



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2015/16 SESSION

14 October 2015

*First Sitting of the Third Meeting
(Pages 361-412)*

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

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

EX OFFICIO MEMBERS OF THE CABINET

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

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Mr Anthony S Eden, OBE, MLA	<i>Deputy Speaker</i> , First Elected Member for Bodden Town
Mr Roy McTaggart, MLA	Second Elected Member for George Town
Mr Winston C Connolly, Jr, MLA	Fifth Elected Member for George Town
Mr Joseph X Hew, MLA	Sixth Elected Member for George Town
Mr Alva H Suckoo, MLA	Fourth Elected Member for Bodden Town

OPPOSITION MEMBERS

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

INDEPENDENT MEMBERS

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

APOLOGIES

Hon G Wayne Panton, JP, MLA	Financial Services, Commerce and Environment
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**OFFICIAL HANSARD REPORT
THIRD MEETING 2015/16 SESSION
WEDNESDAY
14 OCTOBER 2015
10:13AM
First Sitting**

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

The Speaker: Good morning. I will invite the Honourable Minister of Education to grace us with prayers.

PRAYERS

Hon. Tara A. Rivers, Minister of Education, Employment and Gender Affairs: 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, 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. Amen.

The Speaker: Please be seated.

The House is now in session.

READING BY THE HONOURABLE SPEAKER OF MESSAGES AND ANNOUNCEMENTS

APOLOGIES

The Speaker: I have received apologies for the absence of the Honourable Minister of Financial Services, Commerce and Environment.

PRESENTATION OF PETITIONS

The Speaker: There are no Petitions on the paper for this morning.

PRESENTATION OF PAPERS AND OF REPORTS

GOVERNMENT OF THE CAYMAN ISLANDS PORTFOLIO OF INTERNAL AND EXTERNAL AFFAIRS ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 30TH JUNE 2013

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

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

I beg to lay on the Table of the honourable House the Annual Financial Statements for the Portfolio of Internal and External Affairs for the year ended 30th June 2013

The Speaker: So ordered.

Does the Honourable Premier wish to speak to the report?

The Premier, Hon. Alden McLaughlin: No thank you, Madam Speaker.

MINISTRY OF HEALTH, ENVIRONMENT, SPORTS, YOUTH AND CULTURE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2013

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I beg to lay on the Table of this honourable House the Annual Financial Statements for the year ended 30th June, 2013, for the Ministry of Health, Environment, Sports, Youth and Culture.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to the report?

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

In accordance with International Public Sector Accounting Standards and the provisions of the Public Health Management and Finance Law, I am pleased today to have laid on the Table of this honourable House the audit report of the former Ministry of Health, Environment, Youth, Sports and Culture for the fiscal year ended 30 June 2013.

The statement of the financial position at 30 June 2013 showed that the total assets shrunk by approximately 3 per cent from \$20,621,000 to \$19,931,000, the total current assets rising by approximately 9 per cent, and total non-current assets falling by approximately 11 per cent. The total liabilities fell by approximately 11 per cent from \$3,696,000 to \$3,282,000, and the net assets fell from \$16,925,000 to \$16,649,000, approximately 1.7 per cent decrease. Consequently, the total net worth dropped approximately 1.7 per cent.

Madam Speaker, for the year ended 30 June 2013, the statement of financial performance showed a deficit of \$2,469,000 from a surplus of \$1,896,000 the previous fiscal year that ended 30 June 2012, resulting in approximately a 57 per cent loss.

The total revenue fell by 19 per cent from \$11,459,000 to \$9,303,000. Total expenses were significantly affected by a loss of \$2,414,000 on re-evaluation of property and equipment, of which there is no information to compare for the previous fiscal year which ended 30 June 2012.

As a result, total expenses rose by 19 per cent from \$9,563,000 to \$11,772,000.

Madam Speaker, the Ministry of Health, Environment, Youth, Sports and Culture was a government-owned entity as defined in section 2 of the Public Management and Finance Law and is domiciled in the Cayman Islands. Its principal activities and operations including all activities carried out in terms of the outputs purchased by the then Minister of Health, Environment, Youth, Sports and Culture, as defined in the Annual Plan & Estimates for the Government of the Cayman Islands for the financial year ended 30 June 2013.

During the year ended 30 June 2013 the Ministry comprised the following departments: Health Regulatory Services, Department of Environment, Department of Sports, Youth Service Unit, and the Cayman Islands Cadet Corps. The subject area Envi-

ronment moved to a separate ministry in July 2013, while the subject area Environmental Health came into the same ministry at that time. Further to this change, the subject areas Youth and Sports moved to a separate ministry in January 2015. With these changes, Madam Speaker, the Ministry formerly titled the Ministry of Health, Environment, Youth, Sports and Culture is now entitled the Ministry of Health and Culture.

The Ministry is funded through its revenue from which a significant percentage is derived for the provision of services to Cabinet. A relatively small component of the Ministry's revenue comes from other agencies in government and third parties.

The Auditor General issued a report on the financial statements of the Ministry of Health, Environment, Youth, Sports and Culture for the year ended 30 June 2013. The Auditor General expressed his opinion in the following commentary: **"In my opinion, the financial statements present fairly, in all material respects, the financial position of the Ministry of Health, Environment, Youth, Sports & Culture as at 30 June 2013 and its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards."**

Madam Speaker, it should be noted that this is the first time the Ministry has ever received an unqualified audit opinion. I am very encouraged that the number of agencies receiving unqualified opinions continues to grow. I would like to commend the hard work and dedication that is required on the part of the ministry to achieve this unqualified result, thereby meeting professional standards and providing value for money to the people of the Cayman Islands.

Madam Speaker, I invite Members of this honourable House to read this report in detail. Thank you.

**GOVERNMENT OF THE CAYMAN ISLANDS
MINISTRY OF HOME AFFAIRS ANNUAL
FINANCIAL STATEMENTS FOR THE YEAR
ENDED 30 JUNE 2014**

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I beg to lay on the Table of this honourable House the Annual Financial Statements for the year ended 30 June 2014 for the Ministry of Home Affairs.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to his report?

The Premier, Hon. Alden McLaughlin: No, thank you, Madam Speaker.

FINANCIAL STATEMENTS OF SEGREGATED INSURANCE FUND OF THE CAYMAN ISLANDS FOR THE YEAR ENDED 30 JUNE 2014

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

The Premier, Hon. Alden McLaughlin: I beg to lay on the Table of this honourable House the Financial Statements of Segregated Insurance Fund of the Cayman Islands for the year ended 30 June 2014.

The Speaker: So ordered.

Would the Honourable Premier like to speak to the report?

The Premier, Hon. Alden McLaughlin: Yes, thank you, Madam Speaker.

In accordance with section 11(4) of the Health Insurance Commission Law, I am pleased to have laid before this honourable House the audited Financial Statements of Segregated Insurance Fund for the year ended 30 June 2014.

The Segregated Insurance Fund (the Fund) was established under the Health Insurance Commission Law (2003). The Health Insurance Commission took over administration of the Fund from the Cayman Islands Monetary Authority on 1 January 2006.

The Fund's primary function is to assist the Cayman Islands Government to defray the costs incurred for providing treatment to indigent persons. Contributions to the Fund are received from approved insurance providers in accordance with section 5 of the Health Insurance Regulations which require that all fees collected by the Health Insurance Commission be paid into the Segregated Insurance Fund.

An approved insurer collects a monthly \$10 contribution from individual policy holders with no dependants. Those with dependants pay \$20 per month for the Fund. Health insurer providers then submit these collections to the Health Insurance Commission in its capacity as Fund Administrator.

The current list of insurance companies contributing to the Fund is as follows: Aetna Life and Casualty, BAF, British Caymanian, Cayman First, CayMed Plus, CINICO, Generali Worldwide, Guardian General, and Pan American International.

Madam Speaker, during the 2013/14 fiscal year, CINICO provided coverage for the largest number of persons 14,114, followed by Generali, 14,084, and then Colonial Medical - British Caymanian with 6,385. Also the total number of persons with health insurance in the Cayman Islands was 52,516 for the year ended 30 June 2014, which was very similar to the previous year (2012/13). The number was 52,217. This represents 90 per cent of the population with health insurance coverage.

Madam Speaker, the Segregated Insurance Fund collected \$5,370,000 from approved insurance

providers for the period ended 30 June 2014. Operating expenses for this period totaled \$9 million and the amount of \$5 million was deposited to executive revenue account of the Ministry of Health.

The Auditor General has completed the audit of the Segregated Insurance Fund and has provided the financial statement duly certified pursuant to section 12(a) of the Health Insurance Commission Law. The audit opinion for the period was an unqualified opinion which means that information contained within the financial statements can be relied upon by the user. This opinion has been consistent with opinions received by the Auditor General's office for the past five years.

Madam Speaker, I invite Members of this honourable House and the public to review this report in detail.

FINANCIAL STATEMENTS OF THE CAYMAN ISLANDS NATIONAL MUSEUM FOR THE YEAR ENDED 30 JUNE 2014

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

The Premier, Hon. Alden McLaughlin: I beg to lay on the Table of this honourable House the Financial Statements of the Cayman Islands National Museum for the year ended 30 June 2014.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this report?

The Premier, Hon. Alden McLaughlin: Yes, thank you, Madam Speaker.

In accordance with section 7 of the Cayman National Museum Law, and section 52(2) and (5) of the Public Management and Finance Law, I am pleased to have laid on the Table of this honourable House the audited report of the Cayman Islands National Museum for the fiscal year ended 30 June 2014.

The statement of financial performance shows that for the year ended June 30, 2014, total revenues were \$1,065,066. Product sales were \$90,537. Admissions revenue was \$39,680. Rental income was \$19,000.

On the expenditure side, the total costs for the year were \$1,059,849. The previous year's expenditure was \$1,059,849. Staff costs were \$464,002. Facility costs were \$168,300. Administration expenses were \$76,457. Rent \$115,181. The net loss for the year was \$376,116, an increase over the previous year's loss of \$4,496.

At 30 June 2014, the current assets were \$580,550 and the total assets were \$2,884,245. Total liabilities were \$144,562 and the net worth \$2,379,683. Total assets fell by 1.4 per cent from the previous year and net worth rose by 98.8 per cent.

The Cayman Islands National Museum (the "Museum") was established on May 3, 1979 by enactment of the Museum Law, 1979. Its purpose is to establish for posterity a collection of material evidence concerning humankind and its environment, with primary but not exclusive reference to the Cayman Islands. The Museum also serves to arouse public interest in Caymanian heritage and increase the knowledge and appreciation of and respect for it through the proper use of collections.

The Museum is funded primarily by an annual grant from the Cayman Islands Government through the Ministry of Health and Culture. The Museum would not be able to continue as a going concern without ongoing support from the Cayman Islands Government. And, as a result, the Museum is economically dependent on the Government of the Cayman Islands.

