Mr. V. Arden McLean: Madam Speaker, I am specific now to the one Caymanian that was not successful. Why wasn't he engaged at the prison after going through the training period? And he got 62 per cent overall, average. So it's got to be higher than that, you know what I mean, most . . . some of them.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, thank you.

As I said in my substantive answer, we were able to . . . there were seven posts, we put four Caymanians in those posts, two persons were permanent residents. We ran the training programme and in the end, unfortunately, one Caymanian did not meet the pass mark that was set. I do not know what the pass mark was and I will be happy to get it.

Madam Speaker, I just want to be very clear. As Head of the Civil Service I have challenged all of our heads of departments to employ as many Caymanians as possible. We are over 74 per cent in the civil service of Caymanian and that is something that we must be proud about, but we must not stop there.

I have also challenged heads of departments to recruit superstar employees so that they are able to

perform their duties at the highest standards. The civil service has been criticised for not doing its job to a high standard, and the only way for us to change that to get better is two things: we train up the people that we have there now; or we bring in highly skilled individuals. And that is exactly what we are doing.

I want to make it clear, Madam Speaker. This recruitment exercise, from all the information that I have, was done properly in accordance with the rules. We were able to employ four Caymanians. Would we have liked to employ all seven? Absolutely! But we have standards, and we have to meet those standards. We are not going to compromise those standards, Madam Speaker. Thank you.

The Speaker: Elected Member for East End.

Mr. V. Arden McLean: Madam Speaker, you see what disrupts our country, and then, we see those young people, not every one of them is an Einstein. But if given the opportunity, they can become productive citizens. Now, listen to this one.

Week one, 22.5 out of 30—

The Speaker: Are you referring verbatim to a document?

Mr. V. Arden McLean: Yes, I was just looking at you . . . do you need it Ma'am? If you need it, I can get it copied.

The Speaker: Member, [INAUDIBLE] for rules and you probably have more comprehension of them than most people. So please make sure that when you respond you do so within the context of your usual manners.

Mr. V. Arden McLean: Madam Speaker, I was only referring to the document. But what I'm saying is, if it is a requirement of you to have a copy of the entire document—

The Speaker: If you are reading the document verbatim, then it is the convention that the Chair will request it. If you are just refreshing your memory, then please proceed.

Thank you, Member.

Member for East End, would you give way to the Third Elected Member for West Bay who has an unrelated question?

I recognise the Third Elected Member for West Bay.

Mr. Bernie A. Bush, Third Elected Member for West Bay: Madam Speaker, can the Deputy Governor also inquire whether there is a policy that when the prison is recruiting that HR people fly off to other countries to get lists of names and so forth? Would you inquire into that for us as well, please?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Yes, Ma'am.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, can the Deputy Governor say if the open recruitment policy applies to every prison officer whose existing contract comes to an end? Or are they allowed to re-engage them on another contract without open recruitment?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, we have to ensure that there is continuity, that there is stability in these organisations. So the short answer to the Member's question is, no. But let me explain.

We have a system in place where we require departments that have high numbers of foreign nationals that two or three times a year they run recruitment exercises to determine whether there are Caymanians available. But we do not require every single contract renewal for a non-Caymanian to get advertised every single time it comes up for renewal. But we do make sure, and we go to careful pains to make sure, that we are aware whether Caymanians are available to take up those jobs when those contract renewals do come up.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, can the Deputy Governor say how a Caymanian who is aspiring for promotion made aware of contracts above their position expiring and why are they not given an opportunity to apply?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I mean, I have to be clear. I am not aware of us, first of all promoting high numbers of non-Caymanians in the civil service. It rarely ever happens. What I think you're asking about is contracts coming up and whether Caymanians know about those contracts. Like I said, we advertise those contracts in the civil service, outside of the civil service. I take the Member's point from the last Finance Committee that we should make every effort to advertise internally first to see whether there are Caymanians in the civil service, and we are doing that. A lot of the adverts that come out right now are internal applicants only. So, I believe that we are doing our utmost best to ensure the upward mobility of all Caymanians in the civil service. We are doing secondments, we are giving people opportunities to go and work in other minis-

tries, other departments. It is actually paying huge dividends for us, Madam Speaker. Thank you.

The Speaker: Elected Member for East End.

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

What I was trying to point out is that we cannot expect our kids to compete with people who have 10, 15 years' experience in the related field. You know? The most successful police officers we have ever had started at 16—Scotland, Walton, Clifford, Dixon, three of them from Cayman Brac, 16 years of age. They are not Einstein. We need to develop them.

But I want to know why this young man wasn't hired with scores as follows:

Week 1: 22.5 out of 30, that equates to 73 per cent.

Week 2: 15 out of 30; 50 per cent.

Week 3: 21 out of 30; 70 per cent.

Week 4: 18.5 out of 30; 62 per cent.

Week 5: 21.5 out of 40; 54 per cent.

Week 6: 30 out of 50; 60 per cent.

Extra test: 13 out of 21; 62 per cent.

Extra test: 10 out of 20; 50 per cent.

An average of 62 per cent in six weeks of training without experience and we can't hire them? Why wasn't this young man hired? Opportunity, opportunity, opportunity in the land of the Cayman Islands, the Cayman Islands, the Cayman Islands, and the Caymanian, Caymanian, Caymanian.

The Speaker: Honourable Deputy Governor, I was waiting for the question mark after that but . . .

[Inaudible interjection]

The Speaker: Okay.
Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I'm a Caymanian too. And I started in the civil service when I was 16 too. So—

Mr. V. Arden McLean: And you did pretty good.

The Deputy Governor, Hon. Franz I. Manderson: Absolutely!

Mr. V. Arden McLean: [INAUDIBLE]

The Deputy Governor, Hon. Franz I. Manderson: And that's exactly what I'm doing, Madam Speaker. We are giving hundreds and hundreds of Caymanians opportunities. We had 145 Caymanians working in the civil service last summer. We are doing it, Madam Speaker. I have committed . . . I started in the civil service as an intern over at the Immigration Department. And have I told everyone that it is my desire that when I leave the civil service, we are well, well

above 74 per cent. Madam Speaker, it is something for us to be proud about. How many companies right now can say that they have over 74 per cent of their employees are “us”? So we must be proud of that.

Does the prison service need to get better? Absolutely! And it will get better. And we just employed Caymanians. In the last two recruitment exercises the Prison Director has been told we need to increase the number of Caymanians in the prison service. And, Madam Speaker, he is doing just that.

To answer the question, I do not know what the pass mark was. So I cannot say specifically why this person was not hired. If the pass mark was 75 and he got 62, then that’s the end of the story right there.

The Speaker: Member for East End, and then the Honourable Leader of the Opposition.

Mr. V. Arden McLean: Madam Speaker, I should have taken my medication this morning.

The Speaker: Take a deep breath.

Mr. V. Arden McLean: Madam Speaker, I am embarrassed, based on what the Deputy Governor just said.

The Deputy Governor, Hon. Franz I. Manderson: You should be proud.

Mr. V. Arden McLean: Proud?!

The Deputy Governor, Hon. Franz I. Manderson: It’s your people.

Mr. V. Arden McLean: You’re making excuse that we’re 74 per cent? And which country or which company?

This country is ours and we should be 100 per cent!

The Deputy Governor, Hon. Franz I. Manderson: Help me.

Mr. V. Arden McLean: Help you? It’s your job—do it! Don’t ask me to help you—

The Speaker: Members, let’s keep the comments through the Chair.

Mr. V. Arden McLean: Madam Speaker, make me stop because I didn’t take my medication, you hear.

The Speaker: I recognise the Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: Thank you, Madam Speaker.

[Inaudible interjections]

The Speaker: I recognise the Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: Thank you, Madam Speaker. I thought the Member for East End was on a good subject so I was giving way.

Madam Speaker, can the Deputy Governor say what is the top salary for a prison officer?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I don’t have that off the top of my head, but I can certainly get the salary in an hour or so. Sorry, I don’t have it off of the top of my head.

The Speaker: Honourable Leader of the Opposition, is that satisfactory? Okay.

I recognise the Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, let me congratulate the Deputy Governor with his success. But, Madam Speaker, the problem is, can the Deputy Governor justify in this one instance why the Caymanian was not given the job? Because, Madam Speaker, don’t care how many we have, when we turn down one of our own for reasons that are not readily available, it reflects badly on all of us. I would invite the Deputy Governor to commit to provide to us in writing why this one Caymanian was not hired.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, it is my understanding that the Member for East End has that information. He has the letter that the person was given, so let us all see it. I don’t think we should get into specifics about this young man in a public forum, but the letter that the Member for East End has, has the reasons why the gentleman was not hired. But we want him to do well on his next endeavour. So, I think we should not do this publicly.

The Speaker: I recognise the Fourth Elected Member for Bodden Town.

Mr. Alva H. Suckoo, Jr.: Thank you, Madam Speaker.

Could the Honourable Deputy Governor state what the time period was for this most recent recruitment drive?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, in my answer I did say that the recruitment started in October and ended in January. If

the Member is asking for when we started to advertise, I don't have that, Ma'am.

The Speaker: Fourth Elected Member for Bodden Town.

Mr. Alva H. Suckoo, Jr.: Thank you, Madam Speaker.

I think that answer will suffice, but I really am curious to know what the pass mark is, because I am aware of another individual who got 91 per cent and wasn't hired, but not in this most recent drive; in a previous one.

The Speaker: Member, could you repeat that? The Deputy Governor was consulting on the side and I don't think he fully heard it.

Mr. Alva H. Suckoo, Jr.: Just to reiterate that I would also like to know what the pass mark is for the training and testing because there is an individual that I am aware of that got 91 per cent and was not hired. Not in this most recent drive, but in a previous one.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Yes, Madam Speaker, I am happy to get that information.

And, Madam Speaker, I don't want anyone, the public, or anybody in this House, to believe that there was some ulterior motive as to why this Caymanian was not given the job. The Member for East End has a letter that says exactly why the person wasn't given the job, and I think we should be full and open and let's hear exactly what the letter says as to why this person did not get the job, so that there is no stones left unturned. We should just leave the gentleman's name out of it, but I wouldn't want it to be said that there is some ulterior motive why the person did not get the job. The person was told.

The Speaker: Honourable Deputy Governor, I have asked the Serjeant to make copies, and that's what he's doing now.

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

[Inaudible interjections]

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: Thank you, Madam Speaker.

Can the Deputy Governor say whether he is finding a move of Caymanians to want to be in the service?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, we have had some tremendous successes recently. I was ecstatic to find that in the Ministry of Tourism we have just employed a bright, young Caymanian to be our Deputy Chief Financial Officer. He was a former "Proud of Them" recipient. He comes from the private sector and he is just one of many Caymanians that we see are now applying to come into the civil service, despite the beating that we take down here sometimes, Madam Speaker, which is not helping me recruit Caymanians into the civil service. I want everybody to understand that.

People are saying to me, *Well, Mr. Manderson, if I have to come down here and take a beating for doing my job . . .* they don't want to join the civil service. I want people to understand that. But we are committed in the civil service, I, as a Caymanian, am committed to ensuring that every single Caymanian that applies for a job in the civil service gets it.

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: Thank you, Madam Speaker.

Can the Deputy Governor . . . I am asking this particular question because of what he just said. I think it casts some aspersions on Members here. What is the Deputy Governor meaning when he says that civil servants get a beating when they come down here?

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I am repeating what was said to me. I think everyone knows what I am talking about.