Madam Speaker, the Auditor General issued a qualified opinion on the financial statements of the Museum for the year ended 30 June 2014. The Auditor General relied on the work carried out on his behalf by PKF (Cayman) Limited, that performed their work in accordance with International Standards of Auditing.

The Auditor General gave two explanations as to the basis for the qualified opinion in the following comments, and I quote: **"During the period ended June 30, 2012, the Museum changed the system that maintained the property, plant and equipment register and this resulted in a material adjustment to accumulated depreciation and accumulated surplus. The audit reports on the financial statements for the period ended June 30, 2012 and the year ended June 30, 2013, included a qualification in respect of this matter. We were unable to form an opinion on the accuracy of this adjustment or the property, plant and equipment recorded in the statement of financial position as at June 30, 2014 and the related impact that this would have on the accumulated surplus and equity of the Museum as at June 30, 2014.**

"In common with many non-profit oriented organizations, the Museum derives a portion of its cash receipts from various sources, the completeness of which is not susceptible to independent audit verification. Accordingly, our verification of such cash receipts was limited to the amounts recorded in the records of the Museum and we were not able to determine whether any adjustments might be necessary to cash receipts from fundraising income and donations, the increase in cash and cash equivalents for the year ended June 30, 2014, opening cash as at July 1, 2013 and closing cash as at June 30, 2014. In addition, the audit report on the financial statements for the year ended June 30, 2013 included a qualification of the same matter."

Madam Speaker, the Auditor General further stated, that in his opinion **"except for the possible effects of the matters described in the bases for qualified opinion paragraphs above, the financial statements present fairly, in all material respects, the financial position of the Museum as at June 30, 2014 and its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards."**

Madam Speaker, the Auditor General went on to state in the "Emphasis of Matter," **"We draw attention to note 1, which discloses that the Museum is dependent upon the financial support of the Cayman Islands Government to enable it to meet its obligations as they fall due. Without this ongoing support a material uncertainty exists that casts significant doubt about the Museum's ability to continue as a going concern. Our opinion is not qualified in respect of this matter."**

Madam Speaker, I have spoken at some length to these matters to ensure that there is full transparency with respect to the findings in relation to the audits carried out by the Auditor General, not just with respect to the Museum, but with respect to the other entities to which I have spoken. So I invite Members of this honourable House and the public to review this report in detail.

FINANCIAL STATEMENTS OF CAYMAN ISLANDS HEALTH SERVICES AUTHORITY – 30 JUNE, 2013

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I beg to lay on the Table of this honourable House the Financial Statements of the Cayman Islands Health Services Authority for 30 June 2013.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this report?

The Premier, Hon. Alden McLaughlin: Yes, Madam Speaker.

In accordance with section 52(2) and (5) of the Public Management and Finance Law, I am pleased to have laid on the Table of this honourable House the audited report of the Cayman Islands Health Services Authority for the fiscal year ended 30 June 2013.

The Cayman Islands Health Services Authority is a statutory body that was established on 1 July 2002 under the Health Services Authority Law. The purpose of the Health Services Authority is to provide health care services and facilities in the Cayman Islands in accordance with the National Strategic Plan

for Health prepared by the Cayman Islands Government.

Madam Speaker, the Authority provides primary and secondary levels of healthcare services for the three Islands and its facilities include the following healthcare agencies. The main facilities:

- Cayman Islands Hospital, George Town, Grand Cayman
- Faith Hospital, in Cayman Brac

Community-based services include:

- Little Cayman Health Centre
- George Town General Practice Clinic
- West Bay Health Centre
- Bodden Town Health Centre
- East End Health Centre
- North Side Health Centre
- Public Health Unit
- Lions Eye Clinic
- George Town Dental Clinic
- Merren's Dental Clinic
- Cayman Brac Dental Clinic

Madam Speaker, in reviewing the audited financial statements for the year ended 30 June 2013, the Health Services Authority recorded total revenues from government patient service fees and other sources of \$93,915,400. The total operating expenses reported were \$96,837,555. The reported net loss for the year was \$2,922,155. This loss is significantly less than the loss reported in the previous year 2011/12 of \$4,609,703.

The current assets for the year were reported at \$33,234,200, and the fixed assets were \$63,032,008. The Health Services Authority also reported total assets of \$96,266,208, and total liabilities of \$18,021,657.

The net assets for the year were reported at \$78,244,551. At 30 June 2013 the HSA ended the fiscal period with a positive cash balance of \$9.1 million, compared to the 2012 balance of \$8.1 million.

Madam Speaker, the Auditor General completed the audit and issued a qualified opinion on the financial statements of the HSA for the period ended 30 June 2013. A qualified opinion means that a portion of the financial statements cannot be relied upon but the rest of the statements can be relied upon by the reader.

Madam Speaker, the Auditor General pointed out five significant matters that influenced him to arrive at his opinion: Ineffective controls over completeness of patient revenues. The Auditor General said that he was unable to satisfy himself that the reported patient services fees of \$79.8 Million were complete.

In response, the HSA management noted that the HSA has implemented organizational policies and procedures to ensure revenue completeness. This will include training and proper documentation by physicians, the development of a charge master policy, and

recommendation of an automated charge capture technology system, for example, Craneware.

The second point was Completeness and valuation of patient-related accounts receivables. The Auditor General stated that he was unable to determine the completeness of patient-related accounts receivable reported due to their connections to patient revenues whose completeness is qualified. He went on to say that tests of subsequent receipts to ascertain valuation of the accounts receivable and sufficiency of the provisions for bad debts as of 30 June 2013 were also curtailed in light of present qualifications to patient services fees.

In addition, the Auditor General stated that the new patient adjudication system introduced in May 2012 to streamline the claim settlement process and the cash receipts process has \$2 million of cash received from CINICO that he could not reconcile to individual receivables in the revenue system as at 30 June 2013.

In response, the HSA's management highlighted a number of action steps to be implemented, including the creation of an electronic version of the patient responsibility form, updating the payment policy, and employing an accountant with responsibility for reconciling daily account receivables.

The third point was, Inability to ascertain the accuracy, existence and valuation of year-end inventory. The Auditor General stated that he was unable to satisfy himself of the accuracy, existence valuation of inventory as at 30 June 2013, as the listing presented highlighted significant differences for the majority of items from what his staff had verified during the year-end inventory count.

In response the HSA's management advised that they would select and implement an automated materials management system to address this problem.

The fourth point was omission of required pension disclosure. The Auditor General stated that while he was satisfied as to the reasonableness of the unfunded pensions liability balance as of 30 June 2013, and the related expenses for the year then ended, management advised that certain information required by IAS-19 in relation to its pension scheme was unavailable from the actuary. As a result of the material omission of a required disclosure, the Auditor General was unable to speak to the adequacy to the note disclosure related to pensions.

And the final point, Madam Speaker, was, Uncertainties due to modified (and disclaimers of) audit opinions on the prior years' financial statements. The Auditor General stated that because of the disclaimers of audit opinion on the Health Authority's financial statements for the years 2005/6 to 2009/10 and the qualified audit opinion in 2010/11 to 2011/12, he was unable to determine the accuracy of the accumulated deficit as reported in the balance sheet and the statement of changes in net equity.

In response, the HSA's management noted that this issue would be resolved when the HSA receives an unqualified opinion.

Madam Speaker, the Auditor General's opinion was that **“except for the possible effects of the adjustments necessary in respect of the matters discussed in the 'Basis for Qualified Opinion' paragraphs above, these financial statements present fairly, in all material respects, the financial position of the Health Services Authority as at 30 June 2013, and the results of its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.”**

Madam Speaker, in closing I would like to publicly thank the board and management of the Health Services Authority for their hard work and perseverance in producing these annual reports and responding to the significant matters raised by the Auditor General that form the basis of the qualified opinion. I invite Members of this honourable House and the public to review these reports in detail.

[Pause]

The Speaker: Honourable Premier, I should indicate at this juncture that because of the historical value of the tabling of this next document, that the Chair will give permission for the taking of one photograph upon your tabling the document.

[Pause]

The Speaker: Based on the body language, let me further clarify the discretion to allow one photograph. Should members of the press wish to take a photograph, you will also have an opportunity. I will ask the Serjeant to escort you into the door there at this moment, and if you would observe the decorum and sanctity of the Parliament so it would not be an interference, and also any other Official Member of the Government or backbench who wishes to take a photograph of this historic, long-awaited tabling of this draft, may do it at this time. Please do not abuse the discretion.

[Inaudible interjection]

NINETEEN SINGLE MEMBER ELECTORAL DISTRICTS BOUNDARIES ORDER, 2015

The Speaker: I recognise the Honourable Premier.

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

In accordance with section 89(3) of the Cayman Islands Constitution Order, 2009, I beg to lay on the Table of this honourable House, the Draft Cayman

Islands Constitution Order, 2009, The Nineteen Single Member Electoral Districts Boundaries Order, 2015.

The Speaker: So ordered.

Honourable Premier, I would imagine you would wish to expound on this.

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

Madam Speaker, I do not propose to speak substantively to the matter at this stage, because there is a motion to follow. But I will explain, by reference to the Constitution, the process that we are following.

Madam Speaker, section 89(1) of the Cayman Islands Constitution Order, 2009, provides for the appointment of an Electoral Boundary Commission by Her Excellency the Governor. That process was gone through. Her Excellency appointed an Electoral Boundary Commission at the invitation of this House, this House having resolved in those terms.

The Electoral Boundary Commission has carried out its work. It has produced a report entitled “The Report of the Cayman Islands Electoral Boundary Commission 2015” which has been delivered to Her Excellency and to all Members of this honourable House, again in accordance with the Constitution.

Section 89(3) of the Constitution provides, **“As soon as may be after the Commission has submitted a report under subsection (1), the Premier shall lay before the Legislative Assembly for its approval the draft of an order by the Governor for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft may make provision for any matters which appear to the Premier to be incidental to or consequential upon the other provisions of the draft.”**

Subsection (4), **“Where any draft order laid under this section would give effect to any such recommendations with modifications, the Premier shall lay before the Legislative Assembly together with the draft a statement of the reasons for the modifications.”**

Madam Speaker, there are no modifications proposed by me on behalf of the Government with respect to the report of the Electoral Boundary Commission.

Madam Speaker, for the sake of completeness, even though we are not at that stage, I will just refer to the remaining subsections of section 89 of the Constitution:

“(5) If the motion for the approval of any draft order laid under this section is rejected by the Legislative Assembly or is withdrawn by leave of the Assembly, an amended draft shall be laid without undue delay by the Premier before the Assembly.”

“(6) If any draft order laid under this section is approved by resolution of the Legislative Assembly, the Premier shall submit it to the Governor who shall make an order (which shall be published in a Government Notice) in terms of the draft; and that order shall come into force for the determination of the boundaries of the electoral districts to which it relates upon the next dissolution of the Assembly after it is made.

“(7) The question of the validity of any order by the Governor purporting to be made under this section and reciting that a draft of the order has been approved by the Legislative Assembly shall not be inquired into in any court.”

So, Madam Speaker, I hope that has explained the process that we have now embarked upon. This will be followed in due course by a necessary Government Motion. I look forward to that over the course of today or tomorrow.

REPORT OF THE STANDING BUSINESS COMMITTEE SECOND MEETING OF THE 2015/2016 SESSION OF THE LEGISLATIVE ASSEMBLY

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health and Culture.

The Premier, Hon. Alden McLaughlin: I beg to lay on the Table of this honourable House, the Report of the Standing Business Committee Second Meeting of the 2015/2016 Session of the Legislative Assembly

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this report?

The Premier, Hon. Alden McLaughlin: No thank you, Madam Speaker.

SISTER ISLANDS AFFORDABLE HOUSING DEVELOPMENT CORPORATION FINANCIAL STATEMENTS 30TH JUNE 2014

The Speaker: I recognise the Honourable Deputy Premier, Minister of District Administration, Tourism and Transport.

Hon. Moses I. Kirkconnell, Deputy Premier, Minister of District Administration, Tourism and Transport: I beg to lay on the Table of this honourable House the Sister Islands Affordable Housing Development Corporation Financial Statements 30th June, 2014

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this report?

Hon. Moses I. Kirkconnell: Yes, Madam Speaker.

The audited financial statements show that the revenue for the year ended 30 June 2014, was \$56,000. There was a net deficit of \$104,000. The corporation had total assets of \$1,750,000, resulting in a positive net worth of \$1,700,000.

The Auditor General has given an unqualified opinion on the Sister Islands Affordable Housing Development Corporation statements for the year ended 30 June 2013. The Auditor General stated that in his opinion the financial statements present fairly, in all material respects, the financial position of the Sister Islands Affordable Housing Development Corporation as at 30 June 2014 and its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

Madam Speaker, I would like to thank the Board of the Sister Islands Affordable Housing Development Corporation for the hard work that has gone into producing the positive results for the corporation. I would also like to invite all Members of this honourable House and the public to review the report in detail. Thank you.

CAYMAN AIRWAYS LIMITED CONSOLIDATED FINANCIAL STATEMENTS 30 JUNE 2014

The Speaker: I recognise the Honourable Deputy Premier, Minister of District Administration, Tourism and Transport.

Hon. Moses I. Kirkconnell: In accordance with section 52(5) of the Public Management and Finance Law (2013 Revision), I place before this honourable House the audited Financial Statements for Cayman Airways Limited for the fiscal year ended 30 June 2014.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this report?

Hon. Moses I. Kirkconnell: Thank you, Madam Speaker, yes; a few short comments.

The 30 June 2014 audited financial statements show that the revenue for the year ended 30 June 2013 was \$87,600,000, while total expenditure was \$88,600,000. This, along with financing costs of \$1,400,000 resulted in an overall net loss of \$2,300,060—the airline’s best result in a decade!

At year end, Cayman Airways Limited had total assets equaling \$34,500,000 with total liabilities equaling \$94,600,000. This resulted in a negative net worth of \$60 million.

These financial statements are audited by the Auditor General in accordance with section 29(2) of the Public Management and Finance Law (2013 Revision). An unqualified opinion has been issued on the June 2014 financials with an emphasis on the matter of the company’s reliance on financial support from

the Cayman Islands Government. The Auditor General states that statements present fairly, in all material respects, the financial position of Cayman Airways Limited and its subsidiary as at 30 June 2014 and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.

Madam Speaker, I would like to take this opportunity to thank the board and management of Cayman Airways for their work during this period and all of their efforts in producing these audited financial statements, and the office of the Auditor General for auditing them. I now invite all honourable Members and the public to review the report in detail. Thank you.

**MINISTRY OF DISTRICT ADMINISTRATION,
WORKS, LANDS AND AGRICULTURE ANNUAL
FINANCIAL STATEMENTS FOR THE YEAR ENDED
30TH JUNE 2013**

The Speaker: I recognise the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure.

Hon. D. Kurt Tibbetts, Minister of Planning, Lands, Agriculture and Infrastructure: Thank you, Madam Speaker.

I beg to lay on the Table of this honourable House the Annual Financial Statement of the Ministry of District Administration, Works, Lands and Agriculture for the year ended 30th June 2013.

The Speaker: So ordered.

Does the Honourable Minister wish to speak to this report?

Hon. D. Kurt Tibbetts: No, Madam Speaker, the report is self-explanatory.

**MINISTRY OF PLANNING, LANDS, AGRICULTURE,
HOUSING AND INFRASTRUCTURE ANNUAL
FINANCIAL STATEMENTS FOR THE YEAR
ENDED 30TH JUNE 2014**

The Speaker: I recognise the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

I beg to lay on the Table of this honourable House the Annual Financial statements for the year ended 30 June 2014 for the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure.

The Speaker: So ordered.

Does the Honourable Minister wish to speak to this report?

Hon. D. Kurt Tibbetts: Madam Speaker, just to say that in the report itself the Auditor General, and I quote him as he says, **“In my opinion, except for the possible effects of the matters described in the Basis for Qualified Opinion the financial statements present fairly, in all material respects, the financial position of the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure as at 30 June 2014 and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.”**

**WATER AUTHORITY OF THE CAYMAN ISLANDS
ANNUAL REPORT FOR THE 2013/14 FINANCIAL
YEAR**

The Speaker: I recognise the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure.

Hon. D. Kurt Tibbetts: Thank you.

Madam Speaker, I wish to lay on the Table of this honourable House, the Water Authority of the Cayman Islands Annual Report for the 2013/14 Financial Year.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this report?

Hon. D. Kurt Tibbetts: Just very briefly, Madam Speaker, just referring to the Auditor General's written opinion, and quoting him, as he says, **“In our opinion the financial statements present fairly, in all material respects, the financial position of the Water Authority as at 30 June 2014 and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.”**

**CAYMAN ISLANDS MINISTRY OF EDUCATION,
EMPLOYMENT AND GENDER AFFAIRS
INDEPENDENT REVIEW OF CAYMAN ISLANDS'
PUBLIC EDUCATION SYSTEM – JUNE 2015**

**CONSULTANCY – CAYMAN ISLANDS BASELINE
INSPECTION OF SCHOOLS: OVERVIEW REPORT
– JUNE 2015**

The Speaker: I recognise the Honourable Minister of Education, Employment and Gender Affairs.

Hon. Tara A. Rivers, Minister of Education, Employment and Gender Affairs: I beg to lay on the Table of this honourable House the Cayman Islands Ministry of Education, Employment and Gender Affairs, the Independent Review of Cayman Islands' Public Education System, which was commissioned

by the Ministry, and also the Baseline Inspection of Schools, again, commissioned by the Ministry of Education.

The Speaker: So ordered.

Does the Honourable Minister wish to speak to these reports?

Hon. Tara A. Rivers: Yes, Madam Speaker, just very briefly at this time, because I do intend to make a more fulsome statement to the House, talking not just about the reports themselves, but about the plan of action to deal with some of the issues highlighted.

Madam Speaker, on behalf of the Government I present to this honourable House the reports of the Baseline Inspection of Public Schools, including the overview report produced by the external inspections team and the independent review of the Cayman Islands Public Education System.

In speaking to these reports, again I will be brief, as I intend to speak in a more fulsome statement in that regard.

Madam Speaker, you may recall that during the Budget Debate of 2014/15 back in June, I spoke of the Ministry's intention to engage in such external evaluations of the education system in an effort to get a better understanding of the system as a whole. I am happy to report that these reviews have now been conducted and the reports have been completed. As promised then, these reports are now being tabled for all to see.

Madam Speaker, these important reviews of our system were carried out as promised, and the results are in and the Ministry is taking action. However, very briefly to say that the baseline inspections were carried out on all 15 government schools across Grand Cayman and Cayman Brac between November 2014 and March 2015. The inspection process was coordinated by a local lead inspector who has extensive working history and knowledge in the Cayman Islands education system.

The baseline inspections carried out primarily examined and reported on the following areas:

- Student progress and achievement
- Effectiveness of teaching and its impact on learning
- Leadership and management
- Quality of provision in student outcomes in English and Mathematics

Each school was given an overall grade in these areas, with a possible grading scheme consisting of the following: Very good, Good, Adequate or Unsatisfactory.

Overall, Madam Speaker, the baseline inspection reports that whereas there has been progress made over the past several years, the achievement with respect to English, Mathematics and the practical aspects of Science overall achievement is still significantly lower than the UK norms by at least one year.

Madam Speaker, with respect to the Education System Review, which was commissioned and carried out in tandem with the Baseline Inspection of Schools, the Ministry sought to engage the services of an external and objective body to conduct a review of the education system as a whole. The review focused on educational governance; provision and student outcomes in primary and secondary education in the Cayman Islands Government Education System; and it provided recommendations for improvement.

The education system review also refers to performance data that indicates improvement in achievement during the recent years. In other words, Madam Speaker, there has been improvement in the system in recent years. However, consistent with what the baseline school inspections found, the Education Review Report found that the performance is still significantly below UK performance at the same age for English and Mathematics.

For example, the UK floor performance requirements for English and maths are set at 65 per cent, whereas in the Cayman Islands English is currently at 63 per cent in terms of achievement overall, and mathematics is at 47 per cent.

The report indicates that though year on year improvements have been made, the Cayman Islands is still significantly behind other leading countries and by not making significant changes the Cayman Islands will continue to diverge and improvements made by leading countries will continue to contribute to the widening of the performance gap.

As I said, Madam Speaker, I will end my remarks with respect to these reports at this stage and will provide this House with a more fulsome statement. I do urge all Members of this House to read the reports if you have not already done so. Thank you.

**GOVERNMENT OF THE CAYMAN ISLANDS
CHILDREN AND YOUTH SERVICES (CAYS)
FOUNDATION FINANCIAL STATEMENTS 30 JUNE
2012, 30 JUNE 2013, 30 JUNE 2014**

The Speaker: I recognise the Honourable Minister Community Affairs, Youth and Sports.

Hon. Osbourne V. Bodden, Minister of Community Affairs, Youth and Sports: Thank you, Madam Speaker.

I beg to lay on the Table of this honourable House the Financial Statements for Children and Youth Services (CAYS) Foundation for 30 June 2012, 30 June 2013, and 30 June 2014.

The Speaker: So ordered.

Does the Honourable Minister wish to speak to this report?