Hon. W. McKeeva Bush, Leader of the Opposition: No! Well, Madam Speaker—

The Speaker: One minute, Honourable Leader of the Opposition.

I almost made an interjection when I heard you say it, and I had hoped that the House didn't have to go there, but we're already there. So Honourable Leader of the Opposition, and that's just based on the Standing Orders.

Honourable Leader of the Opposition, please proceed.

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, it's not something to drag out. But certainly we don't want to leave it in the public domain that if we need to call a civil servant that anyone needs to be afraid to answer questions. I have been here 30-odd years and I have had civil servants many times in Finance Committee. The only one that

seemed to refuse was the Commissioner of Police, whom you all protect quite well. Civil servants never refuse to come to answer for the subjects they are responsible.

I think I need to explain it, Madam Speaker, because certainly I am one that is not going to take that route to bamboozle any civil servant down here because they are answering questions. And I make that absolutely clear. Thirty-odd years and I haven't done it.

The Speaker: Honourable Deputy Governor, I think I better do this at this stage, and then I will call on you so I can refresh all and sundry Members.

Standing Order 23—and I beg the indulgence of the House to so read:

“23. (1) At question time the Presiding Officer shall” (and I want Members to pay particular attention to the mandatory aspect of the provision) **“call in turn upon each Member in whose name a question stands upon the Order Paper, in the order in which the questions are printed. Each Member so called shall rise in his place and ask the question on the Order Paper and the Member of the Government questioned shall reply.**

(2) After the answer to a question has been given supplementary questions may, at the discretion of the Presiding Officer, be put for the purpose of elucidating the answer given orally, but the Presiding Officer may refuse any question which in his opinion introduces matter not relevant to the original question or which infringes Standing Order 22.” (And Members can look up 22 at their own discretion.)

“(3) When all the questions for which an oral answer is required have been called, the Presiding Officer, if time permits, shall call again any question which has not been asked by reason of the absence of the Member in whose name it stands; in which case another Member may, if deputed by the absent Member on his behalf, either ask the question or request its postponement. The Presiding Officer shall also call again any questions which have not been answered by reasons of the absence of the Member to whom it is addressed.”

I have taken the time to read this section to show the importance that's given to the asking and answering of questions.

“(4) A Member of the Government may decline to answer a question if an answer would, in the opinion of the Government, be contrary to the public interest.

“(5) A Member of the Government may, with the leave of the House, defer answering a question.

“(6) Not more than three questions requiring an oral answer shall appear on the Order Paper in the name of the same Member for the same

day, and any question in excess of this number shall not be called by the Presiding Officer but shall be answered as provided in paragraph (8).

“(7) No question shall be asked after 11 a.m. . . .” (and that's the procedure we went through earlier)

“(8) Any question which has not received an oral answer by 11:00 a.m. shall be postponed and placed upon the Order Paper for reply at some later sitting within the same meeting:

“Provided that if all other business for the meeting has been disposed of, such postponed questions and all other questions listed on a Business Paper but not placed on the Order Paper shall be answered in writing by the Member of Government to whom the question was addressed, and copies of the answer shall be sent immediately thereafter to the Clerk, who shall send a copy to the Member in whose name the question stood and to all other Members.”

I would ask Members to please once again refresh your memories of Standing Order 23.

I recognise the Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Yes, Ma'am, and I take the point.

Madam Speaker, I just want to be clear, and I thank the Leader of the Opposition for the question.

We understand very clearly, Madam Speaker, that, civil servants answer to our political leaders. And this House is where we come to answer their questions and to address any concerns they have. So, I am not by any stretch of the imagination saying that shouldn't happen; I welcome it. And I don't want to give the impression that civil servants are afraid to come down here. What I was told was that when people listen to what happens down here sometimes it doesn't excite them about wanting to join the civil service. That was it. I don't want to impute any improper motives on anyone here. I think we all get along very well. And I want that to continue, Madam Speaker, because we in the civil service understand very clearly to everyone here that we answer to this House. Thank you.

The Speaker: Thank you.

The Elected Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker. I am glad for the little intermission and I do apologise if I offended the Chair. You notice, I said the Chair?

Madam Speaker, with your indulgence, that letter . . . for the purposes of completeness, I think I should read the response. This 19, 20 year old wrote to the Director of Prison. I think that's fair. That's how you like saying it, lawyers—

The Speaker: Please proceed, and, as usual, provide a copy. Thanks.

Mr. V. Arden McLean: “Dear Mr. Lavis:

“This letter serves as an appeal to seek your immediate intervention into the matter of what I believe is an unfair dismissal.

“I hereby state that I have successfully completed the required test set by the recruitment department of Her Majesty’s Prison and was employed and given my kit, including key to the institution, on Monday, December 4, 2015.” (That’s the date of the letter that I just laid.)

“On the same day at the final of the training I was applauded for my excellent performance and set to work. However, whilst at work on that same day I was called by the Human Resource personnel and given a letter stating my employment has been terminated upon the grounds stated in the termination letter (letter attached). At no time was I confronted on the grounds mentioned, I was not issued, nor did I sign a warning letter.

“Sir, I’m a young” (*This is the part that really touches me.*) “Sir, I am a young Caymanian and I acknowledge that I was naïve in this environment. But I am willing to learn and excel. I really love and always hoped to have myself engaged in this career, so in future I could be an asset to this institution and my country. Now, I feel so rejected, as I resigned the job I was in to seek employment here, which leaves me very disappointed. I was so excited when I was shortlisted to be engaged in an institution where I can be an asset to my country. Sir, I do not intend to be an outcast in society, or a reject in the country I was born due to not being given a chance. I believe this is one reason why so many young men are behind bars globally nowadays, and I do not intend to join that group. If I have offended anyone whilst in this institution I am willing to apologise and mend the broken pieces in an effort to enhance a peaceful and unified working environment.

“Please, I am using this medium, sir, to solicit your favour of intervening in this matter and give me another chance to prove myself worthwhile. I really need a chance. In all the grounds she mentioned that is in the letter, even if it were so, why give me a job and a key for a high-risk institution if I wasn’t proven efficient for the job? I diligently seek your advice and intervention into this matter.” [UNVERIFIED QUOTE]

Beat that!

Nineteen years old!

The Speaker: If there . . . Honourable Leader . . . sorry.

[Inaudible interjection]

The Speaker: Serjeant, the Members are asking for copies of the last letter, so when you get a chance please distribute that as well.

I recognise the Third Elected Member for West Bay.

Mr. Bernie A. Bush: Madam Speaker, I am sure the Deputy Governor has heard of the many HR fiascos that have gone on at Her Majesty’s Prison. There was a lady who I supported on the Floor of this House who was about one week from getting her status and was released because she was not a Caymanian, even though the HR department had been told that the status sitting was one week away. So this is just another chapter.

Can you do an undertaking to see in that seventh post, because like you said four Caymanians, two PR, that one other Caymanian, this young man, that seems very intelligent, seems . . . and like he said, Madam Speaker, after being handed the keys, for the HR to do this, something is amiss. Please look carefully, Mr. Deputy Governor at whom—honourable Member for East End, please listen carefully—was given that seventh position? Please look into that, sir. And let us know, Mr. Deputy Governor.

The Speaker: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, I am happy to give that undertaking. I know the Member for East End had asked why this gentleman was not employed. I now have that information here that I can read out. It says:

“I regret to inform you a decision has been taken not to offer you continued employment.” (This is a letter from the Director to the young man.) And I think we need to do a further redaction on that. Yes, okay.

“I regret to inform you a decision—

The Speaker: Honourable Deputy Governor, I think we ought to circulate it within this House as opposed to reading it for the general public, because even though I requested, and I saw you redact the name of the person, it’s a very small community and it’s now going to be beyond the borders of the prison, and we don’t want him to fall through the cracks. So—

[Inaudible interjections]

The Speaker: Let’s just take a five minute break, and can I have Members meet in the committee room?

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

Proceedings suspended at 11:41 am

Proceedings resumed at 12:04 pm

The Speaker: Please be seated.

Proceedings are resumed.

I recognise the Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson: Madam Speaker, thank you.

I think we have agreed that we all—*all*—care about this young man, and we would *all* love to see him take up the job of his dreams. So, on that basis, we are not going to read out verbatim the letter that was given to him which the Member for East End had with him when he asked me the question why he wasn't given the job. It's all very clear right here.

So, we have agreed, Madam Speaker, that we would just give a summary. So, what I will say, Madam Speaker, is, that the Director had specific reasons why he didn't do it; it is clearly documented here. I am reading this, I am satisfied that this would be a decision that would be in keeping with civil service high standards of performance. And, Madam Speaker, I would like to just make note that this young man has been invited in writing, in this letter from the Director, to take part in the next recruitment exercise. And I would implore him to do so.

Madam Speaker, I want to make it very clear, and I accept that while we are at 74 per cent Caymanian in the civil service (and I crave your indulgence, Ma'am), the prison service, our teaching, our police service, those are where there is a high concentration of non-Caymanian. And that is for a reason, Madam Speaker.

Must we do better? Absolutely!

Are we committed to doing it? Absolutely!

We have run two recruitment classes now at the prison under the new Director and we have gotten Caymanians employed. We will continue to do that, Madam Speaker. I want to give an undertaking here. We will continue to do our best to get our Caymanians into these jobs in the civil service. That is my commitment; that is my job. And I take that responsibility very seriously.

I would implore this young man to get in contact with me. I would be happy to sit with him, go through this and any concerns he has to ensure that they are properly addressed. Madam Speaker, I say it again. I started here in the civil service when I was 16. I want as many Caymanians as possible to follow in my footsteps, and I am doing my endeavour best to make sure that happens.

I would ask all Members of this House, when they get concerns about civil service matters, rather than bringing it to the Floor of this House, they engage with us, tell us what's happening, and give us an opportunity to address them.

Thank you very much, Madam Speaker.

ANNOUNCEMENT BY THE SPEAKER

HOUSE VISITORS

The Speaker: Before I call on the Clerk, I just wanted to recognise the Rotary Club for their adventures in citizenship essay competition that they are finalists

along with Mrs. Deanna LookLoy were here in the Gallery earlier this morning, and had to leave now. But we'd like, through the Rotarians and others here, to let them know that we appreciate them taking time to see how their Government works.

Madam Clerk.

QUESTION NO. 48— WATER SPORTS ZONES, UPDATE

The Speaker: The Elected Member for North Side

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

I beg to ask the Honourable Minister responsible for District Administration, Tourism and Transport: Can the Honourable Minister give an update as to when the Water Sports Zones, prescribed in the Water Authority [*sic*] Law and Regulations will be properly demarcated?

The Speaker: Port Authority.

Honourable Deputy Premier.

Hon. Moses I. Kirkconnell, Deputy Premier: Thank you, Madam Speaker, and I thank the Member for his question.

The Port Authority of the Cayman Islands and the Department of Environment has formed a committee to review the current Water Sports Areas that are prescribed in the Port Regulations. The committee has prepared recommended changes to the current Water Sports Areas designated in the Port Regulations.

The recommended changes have been reviewed by the Ministry and sent to caucus and Cabinet for consideration. Once the changes are approved by Cabinet, the Port Authority will embark on demarcating these areas.

SUPPLEMENTARIES

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, I wonder if the Member would agree to let me know what the proposed changes are because two of these areas are in my constituency and I was involved in the original creation of these in 1985/86, hopefully before it goes to caucus and Cabinet, because this involves my community. The way we do things in North Side is we take these kinds of things to our community through the district council, particularly now that people have gotten used to using these areas over the last several decades.