Hon. Osbourne V. Bodden: Madam Speaker, only to say that the reports are qualified. And, for the record, I

would like to read in the basis for the qualified opinion as per the Auditor General. It says, **“In common with many charitable organisations the Foundation derives a material portion of its income from donations, fundraising events and similar activities, the completeness of which is not susceptible to audit. Therefore, we were not able to extend our audit of such income beyond the recorded amounts. Had we been able to extend our audit to the completeness of such income, we may have determined adjustments necessary to income.”**

And the qualified opinion is, **“In my opinion, except for the effects of the matter described in the Basis for Qualified Opinion the financial statements present fairly, in all material respects, the financial position of Children and Youth Services Foundation as at 30 June 2014”** (and in this case all three years) **“and its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards.”**

Thank you.

**FINANCIAL REPORTING AUTHORITY (CAYFIN)
CAYMAN ISLANDS GOVERNMENT PORTFOLIO
OF LEGAL AFFAIRS ANNUAL REPORT 2014/2015**

The Speaker: I recognise the Honourable Attorney General, ex officio Member responsible for the Portfolio of Legal Affairs.

The Attorney General, Hon. Samuel W. Bulgin: I beg to lay on the Table of this honourable House the Financial Reporting Authority (CAYFIN) Cayman Islands Government Portfolio of Legal Affairs Annual Report 2014/2015.

The Speaker: So ordered.

Does the Honourable Attorney General wish to speak to this report?

The Attorney General, Hon. Samuel W. Bulgin: Madam Speaker, just briefly to read the opening paragraph of the report from the director, Mr. Lindsey Cacho, where he says, **“This year, 2014/2015, marks the twelfth reporting period for the FRA. It is the second consecutive year in which the number of suspicious activity reports (SARs) had reached more than 500. There were 568 cases reported, and admittedly, such large numbers posed an uphill challenge to the analytical staff. However, it is nonetheless gratifying to note that the vigilance of the reporting entities has not waned thus creating a hostile environment for those who are desirous of using our jurisdiction for their criminal activities and enrichment.”**

Madam Speaker, the statistics demonstrate the continuing vigilance of the numerous compliance officers and other gatekeepers in our financial industry

in preventing abuse of our institutions from those who would wish to do so. And in tabling this report I certainly wish to use the opportunity to commend the FRA Director, Mr. Cacho, and his hardworking staff for the excellent job they are doing at the FRA as evidenced by this report.

Thank you.

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

The Speaker: At this time the House will take a 10 minute suspension. The Honourable Minister responsible to respond to this question is engaged on the steps of Parliament with the petition drive. I will suspend for 10 minutes and allow the Minister to finish those duties and any other Members who may wish to join him there, and we will reconvene promptly, Mr. Whip and others, in 10 minutes.

Proceeding suspended at 11:13 am

Proceedings resumed at 11:44 am

The Speaker: Please be seated.

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

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

The Speaker: I recognise the Honourable Deputy Premier to move the suspension of Standing Order 23(7) and (8) to allow question time to continue beyond the hour of 11:00 am.

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

Madam Speaker, I move the suspension of Standing Order 23(7) and (8) in order for questions to be asked after 11:00.

The Speaker: The question is that Standing Order 23(7) and (8) be hereby suspended to allow the questions to continue beyond the hour of 11:00 am.

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: I recognise the Honourable Member for the district of East End.

QUESTION No.16—NAVASOTA

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

Madam Speaker, Question No. 16 standing in my name reads: Can the Honourable Minister of Planning Lands, Agriculture, Housing and Infrastructure say whether the Government made any additional agreements or commitments with Navasota or any local entity regarding fuel storage in the District of East End?

The Speaker: I recognise the Honourable Minister responsible for Infrastructure.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

Madam Speaker, the short answer is no. I have not authorised or approved any agreement or made commitments to any entities either foreign or local with regards to fuel storage in the district of East End or anywhere else in these Islands.

The Speaker: I recognise the Member for East End for a Supplementary.

SUPPLEMENTARIES

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

Madam Speaker, I wonder if the Minister could tell us if Navasota is working along with one of the entities that are proposing to bid on this project.

The Speaker: Honourable Minister responsible for Infrastructure.

Hon. D. Kurt Tibbetts: Madam Speaker, just for purposes of clarity, since we last had the question raised by the Honourable Member for East End regarding the above fuel storage and the possibility of it being a reality and placed in the district of East End, I have only had one meeting with any interested parties. That meeting was with Navasota (and I am not quite sure on my dates, but I am suspecting somewhere between a month, maybe six weeks ago or six weeks to two months ago). One of the principals came to meet with me to find out if anything else had transpired since we had spoken last and, of course, my answer was simply, no.

I do not know if he is working or if his company is working with any other entity because in that short meeting that we had, he did not say to me that he was working with any other entity towards making this a reality. I can only say that he has expressed an interest to try to pursue to see if there is any answer that can be forthcoming that it would be in agreement

with all parties concerned to move the process forward.

The Speaker: I recognise the Member for East End.

Mr. V. Arden McLean: Madam Speaker, in the interests of transparency I need to do this so that the Minister does not think I am trying to blindside him or this country.

Madam Speaker, I need to ask the Minister if this Government, this Minister in particular, has gone into any agreement with one Donald Thompson of the Cayman Islands who emphatically says that he has the documentation signed by this Minister on the final approvals for Planning, of an agreement to put the pipes in from East End through the North Sound to the Airport and an option of through the East/West Arterial.

The Speaker: Honourable Minister responsible for Infrastructure.

Hon. D. Kurt Tibbetts: Madam Speaker, I appreciate the Member's question, but my only answer can be I know nothing about anything that the Member for East End is speaking about with his last discourse with the supplementary question that he asked me.

I have not met with anyone. I certainly would not have gone to the point of even considering any such agreement without public discourse and debate on the matter. I would never do such a thing. But the mere fact that the Member asked the question seems to me like somebody is saying that that is the case. I want to state emphatically that I have not met with anyone else outside of the meeting I told the Member for East End about with Navasota asking if there was any progression of the matter which I informed him.

So, whoever he speaks about and whoever seems to believe that there is some agreement, I can tell you, Madam Speaker, and this entire country that no such thing exists. Neither has any such thing been thought of because there is a new twist now. It is going through the North Sound. I have never heard that one before.

The Speaker: Member for East End, I will allow two more supplementaries.

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

Madam Speaker, my question to the Minister is that I have been promised that the documents will be delivered to me. Will the Minister be receptive to receiving those?

The Speaker: Honourable Minister responsible for Planning.

Hon. D. Kurt Tibbetts: Madam Speaker, the Member has asked me a question, and I am not trying to evade

or avoid an answer, but, I repeat, no such document exists.

If any such documents that are purported to exist are passed on to that Member I would be happy to receive these documents so that I can see where the dream is coming from.

The Speaker: Last supplementary, Member for East End.

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

Madam Speaker, I wonder if the Minister can tell us if he is aware that the one Donald Thompson is representing one of the entities that plans to bid on this (that is, the project) but that is the local partner contact for one of those entities?

The Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Madam Speaker, the short answer to that is I am certainly not aware of that to be a fact.

Now, if the Member will go back in time when similar questions were asked in this House, and I had said at that time that Mr. Thompson and Mr. Chris Pope had met with me and the gist of what transpired at that meeting was that they were saying that Navasota needed the technical expertise that they had access to, to make this thing happen, and they were simply paying a visit to me to tell me the role that they needed to play in the process. And I simply said to them you are telling me what you are telling me so you go and talk to Navasota because my only role and the Government's only role in this would be to try to see whether the proposal was feasible, to speak to stakeholders.

I did mention to him . . . in fact the Member for East End and the Member for North Side both will remember that we had a few meetings about the matter to try to discuss to see if the matter was something worth taking forward or whether the pros outweigh the cons or the cons outweigh the pros with regard to that matter. Outside of what I just outlined to the Member, I have not had any contact with anybody else regarding this matter.

So, I hope that that puts the Member's mind in straight course. I do appreciate the fact that the Member might not be consoled too well by my answers, but that is only because I know nothing more to tell him. Simple!

[Inaudible interjection]

The Speaker: Next item of business.

I recognise the Member for North Side.

Mr. D. Ezzard Miller, Elected Member for North Side: On a matter procedure, can I have an explana-

tion of why there are not three questions standing in my name on today's Order Paper?

Madam Speaker, as you are aware, I submitted 10 questions in accordance with Standing Order 21(1), and I assume that the Clerk complied with Standing Order 21(2), and the deadline was October 2nd, and those 10 questions were circulated on Business Paper No. 7 which means, Madam Speaker, in my opinion, that in order to be placed on a Business Paper for this Meeting, those questions had to be approved by you as Speaker, which means that all 10 questions complied to Standing Orders 22(1) and (2). And Standing Order 23(6) limits the number of questions per Member per day to three. In my view, Madam Speaker, clearly establishes an expectation for any Member submitting questions to have three questions which meet all the conditions of Standing Order on the Order Paper for the day. And if the Government is not in a position to answer the questions they have to utilise the provisions of Standing Order 23(5) and get up and say that they do not have the answer and ask the House to be deferred.

The Speaker: Member for North Side you would fully be cognisant that the current way the Standing Orders are drafted, the Speaker does not approve the Business Paper or the Order Paper. There is a Standing Select Committee styled after the fashion of the Business Committee which is chaired by the Honourable Premier and the other memberships as they represent both sides of the House. They set the business for the Order Paper and the business has been set as appears on the Order Paper.

I take note of your submission, but seeing that the Standing Order do not allow me as Speaker, I would have to defer to the Deputy Premier who is also a member of that (in light of the fact that the Honourable Premier is not here) to respond to your inquiries from a procedural standpoint.

I recognise the Honourable Deputy Premier.

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

Madam Speaker, the Business Committee met—unfortunately the Premier is not here, but the other members are here. We requested that the Deputy Clerk contact the Ministries and ask them to send their answers down for this sitting and we also set it out that as they were available they would be put on the Order Paper.

The Speaker: Member for North Side—

Mr. D. Ezzard Miller: Madam Speaker, I wonder if you or the Deputy Premier could direct me to the Standing Order or the TOR of the Business Committee that allows the Business Committee to take that action.

The Speaker: Honourable Deputy Premier, as I am sure you did not anticipate this, you may wish to have some time to respond. If you are able to respond now, by all means do so.

Mr. D. Ezzard Miller: Madam Speaker, in fairness, if they made a decision the decision must have been made on some authority of Standing Order or the TOR's of the Business Committee which they relied on to make the decision not to place the questions on the Order Paper because they did not have the answers.

The Speaker: Honourable Deputy Premier.

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

Madam Speaker, for the questions to be placed on the Order Paper they have to be brought from the Ministry to the Legislative Assembly.

Mr. D. Ezzard Miller: No, no, no. Show me the Standing Order that says that.

Hon. Moses I. Kirkconnell: The answers.

Mr. D. Ezzard Miller: Show me the Standing Order that says that.

The Speaker: Let us keep the comments through the Chair.

Mr. D. Ezzard Miller: Madam Speaker, there is no Standing Order—

The Speaker: Member for East End, have you completed your response? Okay.

Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, I am not aware, and I would be delighted to be directed to the Standing Order that says questions can only be placed on an Order Paper when answers are available.

The reason that I have to give 10 days' notice and the Clerk has to send them to the Member being questioned on the day that she receives them in accordance with Standing Order 21(2) is so the Government will have 10 days to provide the answer to the question.

Mr. V. Arden McLean: Absolutely!

Mr. D. Ezzard Miller: In absence of the relevant authority in Standing Orders, Madam Speaker, I am beginning to get concerned because this happens to me as a minority in this Parliament every meeting. I have questions that have been submitted meeting after

meeting that do not get answered because they do not put them on the Order Paper.

I put to you, Madam Speaker, that the Business Committee has no . . . I submit to you that the Business Committee has no authority not to put business on the Order Paper that has been circulated on a Business Paper.

[Inaudible interjection]

The Speaker: I recognise the Honourable Deputy Premier and after that I will conclude the exchange in that the procedural point has been made. And if there is not a satisfactory response the Member knows full well that he can bring other avenues to deal with it and the Chair will not get into a discourse furthering it after this response from the Deputy Premier.

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

Madam Speaker, the Standing Order was not what I was trying to answer the Member. The Member . . . I was trying to explain to him what the Business Committee had discussed and what the Business Committee was doing as far as allowing the questions to be put on the agenda as quickly as possible which we believe is the responsibility of the Business Committee.

The questions were not delivered to the Legislative Assembly. The answers to the questions were not delivered to the Legislative Assembly to be put on the Order Paper. What the Business Committee said was that we would ask the Deputy Clerk to contact the Ministries and ask them to send down their answers as quickly as possible in order for them to be put on the agenda.

The Speaker: Madam Clerk.

STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

The Speaker: There are no statements on the Order Paper today.

PERSONAL EXPLANATIONS

The Speaker: There are no personal explanations.

OBITUARY AND OTHER CEREMONIAL SPEECHES

The Speaker: There are none.

RAISING OF MATTERS OF PRIVILEGES

The Speaker: There are no matters of privileges on the Order Paper today.

GOVERNMENT BUSINESS

BILLS

FIRST READINGS

LEGAL AID BILL, 2015

The Clerk: The Legal Aid Bill, 2015.

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

PUBLIC MANAGEMENT AND FINANCE (AMENDMENT) BILL, 2015

The Clerk: The Public Management and Finance (Amendment) Bill, 2015.

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

BILL

SECOND READING

LEGAL AID BILL, 2015

The Clerk: The Legal Aid Bill, 2015, Second Reading.

The Speaker: I recognise the Honourable Attorney General.

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

Madam Speaker, I beg to move the Second Reading of a Bill entitled, A Bill for a law to reform the system of providing legal aid services to persons of insufficient means; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved. Does the Honourable Attorney General wish to speak there-to?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Madam Speaker.

The Speaker: Please proceed.

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

Madam Speaker, by way of background, this Bill seeks to reform the system of legal aid in the

Cayman Islands in order to, among other things, ensure a more efficient and modern management of our legal aid regime, a regime that has been in place since 1975 and has not been changed.

Madam Speaker, in 2004, in response to concerns about the rising cost of legal aid in the Cayman Islands, I had asked the Legislative Drafting Department at the time to review the existing Legal Aid Law with a view to making improvements thereon. Madam Speaker, once the initial look was taken on the Bill and the existing framework, it was decided that a probably wider and more in-depth review was necessary. So, in September 2005 the Law Reform Commission took over the exercise and prepared their first discussion paper, which was presented in November 2005 for consultation.

Madam Speaker, concerns were raised again in the Legislative Assembly in May 2007 regarding the perceived high cost of legal aid in these Islands. There were also concerns about the number of foreign attorneys being briefed for legal aid cases.

The Commission conducted a substantive review of the legal aid system between October 2005 and February 2008 and the final report was submitted to Cabinet in July 2008, following that exercise, of course. During the review, a range of issues were considered by the Commission as being critical to the determination of whether the legal aid system was functioning with a desired efficiency. The Commission looked at, for example, whether the legal aid system may be reformed simply by improving the investigative and means assessment process relating to the grant of legal aid. They also looked at whether the system should be administered by the Judicial Department based Legal Aid Administrator and support staff, or whether it would be more cost effective to establish other means by which legal aid could be provided, such as by way of a legal aid clinic or public defender's office or a mixture of clinic, public defender and private Bar members.

Madam Speaker, they also looked at whether the recovery system where certain persons who were granted legal aid are required to reimburse the legal aid fund, whether that system should be improved. They also took a look at whether the legal aid fees are too high and should be capped and whether pro bono work should be mandatory in order to give the public more access to legal services.

The recommendations, Madam Speaker, for reform contained in the report were the culmination of in-depth legal research and deliberations as well as extensive consultation with the public and stakeholders. The report of the Commission was also informed by the examination of several legal aid models originating from other common law jurisdictions including the UK, Bermuda, Jersey, Canada (Ontario, in particular), New Zealand and Australia.

Based on the responses received from stakeholders and its research on the legal aid system in

other jurisdictions, the Commission concluded a number of things, Madam Speaker. They concluded that while the concerns expressed by the legislative and executive arms of Government focus understandably on excessive cost and the fact that too many of the services were being provided by foreign counsel, the Commission considered that the main issue lies more in the perception of how the legal aid system was being administered. They are of the view, Madam Speaker, that a more efficient administration of the legal aid, while not necessarily resulting in reduced costs, could serve to more readily demonstrate that legal aid funds are being appropriately spent and thereby satisfying the objective of accountability inherent in legislators' concern.

Madam Speaker, the Commission also considered whether an independent Legal Aid Commission would be the best model to administer legal aid. It was concluded that this may instead add to the cost of legal aid. The Commission's suggestion was that the current court administered model of legal aid should be maintained but that efficiency be improved by the appointment of a specially designated Director of Legal Aid.

[Inaudible interjection]

Mr. D. Ezzard Miller: We cannot hear what you are saying.

The Attorney General, Hon. Samuel W. Bulgin: Oh, sorry.

Mr. V. Arden McLean: We can hear but we cannot understand.

[Laughter]

Mr. D. Ezzard Miller: It could be deliberate. I do not know.

Mr. V. Arden McLean: Or unavoidable; can't help it.

[Laughter]

The Attorney General, Hon. Samuel W. Bulgin: Sorry, I am shouting. Sorry.

Madam Speaker, the Commission also concluded that the legal aid rules should be amended to make them more precise as the rules allow for too wide a discretion in what is taken into account in determining assignments of legal aid.

Can you hear me know, Member? Thank you.

[Inaudible interjection]

The Attorney General, Hon. Samuel W. Bulgin: That the rules, Madam Speaker, do not define nor provide a method of calculating the disposable capital

or disposable income of an applicant for legal aid. And it was therefore felt that these provisions were too imprecise and it was believed that greater clarity could be established by the provision of additional details in these concepts and how they are to be determined in practice.

The Commission, Madam Speaker, recommended that the laws and the rules be revised to make it clear that contributions may be required of persons above a certain specified income and that the Government may require a charge on property as a condition of legal aid in certain circumstances and that such contributions may be recoverable and enforceable in the civil court by the Attorney General.

Madam Speaker, very importantly the Commission believed that the present method of provision of legal aid services by the private Bar in general, offers good value for our money; that this type of legal aid system which is called Adjudicare model provides a high calibre of service and would be far less expensive than the public defenders scheme.

Madam Speaker, the Commission also took the view that a legal aid clinic would not be appropriate to provide defence in criminal cases, but could assist in civil cases and the cost of civil legal aid could be reduced by the introduction of at least one legal aid clinic modelled (presumably) along the lines of those operated by the law schools in the region.

Notwithstanding the fact that the Commission was of the view, Madam Speaker, that local legal aid costs are not unduly excessive, the Commission believe that the costs could be better contained by capping the cost of long and complex cases. This could be effected by implementing, for example, where appropriate, a tendering process and such cases could be managed through individual case contracts based on case plans agreed by the Director of Legal Aid after consultation with the respective attorneys.

The alternative, Madam Speaker, would be to impose fixed fees for such cases and to provide that there is a right to request a review in certain circumstances.

Madam Speaker, I have gone into the background to demonstrate that this has been a work in progress. Several Legal Aid Bills were drafted between 2009 and 2014 and submitted for consultation. Over the years, several persons responded to these Bills including, Madam Speaker, the Honourable Chief Justice, the Court Administrator, the Cayman Islands Defence Bar Association, the Cayman Islands Law Society as well as the Human Rights Commission. Accordingly, Madam Speaker, the development of the Bill has a lengthy history as you can see.

With your leave, Madam Speaker, I will now attempt to highlight some of the main provisions of the Bill that is before the House.

Mr. V. Arden McLean: You said Human Rights Commission?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Human Rights—

Mr. V. Arden McLean: They responded too?

The Attorney General, Hon. Samuel W. Bulgin: Human Rights Commission.

Mr. V. Arden McLean: I am glad to hear they responded.

[Inaudible interjection]

The Attorney General, Hon. Samuel W. Bulgin: Madam Speaker, the principal changes being proposed by this Bill are as follows:

- Changes for the Legal Aid Office to include the appointment of a Director of Legal Aid;
- A legislative provision for duty counsel;
- Increase of the rate of legal aid fees;
- Limit on fees for legal aid (appropriate limits);
- Fix contracts in certain circumstances;
- Where appropriate, Madam Speaker, limit on services of foreign attorneys.
- Overall, greater efficiency and accountability of the legal aid system including a more robust means testing system.

Madam Speaker, the Bill contains detailed provision of the scope of legal aid.

Clause 4 provides that legal aid may be granted in proceedings before a court in the following cases: criminal proceedings on indictment, criminal summary proceedings, and in certain cases civil proceedings in the Grand Court or a Summary Court and, of course, appeals in criminal and some civil cases.

It is provided, Madam Speaker, that legal aid may only be granted in family law proceedings if those proceedings involve questions of custody, access, adoption or maintenance or other financial relief relating to the welfare of a child, and that legal aid would not be granted in divorce proceedings or for ancillary matters in such proceedings which do not relate to the welfare of a child.

The Bill, Madam Speaker, in clause 4(4) defines “family law proceedings” as proceedings brought under any of the following law: the Adoption of Children Law; the Affiliation Law; the Children Law; the Maintenance Law; the Matrimonial Causes Law; and, of course, the Succession Law

Clause 4 also provides that legal aid should not be granted in certain civil proceedings including proceedings wholly or partly in respect of defamation and proceedings relating to elections matters.

Clause 5 of the Bill provides that legal aid in civil proceedings may only be granted if the Director is satisfied, after making inquiries under clause 16 that the applicant appears to have a reasonable prospect of succeeding on the merits of the case and, of

course, Madam Speaker, that he or she does not have the means to employ a private attorney.