The Speaker: Honourable Deputy Premier.

Hon. Moses I. Kirkconnell, Deputy Premier: Thank you, Madam Speaker, I'd be happy to provide that to

the Member. I think it might be prudent if I provide it for all Members and let them give input. And I can do that in a very short period of time. So thank you very much.

The Speaker: Elected Member for East End, were you trying to catch my eye?

Mr. V. Arden McLean: Madam Speaker, now that we are on the subject of demarcation, I was just wondering if the Minister could give us an undertaking about our channels to see if we can look into the proper marking and lighting of those channels.

The Speaker: Honourable Deputy Premier.

Hon. Moses I. Kirkconnell, Deputy Premier: Yes, Madam Speaker, I can give that undertaking.

The Speaker: Madam Clerk.

QUESTION NO. 49—CAYMAN AIRWAYS, PASSENGER LOAD FACTOR

The Speaker: Elected Member for North Side.

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

I beg to ask the Honourable Minister of District Administration, Tourism and Transport the following question in my name: Can the Honourable Minister give the average load factor of passengers on the Miami to Cayman Brac and the Cayman Brac to Holguin, Cuba Saturday flights by Cayman Airways?

The Speaker: Honourable Deputy Premier.

Hon. Moses I. Kirkconnell, Deputy Premier: Thank you, Madam Speaker.

The answer: During first two months of the Holguin route's launch, the average load factor between MIA and CYB was 48 per cent and the average load factor between Cayman Brac and Holguin was 37 per cent.

The Speaker: If there are no supplementaries, we will move on to the next question.

QUESTION NO. 50—NORTH SOUND, USE OF WATERWAYS AND CANALS

The Speaker: The Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, I beg to ask the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure the following question: Can the Honourable Minister say what rights do the general boating public have in using canals and other waterways that connect to the North Sound?

The Speaker: Honourable Minister responsible for Planning.

Hon. D. Kurt Tibbetts, Minister of Planning, Lands, Agriculture, Housing & Infrastructure: Madam Speaker, I am going to read the answer, but I want to make it very clear that what this answer is, is what is supposed to happen.

Madam Speaker, in order for the general public to traverse these canals or waterways which are parcels and may be owned, privately or by the Crown, access will need to be granted by the owners. This access will be subject to prevailing interests which are registered against the particular parcel in question. The interests which could be recorded are easements, restrictive agreements, profits, licenses (that is, if there is a caution lodged at the Lands and Survey against the parcel). And just to add one more thing, and to use an example which the Member will probably be familiar with, the canal which runs parallel to the road going from Rum Point to the Kaibo, that canal. And, of course, these are discoveries only when something happens and somebody needs to do something.

When that subdivision was originally done, that canal was a parcel of the larger parcel going . . . I want to say to the east, and nothing was ever done about it over all the years, although the landowners used that canal. And I remember one specific landowner, after the parcel changed hands, speaking to me directly. Unfortunately, he's deceased now, but I remember him speaking to me directly and asking why did he have to gain permission from the landowner to be able to build a dock at the rear of his lot which butts and binds the canal. And that was when persons like me discovered the situation with that canal.

I think in more recent times people are more careful about how the rights are registered and such the like. But my answer is simply to say that many people simply just use it at will, but it is not that they are doing so legally. So, if they were to follow the law and they wanted to go up in and out of there with their jet ski or whatever, the fact is they should gain permission from the landowner.

The Speaker: Elected Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, can the Minister say if the Government is giving any consideration to creating legislation, or whatever is necessary, to treat these canals like public roads? Because the risk is that any particular owner in this situation can tell every other owner who is upland of him that he can't pass the canal in front of him, and all of those people,—because he can refuse to give them the easement—any particular owner who had bought a lot on that canal under the clear understanding that it was a canal lot and he had the right to use it.

Let's go back to your exact chance. If the owners of that parcel now . . . if I buy a lot at the entrance of that canal from Cays, which is a development that now owns the canal, I can refuse and tell you that you can't pass to get to build a dock, because I own the parcel on which the canal is on, and if I don't give him an easement, or give him permission to use it, he can't use it. That's what people are being told. And it has a potential . . . not just on that one; island wide. And I would encourage the Government to look at finding a way to treat them as roads, because if you want to build a dock you have to apply for coastal works to do what we call the Queen's bottom, because it's an extension of the North Side, and that's a private lot.

The Speaker: Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Madam Speaker, I believe I understand what the Member is saying now. This same incident I spoke to you about, caused me, to speak to them and I still await a report on asking the same question you're asking—what's the best way to handle it?

What I don't think that you and I are on all fours with, Member for North Side, is: if I own a lot on that canal, and I have an easement from the owner of the canal for my lot, that doesn't give me the right to prevent anyone else from access. If they are being told that, it is incorrect.

It is only the owner who can say that someone can't traverse; the owner of the canal.

Mr. D. Ezzard Miller: *Inaudible – not speaking into microphone and through the Chair*

The Speaker: Members, just keep the comments through the Chair, please.

Hon. D. Kurt Tibbetts: You mean from the other side?

Now, I'm with you. I was thinking from . . . okay. Now I fully understand exactly what you're saying. And I agree with what you are saying if that is how it is.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Are you sure that the lot itself (and I'm just asking) includes the waterway? Because while the main parcel, when it was sold, included the canal (and I can check to make sure), the subdivision itself, as I understand it, does not include the water going over to the next side. If that is the case, then we would have to do something about that specific instance fast. But back to the general discussion of what you are saying. You are correct about the possibility. I don't think we have many of those specific situations anymore. That's a longstanding one. But, as a

matter of principle, we have to ensure that situations such as that can't occur. And I take your point, and I certainly will have more discussions with the Lands and Survey Department to ensure that that's done.

The Government can do compulsory acquisition. Of course, that process means you have to get a valuation (I'm just telling you), and once you get a valuation that you consider to be fair, you have to lodge money in the courts, go through the process, make sure that all parties are satisfied. So, it is not quite as simple as gazetting it. It's comparable, but it's not quite as simple as that. And after you gazette it you deal with the rest afterwards. But from the perspective of landowners on canals having difficulty, then, certainly, we need to solve that problem and find a way.

When the question was asked and I looked at it, and in talking with the department, it's a bit difficult for people who just are moving back and forth. But for landowners, then, that's a matter that we need to make sure that the encumbrance is not there for them that they can't use it when they are backing up on it.

The Speaker: Elected Member for North Side, followed by the Elected for East End.

Mr. D. Ezzard Miller: Madam Speaker, can the Minister say if he is aware that the Port Authority has constructed a wall on its property in SafeHaven to prevent Caymanians from tying up on Port Authority land because the canal is owned by Dragon Bay and they have said they can't tie up there since they own the canal, even though there is an agreement to register an easement (the easement to my knowledge, or up until two weeks ago, has not been registered), and that the Ritz Carlton is telling these people they can't anchor their boats in the larger area of the canal because they *own* the canal? And they have been told that they are going to be evicted. So, it is a matter that I believe is going to get increasingly contentious and we need to . . . I'm just asking the Government to look into a way. It might not be the correct way to gazette them as public use, but maybe register an easement over it, which might not involve a lot of money, but a public easement. And make sure that in the future when canals are done they are not individually parcelled where owners can own them.

The Speaker: Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Thank you.

Madam Speaker, I am acutely aware of that specific situation. And we have been in discussions and have been given assurances that the easements are in the process of being granted. It has to be done through the Port Authority. And the legal counsels for both sides are in the process of sorting the matter out.

That situation is this, just so that the Member will know. The Ritz Carlton doesn't have an easement from their waterway, a registered easement, into the

canal leading out to the North Sound. So, the Ritz Carlton, their mind says, *Listen, we won't have a problem with you all using our waterway; you just make sure that we get an easement out to the North Sound.* So, just making you know that I know.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: And I understand. I understand now. But we have said to them, *Listen. Let's face reality. Whatever wasn't done right, either out of ignorance or inadvertently, or for whatever reason, the practical reality of the situation is you can't deny these people this right.* Do we get into a fight (which I don't like—but if you force my hand, we will)? Or do we act sensibly and move the process through?

So, just so that the Member will know, I am following up the situation and I will . . . in fact, you have prodded me now to ask the Ministry to check with the legal counsel to see whether, or how far it's at. But I think it's imminent to sort that matter out.

The Speaker: Elected Member for East End.

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

The Minister said that those waterways are private as a parcel, I believe. Is it not so that you require a coastal works licence to build a dock on those?

The Speaker: Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Madam Speaker, I personally would prefer to make sure of what I am saying, but here is what I believe, and I will check to make sure that what I believe is right is exactly the case.

If it's a privately owned canal, meaning it's not Crown, although the answer speaks to private, including Crown, but I mean if a private entity owns a canal, within the precincts of that canal you do not need a coastal works licence. If it is the Crown, then you have to apply to the Crown to be allowed to build a dock. If it's open waterway, then you have to apply for a coastal works licence. But a registered parcel in a private, either individual name or the name of a company or any other entity, that is really not considered Queen's bottom.

The Speaker: Elected Member for East End.

Hon. D. Kurt Tibbetts: Just quickly, Madam Speaker.

Clearly, being understood that that is manmade, not natural.

The Speaker: Elected Member for East End.

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

I wonder if the Minister can tell us . . . I know many years ago it used to have a lot number, like

Snug Harbour, but they don't any more. Are lot numbers on canals now continuing to be given?

[Inaudible interjection]

Mr. V. Arden McLean: Okay.

So is there a requirement for them to get coastal works licence to tie into the North Sound?

The Speaker: Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Thank you.

You would then be speaking of the very end where it connects.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Then you would, at that point.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Yes. Because you are going into the Queen's Bottom.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I hear you; but I am just telling you what obtains.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Madam Speaker, just for practical purposes, the biggest reason for all of that is to guard against people doing it in the wrong way, not having the proper silt screening, all of that, when you go out into the open water. If you are doing an inland canal, let's say there's a subdivision, it has a series of canals, but only one entrance into the North Sound. You are not applying for a coastal works licence for all of that stuff in there; you are applying for a coastal works licence for when you open that waterway to join into the North Sound. That's the reason. And they do still get parcel numbers. They do.

The Speaker: If there are no further supplementaries, we will move on to the next item of business.

STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

The Speaker: None.

PERSONAL EXPLANATIONS

The Speaker: None.

OBITUARY AND OTHER CEREMONIAL SPEECHES

The Speaker: None.

RAISING OF MATTERS OF PRIVILEGES

The Speaker: None.

GOVERNMENT BUSINESS

BILLS

SECOND READING

HEALTH SERVICES AUTHORITY (AMENDMENT) BILL, 2016

[Continuation of debate thereon]

The Clerk: The Health Services Authority (Amendment) Bill, 2016, continuation of debate.

The Speaker: I recognise the Honourable Premier for the continuation of the debate on Health Services Authority (Amendment) Bill, 2016.

The Clerk will give an indication as to how much time is remaining for the Honourable Premier.

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

When the House adjourned on Wednesday evening, I had just concluded reading excerpts from the *Official Hansard Report* for Monday, 13 December 2004. In particular, I had just concluded reading what is recorded as my contribution to the debate at the time with respect to how this section 12(3) provision came about. More precisely, the amendment to what was then section 12(3), which has now become the subject of much controversy, a court case, judgment and, ultimately, this proposal by the Government to amend section 12(3) to remove the immunity which is presently conferred on employees of the Health Services Authority, which prevents them from ever being able to be sued regardless of their actions, regardless of their negligence or regardless of any negligence for which they might be liable.

Madam Speaker, I pointed out during that important debate, that I had specifically targeted the issue of this immunity, because section 12(3) and the new section which was to be inserted dealt with two separate and distinct things. One was conferring immunity on employees and directors, and the other was Government providing directors with an indemnity against actions brought against them as a result of the discharge of their functions or duties as long as those weren't carried out in bad faith. And it is the immunity bit that we are seeking to resolve.

Madam Speaker, as I said, and my contention was and is, that despite utterances by the Leader of the Opposition and the former Minister of Health at the time, recently, that it was not Government's intention to actually exempt employees from liability in these sorts of instances. All of the correspondence, all of the debate actually points the other way. And I would not have gone down this road had it not been stated so categorically to the media that that was not Government's intention. It plainly was.

There was, and is, internal correspondence which points to the issue and the debate in the House at the time plainly demonstrates that, despite the fact the Government was advised . . . well, that's too strong a word. It was brought to the Government's attention by the Opposition in the persons of the then Leader of the Opposition (now Minister, Kurt Tibbetts) and me, the effect that this section was going to have and the Government still proceeded to amend the Bill.

Madam Speaker, I think in fairness, because I believe in being fair, I should complete my reading of the Hansard with the contribution of the then Minister in winding up on the Bill, he having, by that point, heard what the then Leader of the Opposition and myself had to say about the matter. And that is at page 515 of the *Official Hansard Report* for Monday, 13 December 2004.

The Honourable Gilbert A. McLean said: **"Thank you, Mr. Speaker. This Bill is before this Honourable House because it was considered by the Board of Directors long before now, and the favourite time or incident of the Second Elected Member for George Town"** (who, Madam Speaker, was myself at the time) **"that the Board felt there should be a change to the wording in section 12.**

"Also, the Board has been discussing from last year the question of indemnity. Various correspondences have gone on between the Board of the Health Services Authority and the Legal Department with proposed wordings.

"The present wording here is what I have been given as legal advice from the Government's Chief Legal Advisor." (I don't remember who that was at the time, but I am sure we can find out.) **"I have let the Board understand that the Constitution says that Government's Chief Legal Advisor is the Attorney General and when I am given a wording that he or she thinks is acceptable to meet the wishes of the people who serve on the Board of the Health Services Authority, I am obliged to accept that.**

"I can say to the Member that there is certain disagreement still with the legal wording but the wording that I have to use or to bring to this Honourable House is that which satisfies the Legal Department of Government and the Attorney General."

So, Madam Speaker, what the Minister was saying, or seems to be saying, *there are certain res-*

ervations that some of us have about this, but the legal advice we have is this, which, again, underlines the point I made, that this is a decision that was taken by the Government with full knowledge and appreciation, or must have been, of its impact. They had had the benefit of legal advice; there is even some disagreement about it. But nonetheless, the Government proceeded on the basis that *this was the advice of the principal legal advisor and this is what we're going with.*

"I brought it to answer the Second Elected Member for George Town because I am always prepared to do what has to be done, what is right to be done when it needs to be done and in this case the closest we got to acceptable language and indeed the new proposed clause on indemnity was now and therefore I brought the Bill to this Honourable House. I repeat that this has been a matter which has been ongoing from last year long before his friend, Elliott, got into the picture, or that he took up, it seems, un-paid representation on his behalf.

"So, it has nothing to do with any such case but I can understand that is something which the Second Elected Member for George Town cannot free his mind from and that he would now use that to discuss the two clauses which are proposed for inclusion in the Health Services Authority. If he was making advocacy for what might come of the case he cited, I am sure the judiciary will take due note of what is said in here, including what he and I said and make its own determination.

"The section that you drew Members' attention says that where there is a matter which judicial decision is pending on, it should be avoided in debate.

"I will not take any more time to discuss the most favourite subject of the Second Elected Member for George Town in my presentation.

"Mr. Speaker—

The Speaker: Honourable Premier, sorry for the interruption.

The Premier, Hon. Alden McLaughlin: Yes, Ma'am?

The Speaker: I am informed that you have one hour and 35 minutes remaining.

The Premier, Hon. Alden McLaughlin: I hope I don't need all of that, Ma'am. Thank you.

[Continuing the quote from the OHR, 13 December 2004] "Mr. Speaker, as the Minister of Community Affairs stated, it is my understanding, under advice, that the words "dishonesty", "the acts dishonesty", "fraud", and "wilful neglect" are covered under the term "bad faith". He may have noted that the words "or purported discharge" has

been taken out of the proposed insertion and I am made to understand that if anything that may have given greater comfort to Directors but that has been taken out. Again, he has his legal view and I am sure that the Legal Department has theirs.

"The indemnity was not included in the Law at all. I can recall from the very first meeting of members of the Board of Directors asked why there was not an indemnity clause. These are business people and they understand having a fiduciary duty as the Second Elected Member for George Town has said and they enquired about it. It is only now that it had been done and we have heard that the wheels of justice grind slowly but surely and I think that is true of Government's action as well.

"So, both of these amendments are before this Honourable House for no other reasons than they are seen to be sufficient and they have gotten as close as possible to meet the desires of the Board of Directors and the Legal Department. I can give no better explanation than that."

Madam Speaker, the rest of the then Minister's contribution goes on to talk about other aspects of included in the amending Bill regarding the Dr. Horner Memorial site and so forth, not relevant to the issue. And so, Madam Speaker, the short point in all of this is that for reasons which I am still not entirely clear on all these years hence, there was the indemnity that is obvious and clear. There was put into the law a provision which relieved and still relieves employees of legal responsibility in the event of negligence. And that is the mischief this proposed amendment by the Government is seeking to cure.

Madam Speaker, because this has such a storied history, we are doing our very best to ensure that we don't repeat the errors of the past. So, the current Attorney General has sought the advice of senior council and I have, as a result of his efforts, an opinion with respect to the proposed change to the legislation. And, Madam Speaker, I think in the interest of full disclosure it is important that I let Members of this House and the broader public know what that opinion says. So, I am proposing, Madam Speaker, with your leave to read it. It is quite short as these things go, but it's very instructive.

The Speaker: Please proceed.

The Premier, Hon. Alden McLaughlin: Madam Speaker, it is an Opinion obtained from Blackstone Chambers, the counsel involved is Mr. Mark Shaw, QC.

The Speaker: Do you have copies or do you wish the Serjeant to make them?

The Premier, Hon. Alden McLaughlin: I have some copies. I don't have enough for all Members but cer-

tainly for you, Madam Speaker, and I think there is one spare one which the Serjeant may use to copy.

The Speaker: Thank you.

Please proceed, Honourable Premier.

The Premier, Hon. Alden McLaughlin: Reading the Opinion: “The Attorney General seeks my advice on a proposed amendment to section 12 of the Health Services Authority Law (2010 Revision) (“Law”), due to be debated in the Legislative Assembly in early May 2016.” (Well, we beat that date.) “If enacted the amendment would remove the current bar on clinical negligence claims against the Health Services Authority (“Authority”), its employees, directors and committee members. A claim for damages against any of those defendants cannot presently proceed unless the plaintiff identifies some act or omission done in bad faith.

“As it stands, section 12 provides as follows: Neither the Authority, nor any director or employee of the Authority, nor any Committee member, shall be liable in damages for anything done or omitted in the discharge of their respective functions or duties unless it is shown that the act or omission was in bad faith.’

“Clause 2 of the Health Services Authority (Amendment) Bill (“Bill”) would repeal that provision and substitute a new section 12 as follows: Neither the Authority, nor any director nor any Committee member shall be liable in damages for anything done or omitted in the discharge of their respective functions or duties unless it is shown that the act or omission was negligent or in bad faith.

“Clause 3 of the Bill would make a consequential and parallel amendment to section 13 of the Law to remove the indemnity conferred in respect of the negligent acts of directors and committee members, by inserting the words ‘negligence or’ for the words ‘bad faith.’

“The Bill contemplates no other changes to the statutory language.

“In my view, the proposed amendments would strike a legitimate balance between the competing interests of, on the one hand, plaintiffs seeking damages for loss caused by negligence, and on the other hand, the Authority and its personnel who deserve protection from arbitrary and/or frivolous claims.

“As currently framed, section 12 is out of step with the treatment of clinical negligence claims in other advanced legal systems. An absolute ban on the adjudication of such claims works considerable injustice in individual instances as recently illustrated by the case of Donette Thompson v The Cayman Islands Health Services Au-

thority and other (Cause No. 190 of 2013), 19 February 2016.”

Madam Speaker, the House will remember that that is the judgment from which I read [Wednesday] evening.

“As the Grand Court there explained, in paragraphs 118 and 119 of its judgment, it felt, ‘uncomfortable with such immunity’ and regarded its consequences as ‘troubling’. Although driven to uphold and enforce the ban by the Court ‘unambiguous and clear words’ of section 12, the Grand Court suggested that a Government: ‘may feel it appropriate to openly clarify to the voting and wider public, who it is obligated to serve and protect, whether its declared policy is to retain legislation that denies remedies in tort for medical negligence and to explain the justification for such a policy at this time.’”

I pause here, Madam Speaker, to interject, that as I said at the start when I opened my speech with respect to this Bill, this Government feels that we should not seek to protect employees or directors from claims for negligence on their part. We are dealing in this instance, literally, with peoples’ lives and if a doctor or a nurse or someone else is negligent and is found so to be, the injured party deserves to be able to have the appropriate redress.

I return to the opinion:

“The extremity of the ban is hardly moderated by the explicit exception for bad faith. It is notoriously difficult to demonstrate such malicious motivation. Any plaintiff bears the burden of proving that the defendant intended to cause harm or (arguably) that the relevant act or omission was reckless and the defendant did not care whether harm resulted. Any healthcare worker found to have behaved in that matter would not only have contravened the fundamental tenets of their profession, but would also very probably be exposed to criminal liability. Such findings must surely, therefore, be extremely rare.

“By contrast, the proposed amended wording would bring sections 12 and 13 into line with the basic constitutional principal of access to justice, which anticipates redress for negligent acts or omissions. Indeed, accessible, effective, fair and independent adjudication is one of the hallmarks of the rule of law and democratic governance. Remedies for negligence are recognised worldwide as a key part of that legal security, to be provided by a state for its citizens.

“Although the proposed amendment does not seek explicitly to exclude frivolous, scurrilous and/or vexatious claims, defendants would surely benefit from that protection without it being spelt out. Courts have general and inherent powers to strike out a claim, both as soon as it is brought and as it evolves if it appears to disclose no reasonable grounds or is abusive. Defendants are

also entitled to apply for a claims summary (immediate) dismissal if it has no real prospect of succeeding and there is no other compelling reason for a trial. Both powers can be exercised on the application of a party or on the Court's own initiative. Beyond that, defendants are safeguarded by the burden on any plaintiff to prove that all the (exacting) requirements of the tort of negligence are satisfied in the circumstances of their particular case, (i) a duty of care owed by the defendant to the plaintiff; (ii) a breach of that duty by the defendant; and (iii) reasonably foreseeable loss caused to the plaintiff by that breach. The proposed amendment would do nothing to lighten any plaintiff's burden in that regard. Finally, the Court's wide-ranging power to make adverse cost orders (including on the more penal indemnity basis) deters over-ambitious or malevolent plaintiffs."

And so, Madam Speaker, we have the comfort, if I may use that word, of this opinion to underpin the policy decision that this administration has taken.