Clause 6 provides for the continuation of the Legal Aid Office and for the appointment of a Director to administer that office. There is currently a Legal Aid Office, Madam Speaker, which comprises of an administrative officer who assists the judges with legal aid applications. However, Madam Speaker, the Bill seeks to improve the administration of this office by the appointment of the Director who would be responsible for making decisions on legal aid applications instead of a judge, as is currently the case. The Director, it is contemplated, will be an attorney-at-law of at least five years’ call to the Bar and the decision of the Director will be subject to appeal to a judge in chambers. So, Madam Speaker, in those circumstances the Director will be acting in a sort of quasi-judicial capacity.

Madam Speaker, in order to contain or minimize, if you will, the cost of legal aid, it should be noted that the Bill provides in clause 6 that a person who already holds another public office may be appointed as a Director of Legal Aid where the Chief Officer is of the opinion that the person can properly combine the dual roles.

The Bill also contemplates that the Director will provide legal representations and give legal advice in some civil matters and in such circumstances as are approved by the Court Administrator after consultation with the Honourable Chief Justice.

Madam Speaker, it is proposed by the Chief Justice that such civil matters will include, for example, one-off applications such as enforcement of maintenance orders and urgent applications for restraint orders and allegations of domestic violence.

Clause 7 provides that the Director, after consulting the Clerk of the Court, shall prepare and maintain a list of attorneys who are in active private practice in these Islands, and from which will be drawn the names of all attorneys who are able and willing to provide legal aid services.

The Director may prepare a roster of such attorneys for the more efficient administration of the law. The roster, Madam Speaker, it is contemplated will include the names of duty counsel who are willing and able to interview and advise persons arrested for criminal offences in the circumstances set out in clause 14 of the Bill.

I just want to make it clear, Madam Speaker, that, these duty counsels are persons who will be in private practice. They are not Government attorneys—not a Government appointed attorney.

Madam Speaker, pursuant to representations from the Cayman Islands Defence Bar Association and support from the Honourable Chief Justice, it is proposed to increase the legal aid fees to attorneys from the current \$135 per hour to \$160 per hour. There has not been an increase, Madam Speaker, in such fees for many years—I think since 2003. And

this is while the costs of doing business in these Islands have understandably increased in some instances significantly.

It should be noted, however, Madam Speaker, that in the interests of ensuring greater accountability of how legal aid monies are expended, the Bill also seeks to limit in different ways, of course, the amount of fees which may be paid for legal aid services. For example, Madam Speaker, clause 8 of the Bill provides that the Director shall not in relation to any one legal aid matter, without the prior written approval of the Court Administrator and the Clerk of the Court, authorise any expenditure in excess of \$20,000.

Similarly, Madam Speaker, clause 25 provides that subject to some exceptions no attorney-at-law shall be paid for providing more than 10 hours of services in any one day. However, the Clerk of the Court or a designated taxing officer, in taxing any bill of costs under clause 28, may permit the payment of fees for more than 10 hours in any one day if the attorney provides evidence to their satisfaction that they had provided legal services in respect of the relevant matter for a period in excess of the 10 hours, Madam Speaker.

Another method of capping the limits is that the Bill also provides for the payment, Madam Speaker, of legal aid services in complex legal aid cases by way of fixed contracts. This will also seek to restrict the use of foreign attorneys-at-law. I mentioned that that has been a source of disaffection among some members of the public for some time.

Clause 21 provides, Madam Speaker, that the Director shall only assign legal aid work to foreign counsel where the case is of a complex nature and where it is not possible to assign the services of a locally admitted attorney-at-law.

Madam Speaker, in assigning legal aid brief to a foreign counsel it has to be established that every reasonable effort has been made to obtain the services of a locally listed attorney and that there was none available, or willing for that matter, to advise or represent that particular client.

Clause 24 of the Bill provides for the remuneration of assigned attorneys-at-law in complex legal aid cases, Madam Speaker. A complex legal aid case is defined as a case which satisfies three or more of the following criteria. For example, that a successful defence to the charges requires highly specialist knowledge, or that the elements of the offence are of a technical nature, that the elements of the offence involve an international dimension, or the successful defence against the charges requires a combination of legal, accountancy and investigative skills, or if the charges are based on allegations of terrorism, or, Madam Speaker, for example the offence involves complex financial transactions or records.

Madam Speaker, the Director may, by tender, procure legal aid services in such type of cases, and it is provided in clause 24 that the fees and costs at-

tached to the proceedings in complex legal aid cases shall be paid in accordance with the terms of the legal aid contract negotiated between the Director and the attorneys, as well as the Court Administrator.

The Director with the approval of the Court Administrator may, Madam Speaker, on receiving a written representation from the attorney, allow for an upward adjustment (an uplift, if you will) in the agreed fees if, during the conduct of the criminal or civil proceedings, there is a material change of circumstances which justify such an uplift, Madam Speaker.

Madam Speaker, I think I mentioned earlier that one of the issues highlighted repeated throughout the lengthy review undertaken by the Law Reform Commission was the need for a more transparent and efficient administration of legal aid. To this end, Madam Speaker, the Bill provides more detailed provisions relating to means testing. That is, Madam Speaker, an investigation into the applicant's finances in order to decide whether or not he or she has the ability to pay for an attorney.

Madam Speaker, if you look at clause 16(2), I think it is. Let me just make sure.

[Short pause]

The Attorney General, Hon. Samuel W. Bulgin: Yes.

Clause 16(2) of the Bill, Madam Speaker, with your permission, it reads: **"The Director shall, on each application for legal aid, certify in writing to the Court Administrator that action was taken pursuant to this section to evaluate the means of the applicant and shall specify the action taken; and no certificate shall be granted unless such certification has been given."**

So, Madam Speaker, there is an effort being made to tighten up the means inquiry that is required before a certificate can be granted for legal aid.

Madam Speaker, the Bill also contemplates the annual reporting to the Legislative Assembly of the operations of the Legal Aid Office.

If I might, Madam Speaker, with your leave, also mention clause 30 of the Bill. It provides that upon conclusion of any proceedings, if a person who received legal aid succeeded in obtaining, for example, a money judgment or an order for the recovery of any land or other property, the Director of Legal Aid may order that person to pay a contribution or an additional contribution towards the cost of that person's representation and such contribution shall constitute a debt payable to the Government.

Where any land is recovered as specified, Madam Speaker, the Director of such land shall stand charged in favour of the Government with the full amount of the contribution the applicant is required to contribute under his certificate.

Madam Speaker, I think I have focused so far on the main provisions (as I deem them to be) in the

Bill. The Bill itself attempts to be fairly comprehensive. But like most other legislation it will require the assistance of further clarification or amplification, if you will, by way of regulations. So, it is proposed, Madam Speaker, that regulations will be promulgated to deal with many of the other issues covered in the Bill in greater detail.

Clause 42 provides, for example, that the Cabinet must consult with the Chief Justice in the making of such regulations and that the regulations will provide, for example, the information to be supplied by an applicant to the Director to assist with the means inquiry; that the regulation will cover instances such as the cases in which a person may be refused legal aid including by reason of his conduct as an applicant.

The regulations, Madam Speaker, may cover matters such as the management of standard legal aid cases where the costs exceeded \$20,000 and may deal with matters like the recovery of contributions from the assisted person. It may also cover, Madam Speaker, taxation of bills of costs submitted by the attorneys in legal aid cases and for review of and appeals from such taxation.

Madam Speaker, I think that sort of covers the main provisions in the Bill before this House. As I mentioned at the beginning of the presentation, it is our initiative, Madam Speaker, to improve our legal aid regime. It has taken quite a while for it to get this far, but I certainly wish to thank those who have taken part in this exercise.

In particular, again, I wish to thank the Honourable Chief Justice and his colleagues in the judiciary, the Court Administrator, the Cayman Islands Law Society, the Criminal Defence Bar Association, the Human Rights Commissions, the Office of the DPP, the Law Reform Commission and, of course, Madam Speaker, the Honourable Premier and colleagues in Cabinet as well as the Caucus.

I commend this Bill to this honourable House.

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

I recognise the Honourable Member for the district of East End.

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

I certainly could not allow this opportunity to pass in that, particularly, I want to say that the more things change the more they remain the same. I guess I should add also that *Oh, what a tangled web we weave*. I guess I will add on *when we are trying to increase our political fortunes*.

Madam Speaker, I recall quite vividly that the now Premier and I took to the streets against the now Leader of the Opposition in late 2009 on a similar matter—it seems like people have short memories—when it was proposed to take the legal aid and put it under the then Leader of Government Business.

I remember certain statements being made by the then Leader of Government Business about certain criminals should not be getting legal aid; they should just go to jail and the like. We said *No, you cannot do that* and everybody has a right. Along came the new Constitution which gave us a Bill of Rights. The Attorney General returns to these hallowed Chambers not as a full Member, but as an official Member.

We have since spoken quite passionately about the need to protect criminals or those who are on the other side of the law by virtue of ensuring we are not seen to be not supporting them and giving them fair representation. I recall this now Attorney General in the Constitutional talks as well, Madam Speaker. And I cannot quote verbatim what he was saying, but I can tell you that he took us to task. It was either at the Westin or one of those talks somewhere between 2006 and 2009. He and the then little Governor, spoke about the separation of powers and the governance and how we needed to ensure that the Constitution reflected that.

[Inaudible interjection]

Mr. V. Arden McLean: Pardon me? Papa Smurf?

[Inaudible interjection]

Mr. V. Arden McLean: The little runt.

Anyway, Madam Speaker, I state all of that to say that those are my memories and more. The Law Reform Commission has been—Ian Paget-Brown—has been after this for a long time.

I now come back to late 2009 after the general election, the first Finance Committee, wherein one of the Members, Mr. Seymour, then brought a motion to the floor under the Finance Committee requesting Finance Committee to change the subhead of Finance Committee.

Madam Speaker, we fought to prevent the Leader of Government Business from doing that. And, Madam Speaker, with your permission, I am going to quote some of the edited Finance Committee excerpts.

The Speaker: Permission granted. Do you have a copy for the Chair?

Mr. V. Arden McLean: No, Madam Speaker.

The Speaker: Serjeant, can you ensure that I have sight of a copy? Thank you.

Please continue.

Mr. V. Arden McLean: Thank you.

Madam Speaker, after much debate in Finance Committee . . . and I should add that only the now Premier and I were here from the PPM contin-

gent. The now Premier said . . . and I am only going to read the relevant parts, unless, of course, someone would wish that I do otherwise. Madam Speaker, it is not very long so I may as well read all of it.

At the time the now Financial Secretary was Chairman, Madam Speaker.

“Mr. Chairman, I wish to express the concern of the Opposition in relation to the way this very important matter is being dealt with.

“The Opposition has had no time or opportunity to consider what is being proposed. We are not privy to the presentation apparently made to the Government by Mr. McField and/or Mrs. Pitcairn.