Madam Speaker, I should also, for the sake of completeness, indicate that the judgment which is referred to in the opinion, from which I read on [Wednesday], is not presently the end of that particular litigation in the *Donette Thompson against the Cayman Islands Health Services Authority and another matter*. There is still outstanding (and so I won't speak about it, really) a separate and distinct challenge based on a claim that the legislation as it currently stands, section 12(3) of the HSA Law, is incompatible with certain provisions of the Bill of Rights. And so we will see where that claim gets to.

Certainly, Madam Speaker, with respect to future claims, the amendment which is being proposed now, will avoid the necessity for that sort of approach. That leads me to say that we have been approached ("we" being the Government) by some (I'm trying to find the right . . . let me just say some) lawyers for potential plaintiffs who claim, or who would like to claim negligence with respect to the actions or omissions of HSA personnel, and who have lobbied and are advocating that this change to the legislation ought to be retroactive, or retrospective (I'm never quite sure of the distinction between the two, so I'll use both), and that . . . in other words, that it should go back to 2002 when the law was changed and allow in all potential claims which might be made, but which could not have been made because they were debarred by this section.

Madam Speaker, the Government has looked at this, and we have concluded that it is not a policy decision that we can possibly take. We have no way of knowing how many potential claims are out there. We have no way of quantifying what the possible result could be in terms of damages awarded. The insurance policies which have been obtained by the Health Services Authority over that period and the

premiums paid would have been and were on the basis of this immunity provided for in the legislation. The result would be that the HSA would be exposed and without an insurer with respect to any such claims for that period. And so, for those reasons, as empathetic as the Government is to potential plaintiffs who have been shut out by the legislation which has been in place since 2002 until now, almost 14 years, it is not a policy decision that we can take to make this legislation retroactive.

The Speaker: Honourable Premier, is this an appropriate time for the luncheon break?

The Premier, Hon. Alden McLaughlin: Madam Speaker, indeed it is. In fact, I was just about to say to you that that, I believe concludes my presentation with respect to moving the Bill. I will look forward to what other Members may have to say and, as always, reserve the right to address those issues and some others if it becomes necessary as a result of what other Members may say. I thank you, Madam Speaker.

The Speaker: The House will now take its luncheon break. And we will resume at 2:30 pm

Proceedings suspended at 1:00 pm

Proceedings resumed at 3:12 pm

The Speaker: Please be seated.

I would like to apologise to the House for being a bit late this afternoon.

The House is resumed.

Does any other Member wish to speak? Does any other Member wish to speak?

I recognise the Honourable Leader of the Opposition.

GOVERNMENT BUSINESS

BILLS

SECOND READING

HEALTH SERVICES AUTHORITY (AMENDMENT) BILL, 2016

[Continuation of debate thereon]

Hon. W. McKeever Bush, Leader of the Opposition: Thank you, Madam Speaker.

Madam Speaker, firstly, let me say that the reason I took the matter up to put a motion was not to try to give the Government a hard time, because I am a fair man. This Government had nothing to do with the court ruling. It had nothing to do with the court ruling. My contention is that the judge's interpretation is

wrong. And I sought to get the Government to see how they could rectify it. That is what my motion was dealing with.

The Government picked it up and—

[Inaudible interjection]

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

To me, Madam Speaker, it is absolutely clear what a health practitioner is. A health practitioner is different than the employee. From my understanding, from my knowledge, my belief, a health practitioner is different than the typist, the cleaner, the board member. Health practitioners are registered according to the law to *practice*. The employee is different, as far as I am concerned (and thought, in definition) as they are not registered to practice.

Madam Speaker, these laws go way back. The Law was passed in 1974. Then, in 2002 there was a new Law. Then, there was an amendment in 2004 and, I think, one again in 2013. And it has gone through three Governments . . . well, from 2005 the PPM, 2009 the UDP, 2013 now . . . so it is roughly three Governments that we would have dealings with.

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: Four. Yes.

That was a long time, Madam Speaker, from 1974 but, certainly, it is 12 years now for the present Bill that we are dealing with.

One thing is certain, Madam Speaker, I would always do what I can to protect people who are the employees in this instance, and I would protect people who give of their time and resources.

Madam Speaker, this clause goes way back, I believe there must be something like . . . when we looked at it . . . there are several laws with the same clause or something similar. There is the . . . I think the National Roads Authority Law, the Airports Authority Law, the Development and Planning Law, the Monetary Authority Law, the Maritime Authority Law, the Water Authority Law—one, two, three, four, five, six, seven laws, I believe, that have that clause or a similar clause protecting the workers—meaning employees, not meaning . . . well in those instances they do not have . . . and protecting board members.

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: And I believe, yes, Cayman Airways, we gave a blanket one to . . .

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: Yes, and that is where I contend. I believe that I can do that, or I should be willing and I would look at doing that and support that, but I could not and never was in my mind to vote on a bill to give anyone such immunity.

I know there are two different words that I see that catch my attention as it stands because I never ever heard about this coming up before, except for that case that brought it to the forefront. As I said, four or five Governments went through and we never had any problems with it.

So, even if we had to give an indemnity and, as I said, these laws have indemnities. I do not think there was any immunity as such, but I certainly do not believe the Health Services Law was meant to do that. As I said, the Health Practitioners Law 19 of 1974 (1995 Revision) says, “‘**health practitioner**’ means a **person registered as being authorised to practice in one or more health professions.**” It must be talking about doctors, people who do that kind of work, not talking about typists and so on and the people who clean the floors or people who sit on the boards. To my mind, the employee is different in definition as they are not registered to practice.

As I said, Madam Speaker, what happened in court was the judge’s interpretation and, as we know, that is always subject to an appeal. One lawyer says something, another lawyer says something else, and if we go to Summary Court, the Summary Court says something and if you do not stop there you go into Grand Court and he says something else and after that, then, there is the appeal and he says something and then we go into Privy Council and they say something. So everybody has a say and not everybody is of the same mind. One judge is against the next one. That is why you have the appeals.

As far as I am concerned, Madam Speaker, there was not to my knowledge any such intention by the Minister at the time and most of all there were no such policies by the Government to make someone not be able to stand responsible for something that they did that happened in the course of some kind of treatment.

And so, I want to take time, Madam Speaker, to read the debates. The first amendment, I think, it was the 27th of October by the then Minister, The Health Practice (Amendment) (No. 2) Bill, 2004, Mr. Gilbert A. McLean introducing the Bill in 2004.

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: Well, I am reading from 2004.

[Inaudible interjection]

Hon. W. McKeever Bush: I know, I know, but you had your debate so . . . I know what you are trying. I am

going to read that, too. I am going to read all of them. Every one of them I am going to take the time to read, Madam Speaker, because we need to get a full picture. And then—

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: That is right. But I got the 13th December, 2004, and I got Thursdays, June 27, 2002.

But let me agree with the Premier and—

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition:—read some of what was said here. That was the creation of the Bill 2002, Mr. Gilbert A. McLean, again, and he said:

“Neither the Authority, nor any director or employee of the Authority, shall be liable in damages for anything done or omitted in the discharge of their respective functions under this Law unless it is shown that the act or omission result from their dishonesty, fraud or wilful neglect.”
[2002 *Official Hansard Report*, page 407]

So the talk of the legislators giving some immunity is not so. There was no such law and no such intention and no such policy by the Government then.

Come to October 27, 2004. Mr. Gilbert McLean:

“Members of this Honourable House would be aware that the Health Practice Law 2002 grants the Ministry of Health Services the authority to insure that the health of the public is protected through regulation of health professionals and institutions in which health services are provided.

“Members will also recall that the Health Practice Commission was recently established to carry out regulatory functions as outlined in the Law. The Commission was advised that health practitioners who are members of the Medical Protection Society could be in breach of the Law because the society is not an insurance company and does not offer malpractice insurance coverage. Most doctors in the Cayman Islands are members of the Medical Protection Society of the United Kingdom and certainly all of those at the Health Services Authority are members of that particular society. After receiving legal advice I accepted the Health Insurance Commission’s recommendation to amend the Health Practice Law 2002 permitting it to be legally acceptable and sufficient for health practitioners in the Cayman Islands to have medical indemnity.

“Section 15(2)(a) of the Health Practice Law 2002 requires a person operating a health care facility to provide malpractice insurance for employed practitioners. The Bill laid on the Table of this Honourable House would amend this sec-

tion to allow an operator of a health care facility to obtain as an alternative to malpractice insurance, indemnity cover approved by the Health Practice Commission for registered practitioners employed by the health care facility.

“The Bill also seeks to clarify that malpractice insurance, liability insurance, medical indemnity and any other insurance required by the Law shall be obtained from an authorised insurer.”
[2004/05 *Official Hansard Report*, page 400]

So, Madam Speaker, if there was any intention to not provide or not to give them any immunity, why in the world are you making sure that they have malpractice insurance?

“This Bill achieves the objective of insuring that the public is protected while allowing practitioners to access cost effective malpractice insurance coverage. This Bill is one which, to my mind, is extremely straightforward in what it is attempting to achieve and I recommend this Bill to Honourable Members. Thank you.”

Now, Mr. Kurt Tibbetts, then Leader of the Opposition, rose to speak and he said:

“Mr. Speaker, in listening to the Honourable Minister for Health presenting the Bill, it seems to us on this side that it is fairly straightforward. There is a point that we would like to make sure that we are very clear on. The amending Bill refers to Section 15 where in the amending Bill it reads: ‘The principal Law is amended in section 15 by repealing subsection (2) and substituting the following...’

“With your permission I just want to refer to the subsection 2 which exists in the current legislation, Law 25 of 2002. Section 15(2) speaks to a person who operates a health care facility. A person who operates a health care facility—

“(a) shall provide malpractice insurance for the registered practitioners employed by the health care facility.”

This is Mr. Tibbetts saying that. Continuing he says:

“The way the Law reads now it is the person who operates the health care facility who shall be responsible for providing malpractice insurance for the practitioners employed by such facility. What is being proposed here is that a person who operates a health care facility shall provide malpractice insurance or indemnity cover approved by the Commission for the registered practitioners employed by such health care facility. Subsection (b) of the proposed Bill speaks to that individual ensuring that the health care facility is covered with adequate liability insurance and subsection (c) says that that individual must ensure that persons who work at the facility under a contract of services with the health care facility have adequate malpractice and other relevant insurance.

“What is being proposed as we understand it, gives the individual an option for the practitioners who are employed by the facility. The existing legislation does not provide an option as we see it because the existing legislation speaks to the individual who operates a health care facility. It says: ‘shall provide mal-practice insurance for the registered practitioners employed by the facility’ whereas the proposed Bill speaks to ‘provide malpractice insurance or indemnity cover...’

“We would very much like for the Minister to just clarify that point. I heard what he said in presenting the Bill about not being able to provide such coverage but the onus now is shifting from the malpractice coverage being provided by the individual who operates the facility. If we look at the proposed subsection (c) in the amending Bill it says that such persons shall ensure that the persons who work at the facility under a contract of services with that facility have adequate malpractice and other relevant insurance. Therefore, as we understand it, instead of the operator of the facility providing malpractice insurance for the practitioners who work there, it is now saying that the operator must ensure that these people have adequate malpractice insurance or other relevant insurance. It seems to me that there is also a question of malpractice insurance and indemnity cover, as to what the cost of each of these are, and the availability of each of them.”

Mr. Tibbetts goes on: “Perhaps in the Ministers winding up, if he has the information available, to just expand on that a little so that we are very clear understanding what he has said but so that we are very clear with regards to once this is approved and becomes a part of the existing legislation where the responsibility lies. Because we do know that while such insurance is absolutely necessary we certainly want for all parties to be properly covered and to ensure that if anything goes wrong that everything can be sorted out because each side of the coin is covered properly by whatever insurance is necessary.”

It does not sound to me like it was meant for them not to have insurance or that we were giving anybody indemnity just so they could . . . if anything happened, nobody could sue them. It does not sound so to me.

Anyway, he goes on to say: “Again, just to make absolutely sure, I do believe the way it reads, is that if the operator of the facility is to ensure that the people who practice at the facility have proper coverage it does not clearly say as to who is responsible for the payment of the coverage. I do not know whether the objective of the legislation is to be clear as to who shall be responsible for the payment or whether that is not a consideration for the legislation and that is a mat-

ter that one should sort out on his own as an operator or as a practitioner.”

An operator meaning the owner of the facility—Cayman Islands Hospital, whatever hospital, and the nurse, the doctor, whatever. Not the cleaner, not the typist, the practitioner. But he continues:

“I do see, unless that is made clear, a potential problem with regards to people being employed, as to where the onus lies. Perhaps we would want to give some consideration to that.

“Mr. Speaker, I am assuming that this Law also applies to any Government facility. I do not presume for a second that Government is exempt from this legislation. So perhaps the Minister could just for our information and for purposes of clarity just give the House a quick explanation as regards to how Government will be operating under the guise of the new legislation once it is approved.

“Those questions were simply just a matter of clarity.” Mr. Tibbetts, continuing: “We certainly understand the intention of the Bill and we support that intention but we would like if the Minister would just clarify those issues so that we are all clear as to the way forward with regards the entire process and the vote.” [Ibid. pp 400-401]

He understood it. That is what he says.

In winding up, Mr. Gilbert A. McLean: “Thank you, Mr. Speaker.”

The Minister now is explaining: “Honourable Members of this House will understand clearly what malpractice insurance is supposed to provide. It is a requirement that is put in place where if a doctor through misconduct or mistake, or whatever, should injure a patient whom they are supposed to help, the patient should have the right to sue for damage and the medical practitioner should be in a position to pay the cost of those damages and this is done by way of malpractice insurance. It is the term that is regularly used that we are familiar with which stems largely out of the United States. We have heard of major settlements in malpractice insurance.

“Of course in the United States there are so many lawsuits that a certain percentage of doctors are stopping the practice of medicine simply because they cannot afford the premiums anymore. They rather simply not take the risk so they get out of the profession. Others publish on the door a notice ‘We do not have malpractice insurance’; it is an option there to have it or to not have it and the public should notice, not that it hinders them from being sued, but I think it is a consideration that is given in any such litigation if it was a published notice and someone going to that person knew that they did not have malpractice insurance.

“In meetings with the representatives of the Cayman Islands Medical and Dental Services

(CIMDS) there were those who attempted to persuade me not to put this requirement in the Law.” That requirement is so that they have insurance.

“I was not persuaded,” he said, “in that regard because I think that it is better to have that requirement in the Law as incidents do happen and it is better that the doctors are covered, and the person who may have to sue for damage knows that he is not suing a medical practitioner”—“not”, again, Madam Speaker. It nah got a dog-gone thing to do with the typist, the board man or the cleaner or the gardener or the cook. No. All to do with a medical practitioner who has to be registered as such a medical practitioner.

Mr. McLean goes on:

“And the person who may have to sue for damage knows that he is not suing a medical practitioner who can declare bankruptcy or does not have any coverage or money to pay them. It was put in the Law for those reasons.

“Now, what I came to discover was that all of the doctors at the Health Services Authority (HSA) are covered by the Medical Protection Society of the United Kingdom. It is in fact an organisation which serves doctors across the Commonwealth and the Government has been paying the fee for this coverage for medical practitioners. I enquired into that situation and I learnt that that society, in effect, paid for and defended practitioners when they decided to take actions against Government or the HSA as the case may be. There were about two or three cases like that. I thought it was fundamentally flawed for anyone or any entity to be paying or picking up the tabs so that somebody could turn around and sue them. It was after learning about this particular situation that I asked the Legal Drafting and the staff in the Ministry to look at a way forward in this regard.

“What is possible now and would obtain now if the Government continued to pay the coverage for the doctors who work at the HSA, that coverage would not be allowed by the Society to be used to take action against the management of the HSA. It would cover the doctors in the practice of medicine but it would not cover them if they wanted to take action against their employer, they would have to go and pay for that themselves. So, the way the Law is worded now places the responsibility on the HSA or any person who operates a health facility, because they shall see to it that they provide malpractice insurance or indemnity cover approved by the Commission.

“We ran into a flaw and the legal people found that the indemnity offered by the Medical Protection Society is not malpractice insurance as malpractice insurance goes. Therefore, it was necessary to amend the Law in a way that doctors on a whole in this country could continue to get the benefits of coverage by the Medical Protection

Society or malpractice insurance specifically, if they so chose. It had the option of one or the other.

“It is my understanding that for them to get the malpractice insurance here it would be exceedingly high and it makes more sense for them to stay covered under the Medical Protection Society. Sections (a), (b) and (c) basically speaks to this requirement by anyone who offers health services or who operates a health care facility. Whether or not the doctors themselves are asked to contribute would be a question of policy. If a facility chose to go and say to that person ‘look you are covered, we initially will pay it, you pay us back’; it is an option but it is a policy decision. The operator would have to see that the insurance was in place whether they paid for it and it became a part of their administrative expense or whether they asked the doctors to contribute. It would be left to them to work that out amongst themselves.

“That is the objective in this amendment that is before this Honourable House and I guess it could sail under the big umbrella of malpractice insurance although we also have in this the concept and the term ‘indemnity cover’ which can be and is offered by the medical protection society. Mr. Speaker, I trust that the explanation has been sufficient for the Member raising the subject and I recommend the Bill to the Honourable House.”[Ibid. pp 401-402]

As I said, I do see, Madam Speaker, how anyone—how anyone—can declare that the doctors were exempt. How? Maybe, I do not know if the Attorney General has any other opinion or anybody else, but from what Mr. McLean said, it had to be what he meant. That was on the 27th October [2004].

Now, December 2004. Is there a difference between indemnity and immunity? Yes, right? When you are given immunity, Madam Speaker, is it not so that if you give someone immunity you cannot do anything to them, right? Yes, right. But this would not give any doctor any immunity where—

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition:—yeah, well, let me keep reading, then.

Not that I know about any immunity. What it was here is the word “employees”. That is where the judge got stuck. But let us read it.

Gilbert A. McLean [said]: “Thank you, Mr. Speaker. Over two years ago, I stood in this Honourable House and proposed to establish a Health Services Authority as a long term flexible frame work for an organisation aiming to provide the highest standards of patient care for the people of these Islands at the best possible cost. Changing the Health Services Department to an Authority was not a panacea. It has not solved all the prob-

lems or completely eliminated the spiralling cost of healthcare. However, good things have, and continue to occur as a result of this significant organisational change. The key to creating and sustaining a successful 21st Century organisation is leadership. Not only at the top of the hierarchy but also throughout the entire entity.

“During and after the passage of Hurricane Ivan, the benefit of giving greater authority and decision-making power to healthcare workers, that is, the persons who have direct contact with patients”—and you note that the Blackstone’s position talks about healthcare workers, too; that is what they talk about.

“During and after the passage of Hurricane Ivan, the benefit of giving greater authority and decision-making power to healthcare workers, that is, the persons who have direct contact with patients was very evident. It would be remiss of me if I did not take this opportunity to again publicly commend Mrs. Eloise Reid, Chief Executive Officer, and the staff of the Authority for their outstanding work in keeping The Cayman Islands Hospital operational under extremely difficult circumstances.

“Like any other private entity, the Health Services Authority has a Board of Directors that is responsible for the policy and general administration of the affairs and business of the organisation. Board Members who hold office at the pleasure of the Governor in Cabinet carry a heavy responsibility, both to the Authority and to the public which they serve. The time and energy required of Board Members is substantial and the remuneration is small. It is, therefore vital that we do everything possible to minimise the risk of personal liability of persons willing to volunteer their time and skills to serve on boards.”

So he is talking about Board members. That is the indemnity that was given to them that he is talking about.

“This Bill proposes to amend the Health Services Authority Law (2003 Revision) to change the immunity provisions of the Law as well as to provide an indemnity section by repealing section 12 and substituting the following section: ‘Neither the Authority, nor any director or employee of the Authority, shall be liable for damages for anything done or omitted in the discharge of their respective functions or duties unless it is shown that the act or omission was in bad faith.’

“After section 12, the following is proposed to be inserted at 12(a): ‘The Authority shall indemnify a director against all claims, damages, costs, charges or expenses incurred by that director in the discharge of his functions or duties except claims, damages, costs, charges or expenses caused by the bad faith of that director.’

“The Bill also amends Schedule 1 which sets out” [Ibid, page 511]—and this went on to deal with another matter, Madam Speaker. But that was substantially his presentation on that matter.

And in this, Madam Speaker, the Minister at the time did not say a word about giving any or taking away any immunity from the doctors.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: But the law does not say that. Well then that was your interpretation, too, then.

Yes, twelve years later he agreed with you then. Well, I do not know, maybe both of you are right, I do not know. But I can say this, that that was not the intention of the law. And if that was the intention of the law I believe the Minister would have said that absolutely clearly . . . he would have made it absolutely clear.

Mr. Tibbetts spoke and basically what he was talking about, Madam Speaker, was the commission of bad faith, which he said was a sweeping statement rather than the other things that had been in it, but it did not change the substance of the law.

Mr. McLaughlin (the now Premier) went on to talk about those two things. But he, too, did not say anything about immunity, doctors and immunity, healthcare workers; not that I see.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Where did you say that?

I know you went on to talk about the director. He said: “**My colleague, the Leader of the Opposition, did read both the current and the proposed replacement section.**” (This is the Mr. McLaughlin who was a Member of the Opposition and now the Premier.)

“**The Leader of the Opposition did read both the current and the proposed replacement section. He pointed out correctly that the current section 12 provides that no ‘director or employee of the Authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law; unless it is shown that the act or omission resulted from their dishonesty, fraud or wilful neglect.’**”

“**The proposed section 12, again says that ‘Neither the Authority, nor any director or employee of the Authority, shall be liable in damages for anything done or omitted in the discharge of their respective functions or duties, unless it is shown that the act or omission was in bad faith.’ As the Leader of Opposition has pointed out, no explanation has been given to this Honourable House as to the distinction between ‘bad faith,’ which is the**

proposed change, and ‘dishonesty, fraud, or wilful neglect.’

“Personally, I would have great difficulty, particularly knowing something about the background of this proposal, to amend the Law at this stage, to give the directors and/or employees of the Authority, additional protection and indemnity by the Government by changing this subsection. The result of providing immunity or indemnity to the directors or employees is essentially saying whatever you have done, as long as it was not in bad faith, the government will become financially responsible. If employees and directors have done something which is, to use current words of the section, ‘dishonest, fraudulent or wilfully neglectful,’ then in my respectful view, they ought to be held liable for it.” [Ibid. p 513]

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Yeah, but you were talking about what?

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: For who? For who?

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Employees who?

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Employees . . . listen, there is a difference between employees and employers, unna know it too.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: No, we nah going row, I will just read into the Hansard, right?