“Mr. Chairman, in almost nine years in this House and Finance Committee I have never seen anything quite like this. Here we have the matter of legal aid for a country; a lot of money, but more importantly a matter that is key to preserving the rule of law and ensuring that our justice system is fair to all who are charged with serious offences to have access to representation. And, that after 8:30 p.m. the Opposition has been presented with a *fait accompli*, because, while the motion asks for the Government to consider the matter, the speeches made by the Leader of Government Business makes it quite clear that the Government has met, considered this matter, taken a decision that this presentation in Finance Committee is merely a formality. A matter of this consequence ought to be, in my view, moved on the Floor of the House as a substantive motion with adequate notice so that all who have a view about it can have an opportunity to consider it.

“Where are the views of the Attorney General in relation to this matter? Where are the views of the Chief Justice in relation to this matter? In fact, where is the Attorney General himself? I know he is not a member of Finance Committee, but ordinarily on a matter such as this I would have expected that he would have been here so that he could indicate what he thought about the matter.

“We have, Mr. Chairman, the staggering proposition that responsibility for the dispensation of funds for legal aid services is to be given to the Premier designate, the Leader of Government Business, whatever you want to call him at the moment. Just the appearance of the Chief Elected Official in the country having it within his or her remit to decide whether or not certain funds are paid with respect to legal aid, the image that that represents to me, Mr. Chairman, is extremely worrying.

Then, Mr. Chairman, beyond that, what opportunity has been given to any other lawyers to make a bid for what is essentially a contract?”

At the time, Madam Speaker, it was about the . . . I think the Attorney General’s term for that is public defenders system.

He went on about how the Law Reform Commission wrote a long report about it and the last paragraph says:

“We’ve had the Law Reform Commission write a long report. They have done a lot of work on this matter and yet we seem to just dismiss that or the Government seems to have dismissed that to sit in their caucus and in privacy and make the decision to award this contract to two local practitioners, both of whom I have a great deal of regard for, but that is not the point. This is just wrong, the way we are going about all of this, Mr. Chairman, and I beg the Committee to reconsider this. Let us at least defer a decision on this until proper opportunity can be had for the matter to be looked into and carefully considered for us to get the views of the Attorney General and the Chief Justice at a minimum. And not to mention the views of the lawyers who are going to be affected as a result of this decision.”

Madam Speaker, I totally agreed with the now Premier at that time. But the most important part of our opposition . . . and I should add, Madam Speaker, it was only two of us who voted against it. And that was the now Premier and myself. My good friend from Bodden Town was not here, from Cayman Brac was not here, and the Minister for Works was not here either.

Madam Speaker, where I part company with what this Government is doing is when they are going to allow a Minister to be responsible which is precisely what we did not want when the UDP Government proposed it. That is precisely what we did not want.

Madam Speaker, I will go through the Bill in some detail in a little bit, but, Madam Speaker, *we, this House*, within the next week and a half (I hope) will be considering a motion by this Government to effect the autonomy of this Parliament. In essence, the bigger picture is the separation of powers. And in one fell swoop today in front of that historical motion that is going to be brought here by the Premier, we are going to have the executive or the judiciary in this country yet.

So, we only thought that the separation was from Parliament from the executive and we are putting the judiciary on that executive?

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker, the Attorney General said, *Don’t say that.*

Well, Madam Speaker, it matters not to me what it says. Mind, Madam Speaker, sometimes I tend to be . . . I can be wrong. But I welcome those who find that I am wrong to correct me. This Bill in its definition says “Minister” means the Minister or Member of

Cabinet responsible for Legal Aid. Okay, totally agree. There are only three other people in Cabinet other than ministers who have the ability for it to be put under—the Attorney General, the Deputy Governor, or the Governor herself (him or herself).

Madam Speaker, I know I am not supposed to anticipate, but the motion on autonomy clearly says we are trying to move it to the Legislative Assembly. We are trying to move it from under the Executive. Who is this legislature under now, Madam Speaker? It is under the Deputy Governor. So it can only be him if he is considered one of those others in Cabinet that it can go under. We are saying in a few weeks or a few days that we are moving the legislature from under him because it is a conflict because it is no separation of powers. And we are putting the legal aid back there? Something is wrong with that.

Something is wrong with it!
Now the Attorney General has—

[Inaudible interjection]

Mr. V. Arden McLean: Yes, yes, yes, we are coming to that one too.

The Attorney General has much more knowledge on this thing called “law” than I do. And, Madam Speaker, as a matter of fact, it’s eight of unna out there, so I am outnumbered, but I know what; that side has eight separate opinions. I only have one. I only have one. But everyone *unna* giving a separate one, I can tell unna that. Unna going to be more confused than me.

Madam Speaker, what I am saying is that whilst it may not be necessarily going directly under a “Minister” like we fought against the now Leader of the Opposition, but it still encroaches on the separation of powers.

Madam Speaker, when that motion comes up, all I am doing is reading my papers that I have done all over the Commonwealth about autonomy of Parliament and then I am going to sit down.

The Speaker: Member for East End, is this a convenient time for the luncheon break?

Mr. V. Arden McLean: Yes, Ma’am.

The Speaker: We will take the luncheon break and reconvene at 2:15 pm.

Proceedings suspended at 12:54 pm

Proceedings resumed at 2:51 pm

The Speaker: Please be seated. The House is now resumed.

BILL

SECOND READING

LEGAL AID BILL, 2015

[Continuation of debate on]

The Speaker: I recognise the Member for the district of East End.

You have spoken for 20 minutes thus far, Member.

Mr. V. Arden McLean: Thank you, Madam Speaker. Madam Speaker, I hope that I will not be required to use the two hours, but if necessary, I will. That should always be the caveat with me.

Madam Speaker, when we took the luncheon break, I was talking about the separation of powers and as I saw it being eroded here in this piece of legislation, in this Bill. Now, Madam Speaker, I promised that I would show that by going through this Bill piece by piece. And I have already touched on the definition of “minister,” which is, “‘**Minister**’ means the **Minister or member of Cabinet responsible for Legal Aid.**” Now, that could mean, like I say, one of 10 people: the 7 Ministers, 6 and the Premier; and the Attorney General; and the Governor herself or himself; and the Deputy Governor.

Madam Speaker, each Minister has a responsibility somewhat for the administration, but overall management of the civil service falls under the Governor, delegated to the Deputy Governor. But those Ministers in their delegation of delegated responsibilities also deal directly with those departments with a good working relationship between the Minister and the Deputy Governor so that they can get the job done. So there’s not a lot of acrimony, so to speak, between the Ministers and the Deputy Governor whilst he holds responsibility for the departments with regard to them possibly giving directives to different departments, as I know it. That may have changed, but that’s as I know it in the interest of co-operation and getting the job done.

That is one arm of this democracy. That is the executive arm of the democracy that we enjoy. That arm includes all of the civil servants there. And then, Madam Speaker, we have another arm. There are three arms of government—the executive, the judiciary and the legislature. And then we have the judiciary. Now, what happens is that the Attorney General sponsors or defends the budget for the judiciary here. But he has no more responsibility over it except in Finance Committee to defend it on behalf of the Chief Justice, who heads that arm, that branch of this democracy.

And then, theoretically, really, for our democracy to have all the tenets in place, this legislature should be under the Speaker. Unfortunately, the administration of this legislature right now does not fall under the Speaker. And the Premier, rightly so, is cur-

rently bringing a motion for this House to go into committee of the whole House to consider moving this legislature away from the executive. And then we should have the three arms of government, of this democracy, separated, with distances between them, separation of powers. Each has his own power and is an entity unto itself.

Now, in many instances we will find that there is an overlap because the executive is responsible for the financial provisions to run this democracy. So in a sense we don't have a real, true democracy, because the courts should be making their own money and the like, but it depends on the executive for those things. And in the future the legislature will depend on that as well. But at the same time the executive is enabled by the legislature to do their job. In other words, the legislature shouldn't be answering to the executive; that's why they come back here to get approvals for their jobs, to get the job done financial and otherwise, here to the legislature.

Now, Madam Speaker, I say all that to say that I have concerns about this proposed Bill in that this Bill proposes a director be appointed to manage this department. And clause 6(1) of the Bill says: **"There continues to be established a legal aid office of the Judicial Administration and the Chief Officer, after consultation with the Court Administrator, shall appoint a Director of Legal Aid to manage such office, to administer legal aid services in the Islands and to carry out the functions and duties set out in this Law."**

Clause 6(2) says: **"The Director shall be a public officer who is an attorney-at-law of five or more years call to the Bar and shall have such other qualifications as the Chief Officer considers necessary for the performance of the Director's duties under this Law."**

Clause 6(4), Madam Speaker, says: **"The Chief Officer may appoint one or more deputies to assist the Director, and a deputy so appointed shall— (a) be a public officer . . ."** and the likes.

Clause 6(6) says: **"The Director shall be supervised in the performance of his duties by the Court Administrator."**

Now, as I understand the hierarchy in the legal system, we have the Chief Justice, judges—well, the court of appeal above that, but the Chief Justice on the administrative side I'm talking about—Chief Justice, Chief Officer, Court Administrator and the likes, and the likes. So this Director will be, I would venture to say, four tiers down—Chief Justice, Chief Officer, Court Administrator, Director, at least the fourth tier down from the top.

Now, Madam Speaker, clause 7, which is the Functions of the Director; clause 7(4) says, **"The Director, deputy director and legal aid counsel shall provide legal representation and give legal advice in such civil matters and in such circumstances as are approved by the Court Administrator, after**

consultation with the Chief Justice." So it shows that the administration is contained within the judicial branch of this democracy.

Then, Madam Speaker, financial activities within that administration relating to legal aid, clause 8, Financial Activities: **"Subject to this Law and the regulations, the Director shall not, in relation to any one legal aid matter, without the prior written approval of the Court Administrator and the Clerk of the Court, authorise expenditure in excess of twenty thousand dollars."** So, the Clerk of the Court is also involved in that authorisation for expenditure.

Madam Speaker, we jump to clause 10 then, of this Bill, where it says, **"The Minister, after consultation with the Cabinet, may give such general directions as to the policy to be followed by the Director in the performance of his functions as appear to the Minister to be necessary in the public interest, and the Director shall give effect to any such directions."**

Those directions, Madam Speaker, are outside the law and the regulations. Now, what that tells me is that the executive arm is going to go around the Chief Justice, all of the three tiers that are above this Director, to give general direction.

If I am wrong, Madam Speaker, then someone needs to, in their response . . . and I am sure the Attorney General will respond quite clearly to my analysis of this, and I would like to hear that I am wrong, because, certainly, my objective here is to ensure that this separation of powers is maintained. And if it will continue to be maintained, then, that is fine by me. But what I am seeing here is that the executive will have the authority to go straight to the Director. And that bothers me. That is worrying. It is troubling for me. When you have the executive—not only the Minister, but Cabinet?—having direct authority over the Chief Justice.