The law says who is a practitioner. No, no other employee had to be registered as a practitioner. It is clear. Now the judge says there is ambiguity in it and I think Blackstone said there is ambiguity in it. And maybe, because of all the way it is surrounded, there is some ambiguity. Certainly, that is why I wanted to be absolutely clear. That is why I moved the motion or had the motion to move.

But he was here talking about a contract. That is what the Premier was talking about. He went on to talk about that contract and a potential lawsuit from one of the—not a medical practitioner, but one of the employees. That is what he was talking about and it is here in the Hansard. He said:

“This was an extraordinary contract, the highest sum I believe ever paid to a public servant in these Islands.” [2004/05 *Official Hansard Report*, page 511] He is talking about the employees, yes, but who? Who?

My good friend, Dr. Frank, said that the role of the Opposition at the time was to make everything that is clear cloudy and, in particular, my good friend the Second Elected Member for George Town always likes to suggest that there has to be some dishonesty on the part of Government and its members. I remind him that his understanding will also suggest that bad faith is dishonesty, bad faith is fraud, and that bad faith is wilful neglect.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, I do not see how anyone reading this could not get the impression and how anyone could interpret what the Minister said about the amendment, that he is proposing that it gives the doctors immunity. It cannot be. It cannot be, Madam Speaker, it cannot be.

Madam Speaker, here is the Health Practice Law 2013. In section 15(1) it says: “A person who operates a health care facility without a certificate commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and a further fine of ten thousand dollars for every day during which the facility is operated without a certificate.”

“(2) A person who operates a health care facility shall—

“(a) ensure that the registered practitioners practising at the health care facility have malpractice insurance or indemnity cover approved by the Commission;

“(b) ensure that the health care facility is covered with adequate liability insurance; and

“(c) ensure that persons who work at the facility under a contract of services with the health care facility have adequate malpractice and other relevant insurance, . . . “and such malpractice insurance, liability insurance, indemnity cover and any other relevant insurance shall be obtained from an authorised insurer.”

So Madam Speaker, here, there is no immunity in this healthcare law. None! None! Now why didn't the judge look at that? I do not know.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Why? Well I have to ask, I don't know.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Huh? I am talking about the case that I wanted something done about. That is what I am talking about.

Whatever else to do I do not know, I am talking about the ruling he gave which I said he misinterpreted. And here, this law clearly defines that two categories of persons exist—the registered practitioner, and persons who work at the facility. That is what this Health Practice Law 2013, says. And in 27A—two sections of this law—it says:

“(1) A registered practitioner shall only practise as a practitioner while he is in possession of a valid practising licence, issued to him by the Council in the prescribed form on payment of the prescribed fee to the registrar.

“(2) A practising licence shall be valid for a period of two years commencing on the date of its issue, or re-issue, as the case may be.

“(3) The Council may, upon the recommendation of the Governor, waive the prescribed fee payable by a registered practitioner who is in full-time employment in the Government service, if the Council is satisfied that the registered practitioner is not also engaged in private practice.

“(4) A practising licence shall not be issued to a registered practitioner unless the Council is satisfied that the registered practitioner has adequate malpractice insurance, liability insurance, other relevant insurance or indemnity cover obtained from an authorised insurer and approved by the Commission.”

So, this Law clearly requires it. And I say that my understanding of what was done in 2004 did not give them any immunity. And here the Law in the 2013 revision clearly states that they must have it. It does not take away any need for them to have that or the requirement for them to have it.

So Madam Speaker, as I said, four Governments went through and until now we were all unaware that such an all-encompassing clause exists in the law. We understand that the Board of Directors at the time of the coming into existence of the HSA was concerned about the liability in their personal capacity for the decisions and/or actions taken by the Board and whether they were entitled to some form of protection from any liability where decisions or actions were taken in good faith, as was practically all of government boards, as I said, in the laws.

The Board saw its responsibility as largely dealing with administrative policy matters. Beyond that, it took the position, Madam Speaker, that the medical environment was a very specialised field delivering healthcare services and was required to enforce and operate within standards, procedures and practices appropriate to the medical profession which were outside the competence of the Board to determine. Thus, there was clear separation of responsibility between the two.

Doctors, as a rule hold themselves to strict standards in their very unique professions and the Health Practice Law further prescribes standards and requirements. And this Law was brought into exist-

ence by the then Minister. And if one refers to section 15, which I just read, it requires a healthcare facility to provide malpractice insurance for the registered practitioners practicing at a healthcare facility. And section 27A(4) of the Law specifically states that: **“A practising licence shall not be issued to a registered practitioner unless the Council is satisfied that the registered practitioner has adequate malpractice insurance . . . from an authorised insurer and approved by the Commission.”**

And they did not put any limitations either. So, I do not know how anybody would attempt to . . . even if we went that far, because I hear them saying about the limitations, but I do not know of any because the Law does not say so . . . if they got that far.

However, Madam Speaker, clause 12 in the Health Services Law may have been constructed. Certainly, it was never intended that the health practitioners at the HSA would be immune from negligence claims. This is supported by the fact, Madam Speaker, that the HSA has maintained medical malpractice insurance with the Medical Protection Society.

So Madam Speaker, there were no intentions of legislators or Government to exempt doctors of the HSA from liability of malpractice, and I do not think the Minister held any such thought. And I certainly knew that it was no Government policy to do so.

So Madam Speaker, later I may have cause to withdraw my motion. I am glad that the Minister is moving this . . . if for no other reason than he thought it would beat me up real good. But the Hansard stands. They can say we passed it and it has been misinterpreted, but no one can tell me that I held any such thought or that I attempted to do any such thing as all the legislation around us talks about the differences.

Madam Speaker, when it comes to claims for medical, if the Government is not mindful about doing anything about them, and we have had many over the years languishing and nothing goes anywhere, I took it upon myself as the then Premier to settle at least four or five cases and Government paid them over a period of time. I believe that if someone is in need and I believe that that need was caused by Government, then Government should stand behind them.

In the case of Donette Thompson, I beg the Cabinet to do the same. Take the case, look at it, and if the child is what everyone says . . . I do not know that I know the family. Certainly, I do not recognise the name, maybe by another name. But certainly, from what has [been] explained, then, I would certainly do what I could to settle it. Take her and help the poor girl and the child. That is what I ask Government to do also.

Thank you kindly.

The Speaker: Does any other Member wish to speak?

I recognise the Elected Member for North Side.

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

Madam Speaker, I rise to support the Amendment to the Health Services Authority Law that is before the House. From my point of view, I do not think that neither it was necessary to put either an indemnity or an immunity clause in the Law at all. I can certainly attest that the 1991 Health Services Law that I passed did not include the clause at all.

And Madam Speaker, while I support what the Government is doing, I want to ask the Minister to look at a few other things that I believe would help secure the situation on behalf of Government.

Part of the problem lies in the original construct of the Law itself because it is normal, Madam Speaker, in healthcare institutions, such as the HSA, that medical staff are separated and treated entirely different from what are termed “employees” of the organisation. And one of the problems we have is that the current Health Services Authority Law does not entirely do that, and it seems like an attempt was made in section 15(3)(c), and I am not sure, I am not a lawyer, but the way I read this I think it eliminates the Health Services Authority and Government from doing for their own staff.

And I will just quote, Madam Speaker, section 15 says, “**power to employ staff, etc.**” And section (3) says:

“The Board shall also determine—(c) the medical staff structure relating to registered doctors, dentists and such other health practitioners, and the professional qualifications, eligibility criteria, accreditation requirements and procedures, clinical privileges and disciplinary procedures for such practitioners who are not employees of, or under contract of services with, the Authority.”

And I believe the problem there is the [word] “not” because I think it should simply say, *such practitioners who are employees of, or under contract of services with, the Authority*. Because the way I read it, “not” means that the only people the Board can apply to this to, are people who are not employees or who are not under any sort of contract to the Authority. And I would like to invite the Minister to look at it more carefully.

Because, Madam Speaker, what the normal situation would be is that the legislation would say that the Board would establish, whether they call him the Chief of Staff or a Medical Director, and it would insist that under the Chief of Staff or the Medical Director the law allows them to put and make regulations . . . and it is usually put in regulations what are called by-laws for the medical staff, and that lays out the structure, how you are, and you are normally only privileged to work in the institution according to your credentials or speciality.

So, because this law does not do that, it might be a consideration of the Minister to add a sub-clause to clause 12 that says something to this matter that a *person appointed or contracted to the medical staff shall not by reason only of such appointment or contract be an officer, servant or agent of the Authority for any purpose*, which would clearly put the medical staff outside of the Authority and then the Authority can require that they have their own organisation, their own by-laws, and their own credentialing process. And part of that can be that they must have proper malpractice insurance and that they can be sued, because I think there is a section in the law that says the Authority can be sued already.

Madam Speaker, the other fear I have of doing this, is that it is likely to lead to a substantial increase in the payments to the Medical Protection Society for the medical staff at the hospital. Because it is very likely that the Medical Protection Society does, in fact, have knowledge of that clause in the law. And I believe the last accounts I saw for the HSA, or the information I have is that the last financial year the HSA paid some \$2.5 million to the Medical Protection Society for its medical staff.

Of course, Madam Speaker, the Minister could also use section 33 of the law which allows the Minister, after consultation with the Board, to give directives to strongly suggest that it is time for the medical staff at the hospital, and maybe all of the medical professionals in the Island, to look at setting up some kind of captive. I believe that Cayman is the leading place in the world for registering medical captives. I tried this back in 1989 with the Medical and Dental Society. Of course, that is a long time ago and they did not see the wisdom of it at that time. Had they set it up then, they would be in a very good position today and none of this would have had to be debated.

A good example they can look at, Madam Speaker, is what the State of Florida did, in particular, under what is called NICA, which is [the] Neurological Injury Compensation Association. And we know that birth-related neurological injury is one of the most expensive kinds of care because it is going to be lifetime. Florida set theirs up in 1988 and this is why I had the idea for doing it in Cayman because I knew about this at the time. Because, Madam Speaker, just removing the immunity from the clause to allow those people to sue the HSA directly for malpractice with the . . . for instance, yesterday we were going to answer the question, we were at 36 per cent in caesarean births and that in itself, Madam Speaker, is one of the reasons I believe that malpractice coverage insurance is so high, particularly for obstetricians, because it is usually accepted that under normal circumstances a normal delivery is a lot less risky than caesarean sections under anaesthesiology.

I read with interest the criteria used in the answer to justify the high rate. I speak subject to correction, but I believe the World Health Organization of

expected Caesarean sections for medical reasons is somewhere between 16 and 20 per cent.

[Inaudible interjection]

Mr. D. Ezzard Miller: Yes. And what we got yesterday, the answer was 43 per cent.

I also know a little bit about this because I have developed a bad habit some people say, Madam Speaker, of listening to other conversations while I talk. While I was the Member for Health I was . . . it was at the Wharf Restaurant actually, and I heard a friend of mine who represented one of the local health insurance coverages, suggesting to the executive of the company who was here, that of the women who had private health insurance with her, the caesarean section was ninety plus per cent. And I was dumbfounded. I went to her office the next day and apologised for eavesdropping on her, but she had the evidence. And most of that, Madam Speaker, was not medically related, it was for two reasons—convenience for the patient and convenience for the doctor because they could plan the time of delivery and there is also an economic value to it. Doctors get a lot more money from insurance companies or the patient for a caesarean section than they get for a normal delivery.

And these are the kinds of things that contribute to the high cost of these malpractice insurances. And I have a genuine concern that if we do not put, as a former Governor used to tell us, *belts and braces* around this, by looking at some of the aspects of the law and doing some innovative stuff, such as setting up a captive or some form of association to which all the doctors contribute and provide protection, I believe that the Minister of Finance might have reason to be worried about his 18-month budget, because there is the possibility that there could be a flood if some of the things that I hear about going on at the HSA are, in fact, true.

So, Madam Speaker, I would invite the Minister to look at adding a subsection to what we are doing today and to look at clause 15 in the current Law and to see whether or not we need to remove the word “not”, which in my view, would give the Board the authority to insist that there is malpractice insurance before you can be credentialed to work at the HSA because I believe the word “not” eliminates them from doing that.

The Board needs to have that authority and it also needs to have the authority to insist that its staff is structured under proper medical staff by-laws and that people are only *privileged* to practice at the hospital according to their credentials.

What that simply means in layman’s terms, Madam Speaker, is that if I am a board certified surgeon, I am privileged to work at the hospital as a general surgeon. I cannot interfere with internal medicine or cardiology or obstetrics or gynaecology. And one of

the problems we have had in this country is that many of the board certified specialists practice beyond their board certification in other areas. And we need to make sure because, again, those are the kinds of things that if the Health Services Authority Board is not in a position to require the medical staff to be properly organised, and that they are only privileged according to their credentials, that it is going to lead to more malpractice suits and to increased costs for malpractice insurance.

So Madam Speaker, with those few comments I support what is being done, but I believe we need to go a little further and do a couple of one or two more things, particularly to the existing Law as it stands, in order to make sure that we can have the comfort as representatives that we are not simply here today creating a situation where people are going to start suing the hospital for any and every little thing and win because we have not put the necessary things in place that will offer the protection in operation, which is likely to lead to less possibility of malpractice.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker. I intend to be very brief. Just to say that I certainly do support the amendment to the Bill to remove the immunity as it currently exists.

The fact is that there are, as the Premier rightly points out, public policy imperatives which certainly dictate that a person who at least is making these allegations will have their day in court, have their claim adjudicated. And there are also human rights imperative, Madam Speaker, which require that a person who, again, is alleging to have been injured, should at least have their day in court.

We just want to make it quite clear that by amending the Bill as we are doing, nobody is saying that doctors are liable in any way. This will only simply allow for persons to have their claim adjudicated in a court. They will still have the burden of having to prove their case, so they will have to prove that there was a duty of care, which invariably there is. They will still have to prove that there was a breach of that duty of care by their healthcare provider, and they will also have to prove that the breach of that duty of care was what led to their injury, what lawyers call causation. So, they still have that onus and the amendment does not in any way seek to relieve them of that burden. But at least, Madam Speaker, they would have an opportunity to ventilate their claim in the court of law.

Madam Speaker, the honourable Member from North Side mentioned about exploring the possibility of captive. And I must say that is something that

commends itself to me and it is something that has been discussed over the years with certainly some of the doctors here. I recall when we were having the discussions on the Tort Reform Bill, we canvassed that possibility because the insurers were complaining about the possibility of . . . sorry, not the insurers, some of the doctors were complaining about the cost of the premium. I think it was the OB/GYN . . . especially the OBGYN, and they always complain about it. And, we suggested, Madam Speaker, that, they may want to explore the possibility of having a captive and, I think their position is that the numbers tend to militate against that possibility. But I certainly do not share that view, Madam Speaker. I think, like the Member for North Side, that if they had been doing that over the years it would have reached a certain level by now where the premium or the payments that they would be required to make would be lessened.

I am not so sure whether it is because of the transient nature of the society, why some of the doctors are not willing to participate in that, but I think it is still something that they should explore, Madam Speaker, given the almost prohibitive cost of these insurance premiums.

The other thing I would like to mention, Madam Speaker, is just to clarify that there is a difference between indemnity and immunity. Immunity basically prevents you from being sued; that is what it does. And I think maybe the one that comes to mind the most is diplomats, the diplomatic immunity. A diplomat cannot be charged for a criminal offence in the country in which he is posted. He enjoys immunity.

But let us assume that the diplomat could have been sued or can be sued and there is a finding against him and he is required to pay damages. How an indemnity would work, Madam Speaker, is, that instead of him paying the damages out of his pocket, his country would pay the damages out of public funds. In other words, he would be indemnified from having to pay out of his own pocket. So, things like his legal costs, all his expenses, everything would have been picked up by his home country. And that is an example of what an indemnity is. Immunity, certainly, works the other way; it prevents him from being sued or being charged with a criminal offence.

And certainly in the HSA Law that is the same sort of meaning it carries. It means that certain persons cannot be sued, of course, unless they are bad faith, which would include if he acted dishonestly and so. But assuming that he could be sued, then certain people like the directors and officers, they still enjoying what is called indemnity in that because, as you heard, they are volunteers and it was felt the least Government could do for them is that their volunteering their time, then the Government should absolve them from any sort of costs and sort of expenses and kind of damages arising from any suit that might be brought against them while acting in the course of

their duty. Again, of course, if they acted in bad faith then they would not be protected.

There is ongoing debate, Madam Speaker, as to whether negligence is covered unless the language in the statute expressly says so. There are court cases going in both directions. One set of cases says that even though the word "negligence" is not mentioned in the law, the assumption is that if you acted negligently then you are not covered. There is another set of cases which say that unless the word is expressly put in there, then the assumption is that, you know, it is the other way.

So, the best way to provide certainty is to put the language in the legislation to make it clear that where you acted in good faith, then, you are covered. But if there is negligence and it can be proven to the requisite standard, then certainly the persons who have been injured by that negligence ought to be properly compensated.

So, Madam Speaker, that is the extent to which I wish to contribute. I certainly understand that we do not wish to delve into the current matter, which is on its way to the Court of Appeal I am told. So we will await the outcome of that exercise.

Thank you.

The Speaker: Does any other Member wish to speak? Does any other Member wish to speak? Final call—

I recognise the Second Elected Member for the district of George Town.

Mr. Roy M. McTaggart: Thank you, Madam Speaker, a few brief comments from me as I publicly record my support for the amendment Bill that is before the House.

Madam Speaker, I think it's only fair to commend the Premier and the Ministry and the Attorney General's Chambers for the swift way in which they have reacted to the judgment that was rendered and the desire to deal with this issue. I recall several discussions that we had and the conclusion was reached very quickly that it was one which we had to deal with immediately. What transpired and the outcome . . . the results of the judgment that was rendered by the Grand Court Judge put . . . you know it was a very untenable situation and was not one which we sought to leave in place for any length of time.

So, I am delighted that this evening we are debating these amendments that, I think, will remove that doubt and ambiguity, whatever it may have been, that existed and make it clear that . . . you know that professionals should not be able to be shielded by law from malpractice, and that those who are aggrieved or have been subject to the effects of a professional's malpractice deeds, that they should have their say in court and they should have their day.

So, I am delighted to commend this Bill to this honourable House and indicate my full support for it.

Thank you, Madam Speaker.

The Speaker: Honourable Premier, we are just a few minutes from the hour of interruption. Is it your intention to conclude?

I recognise the Honourable Premier.

The Premier, Hon. Alden M. McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I want to record my thanks to the Members who have spoken on this important Bill and offered their contribution to the debate.

Madam Speaker, I sympathise with the Honourable Leader of the Opposition who led the Government at the time when this unfortunate provision was inserted in the Law. I am certainly not intent on vilifying him or the Minister or the Government at the time, but it is plain that whatever advice they received at the time was not sound advice. And regardless of what it was that the Minister or the Government thought the effect of the amendment was or was not, it has been found by the Grand Court and, indeed, on plain reading to me (it is clear) that the effect is to confer immunity on all employees of the Health Services Authority with the respect to the discharge of their functions or duties, and that that is sufficiently broad to catch doctors, nurses and other healthcare workers.

So, the intent of the change that this amending Bill effects is to remove that immunity and to allow anyone who claims to be a victim of negligence of a healthcare worker employed by the Health Services Authority to be able to commence and pursue an action in negligence seeking damages before the Court.

Madam Speaker, I have already set out, I think, in detail the advice the Government has received with respect to this matter and so I need not go through that again.

I wish to thank the Member for North Side for his support of the amendment and we take on board his observations about the need to look carefully at the Health Services Authority Law to ensure that there are not matters and issues there which will give rise to problems going forward now that the provision against immunity has or will be removed as a result of the passage of this amending Bill.

So, Madam Speaker, I do not think I need say more in terms of the wind up, but to say again that the Government has moved as swiftly as we have because we believe that it is fundamentally wrong that someone who suffers loss or damage or injury as a result of the negligence of another, that they should be debarred from being able to have their claim properly adjudicated and in the appropriate case to be able to be awarded damages for such injury, loss or damage.

Madam Speaker, we have proceeded with alacrity to address an issue which has been brought to our attention by a finding of the Grand Court in Feb-

ruary of this year. This is April. I do not know that Government has been able to react as swiftly as this in respect of any other matter while fully meeting all of the constitutional and other requirements with respect to notice.

So Madam Speaker—

[Inaudible interjection]

The Premier, Hon. Alden M. McLaughlin: The Member for East End said we were so busy. He is absolutely right; we were so busy dealing with matters such as this.

[Inaudible interjection]

The Premier, Hon. Alden M. McLaughlin: And so, Madam Speaker, again, I just wish to thank Members for their support and I look forward to a unanimous vote on the amending Bill in due course.

The Speaker: The question is that a Bill shortly entitled The Health Services Authority (Amendment) Bill, 2016, be given a second reading.

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

AYES.

The Speaker: The Ayes have it.

The Speaker: I recognise the Honourable Premier.

The Premier, Hon. Alden M. McLaughlin: Madam Speaker, may I have a Division, please?

The Speaker: Madam Clerk, please call a Division.

The Clerk:

Division No. 16

Ayes: 16

Noes: 0

Hon. Alden McLaughlin
 Hon. Moses I. Kirkconnell
 Hon. D. Kurt Tibbetts
 Hon. Osbourne V. Bodden
 Hon. G. Wayne Panton
 Hon. Marco S. Archer
 Hon. Tara A. Rivers
 Mr. Roy M. McTaggart
 Mr. Joseph X. Hew
 Hon. W. McKeeva Bush
 Mr. Bernie A. Bush
 Mr. Alva H. Suckoo, Jr.
 Mr. Winston C. Connolly, Jr.
 Mr. D. Ezzard Miller
 Mr. V. Arden McLean
 Hon. Anthony S. Eden

Absent: 1

Capt. A. Eugene Ebanks

The Speaker: The results of the Division are as follows: 16 Ayes, 1 Absentee.

The Motion is carried.

Agreed: The Health Services Authority (Amendment) Bill, 2016, given a second reading.

The Speaker: I recognise the Honourable Premier for the Adjournment Motion.

ADJOURNMENT

The Premier, Hon. Alden M. McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I want to thank Members for the dedication to the work of this House this past week. We have really made great progress and I wish everyone a wonderful weekend and move the adjournment of this honourable House until Monday morning at 10:00 am.

The Speaker: The question is that the honourable House be adjourned until Monday at 10:00 am.

All those in favour please say Aye.

AYES.

The Speaker: Those against, No.

The Ayes have it.

The House stands adjourned until Monday at 10:00 am.

At 4:38 pm the House stood adjourned until 10:00 am, Monday, 2 May 2016.