[Inaudible interjection]

Mr. V. Arden McLean: Now, Madam Speaker, the Attorney General is right. He said, *It doesn't say that*; that is true. It does not have direct authority over the Chief Justice. And I do apologise for that. But what it has is, indirectly it has authority over the court system, the judicial department for legal aid.

Now, Madam Speaker, our function here is to make laws. The Chief Justice's function is to interpret those laws, and his courts, and uphold the laws. So, the Chief Justice and his administrative arm make rules in order to apply those laws. But here we are with something as important, as fundamental, to our Bill of Rights, the rights of our people, and the rights of people who have stepped over the line. And the Bill of Rights says that every person shall be represented legally by an attorney.

Try to find that section there for me.

Therefore, Government has a responsibility to do that, to ensure everybody has representation in the court of law.

Seven? Oh, yes, section 7. I don't know where it is, but I know it's somewhere. I'm not as good as you guys. You're probably looking at it there now. Okay.

Madam Speaker, our Bill of Rights, section 7(1), says, **"Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time."**

"7(2) Everyone charged with a criminal offence has the following minimum rights—

- "a) to be presumed innocent until proved guilty according to law;"** (With the exception that we . . . remember how we were trying to say, *We removed the presumption of innocence?* We will get to that another time. That is going to soon be incompatible with this, too.)
- "b) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;**
- "c) to have adequate time and the facilities for the preparation of his or her defence;**
- "d) to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she has not sufficient means to pay for legal assistance and the interests of justice so require, through a legal representative at public expense provided through an established public legal aid scheme as prescribed by law . . ."**

So, Madam Speaker, this Bill is now trying to satisfy [Section] 7(2)(d) in our Bill of Rights.

Now, Madam Speaker, I believe that the rights of those individuals extend to the point at which there should be little or no interference by the executive branch of this democracy. Madam Speaker, we have seen it too often. Having served almost 15 years on this floor, representing the good people of East End, I've heard it here. I have heard it here that they don't deserve it! They need to be put in jail. That is a politician's interpretation of what justice is because then justice or the criminal activity is being visited upon their people. We cannot say that, and worse, since November 2009 when the Bill of Rights . . . no, two years later, 2011, 2013 or 2003 . . .

[Inaudible interjection]

Mr. V. Arden McLean: It was 2012? Yes, one year later. Three years later. Yes, yes, three. That reminds me of somebody who said, *Three more years! Four more years!*

Madam Speaker, I am worrying. It is worrying. And I continue to tell this Government that you can't legislate for yourself. You have to look at what may happen later. I don't know what's going to happen in this country later. You really think we are going to be here? No, absolutely not. You can't expect that you're going to be in the minds of people who will come here who will use this to manipulate the entire system. And that goes for everything, Madam Speaker. People will do it. There are many who are inherently bad. I've seen it before. Trust me. I've been there.

Madam Speaker, I would invite you to move on with me to clause 20 of the Bill. Now, I named out in the beginning of my contribution that this is going to go on the Minister, who will be responsible. Now, Madam Speaker, clause 20 of the Bill says . . . and I am merely trying to show that there are areas in this Bill that need to be thought about.

Clause 20 says, **"The Minister may decide not to recover debt in certain circumstances."** Madam Speaker, clause 20 says, **"The Minister"** comma—only the Minister. There are only seven people declared in Cabinet as Ministers under our Constitution. I will find that, too, but I would have to search for it a little bit. I think it is section 60 or 61.

"The Minister," [comma—singling the Minister out] **"on the advice of the Attorney General."** So it cannot be the Attorney General who is going to be responsible, because you mean we are advising ourselves now, too? We are advising ourselves legally now, too?

[Inaudible interjection]

Mr. V. Arden McLean: We do it all the time? Okay. I can appreciate that. That's why we're in such a quandary now, in the conundrum that we're in now. We advise ourselves too much. I know, Madam Speaker, when I was there, the poor old Attorney General had it rough with me. Sometimes I'd tell him I didn't need it after he gave it to me—the advice, that is. He tried. But I got the job done, though. And you didn't have to go to court to defend me. Well, I left two lawsuits there. I don't know what he did with those.

Madam Speaker, **"The Minister, on the advice of the Attorney General, may decide not to recover any debt due to the Government under a grant of legal aid . . ."**

What?

Are we kidding?

No, you won't.

Section 20(1)(a)—*if, if, if*, Madam Speaker,

- "a) the enforcement of the debt would cause serious hardship to the assisted person;**
- "b) the cost to the Government of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid; or**
- "c) the Director considers that it would be just and equitable not to recover the debt."**

So, if the Attorney General has responsibility for this, then he's going to have to walk out the door and walk back in and advise himself. All he has to do is sit in a different chair in his office, you know. And he can get it done; or, Madam Speaker, get up, turn around, and sit back down. And he's okay.

Now, Madam Speaker . . . And then, clause 20(2), Madam Speaker, **"The Minister may make a decision under subsection (1) at any time after the legal aid is granted."**

Madam Speaker, I just don't understand. It's confusing to me. Mind you, Madam Speaker, I'm confused easily eh, so that's no measure of how—

The Speaker: Is that a statement of fact or personal opinion?

Mr. V. Arden McLean: Oh, yeah, you can ask me that. I know.

[Laughter]

Mr. V. Arden McLean: No, Madam Speaker, in their opinion.

Madam Speaker, clause 20(3) **"If the Minister decides not to recover a debt—**

"a) the debt shall be treated as being written off, and

"b) subsections (5) to (7) apply accordingly."

Clause 20(4) says, **"In subsection (1), 'serious hardship' means significant financial difficulties that arise because of—**

"a) the assisted person's inability to meet minimum living expenses according to normal standards in the Islands;

"b) the cost of medical treatment of an illness or injury of the assisted person or the assisted person's child or other dependant; or

"c) a serious illness suffered by the assisted person or the assisted person's child or other dependant."

Madam Speaker, I don't have too many problems with the causes there.

Now we get to 20(5) and (6). [Clause 20] **"(5) When a debt has been written off under this section, the Director shall give notice to the assisted person of the write-off; and the assisted person is, from the date of the write-off, no longer liable to pay the debt."**

I now draw your attention to [clause 20] (6): **"If, despite the write-off, an assisted person repays some or all of a written-off debt, the Director shall return the amount that was written off."**

Mind, he paid back, and you've got to take it back out of the coffers now to give it back to him. That is the practicalities of that? I don't know why we would want to do that, as broke as *unna* claims government is? And as controversial as this legal aid is, and we

are giving it back after the person, despite all those things, those causes were not engaged. And somebody paid it back and now we're giving it back to um? And we know we are not going to have legal aid requirements next week or next year?

I don't know what we are getting at. But we have to be extremely careful someone doesn't manipulate that and everybody gets sick, like you know how they find God up in Northward, Madam Speaker? God lives up there, you know, right up in Northward by the Minister. I just don't understand why we would want to do that. Why would we want to do it? Anyway, Madam Speaker, that is also one of my concerns.

Madam Speaker, my good friend brought to my attention not to forget 22(5)— **"The Cabinet, after consultation with the Chief Justice, may make regulations to carry out the purposes of this section."**

Well, that's one of the few places the Chief Justice is even mentioned in here. Why not on the rest of it as well? I don't know what we're trying to do if we're trying to side-line the Chief Justice. I don't know. I hope that's not the case, because there have been attempts in the past to do so, or to try and do so! So nobody must tell me no. I've been here long enough to know the little games that they play in here. And some of those people are still around here.

Madam Speaker, I don't know. You know, when Mr. Miller and I spend our time late nights going over these laws, looking at them, doing research, we come here and we're dismissed. We're dismissed. You know what, Madam Speaker? The Hansards of this House live on forever. And I am happy that the staff here does a good job of recording my contributions. I don't know who else. Maybe they need to take some out of some of ours.

Madam Speaker, let me go now to the fraternity of law, or of lawyers. Madam Speaker, we have seen over the last 10 years every law firm of any major significance that is not Cayman owned, made every attempt, used every lobbying tactic to get us to make them practice law in Timbuktu, in Hong Kong, in Jumbachoo [PHONETIC] and wherever. The Attorney General said that they had input on this one, both organisations. Madam Speaker, the Law Reform Commission also recommended some years ago (when was that, 2005 to 2009, somewhere in that area) that if they not going to do anything for this country they should at least put money into the legal aid.

No, no, no. It's every dollar, every man for himself and God for us all, but more so for them when it comes to the thing called *money*. Madam Speaker, very few of them even come out and do pro bono work. If you are not taking every piece of land to mortgage to the bank, don't make sense go. There is a gravy train, and the only ones ain't getting anything out of it are Caymanians. Daily they are prepared to leave our people as carcasses on the sidewalk. Daily they take them out. Because we have no use to them!

They want to be able to practice out law in Hong Kong. I hope *unna* hurry up and bring it so I can tell the people of this country how you all will be responsible for the destruction of the future of their children and their grandchildren!

So *unna* don't expect that *unna* getting any support from over here. Whoever it is out there, they say when you throw a rock in the pigpen, the one that hollers got hit. It matters not to me who gets hit, I want to hit somebody.

Madam Speaker, in all of the Attorney General's declaration that they assisted with this, I'll bet you he didn't say that they volunteered to help one Caymanian who was brought before the courts and couldn't afford it. I'll bet you he didn't. Maybe when he gets up, he can tell us that they did one, two, three or four, if he remembers. Madam Speaker, it's the first country I've seen where there has been an invasion of one profession and killed the indigenous part of it! The first country in the world!

And then this Government appoints some of them, or one of them, Chairman of the Human Rights Committee who cut his legal teeth on this legal aid. I bet you he's not contributing anything. To the contrary, he is prepared to do everything against who we are as a people. Remember now, not one of you could be in here without having one of your mama, papa Caymanian at the time of your birth. I want *unna* to remember that. I may not be here for long. The Hansards will be left. That is what we get here, Madam Speaker. And the few little Caymanians who have been pushed on the side in their little single . . . what do you call it?

[Inaudible interjection]

Mr. V. Arden McLean: Sole practitioner office. They have relegated them to legal aid. That's how they do.

But they won't assist with it.

Mr. D. Ezzard Miller: And control how much each one can get.

Mr. V. Arden McLean: Now, I understand that they're trying, they're putting up . . . when you do the criminal division, what are they?

[Inaudible interjection]

Mr. V. Arden McLean: No, in the law firms they're putting a section for . . . *criminal litigation*. And you know what will happen? Poor, old . . . no don't let me call a name. But those Caymanian lawyers, they're going to be left out in the cold, you know. It's going to get worse if we do not do anything.

Every one of us laughs at the man there, the one from George Town . . . what's his name? Winston . . . what's his number? Number 5—the Fifth Elected Member for George Town. We laughed at him the

other day when he asked them to sign up. They laughed at him. We laughed at him, too! It was an attempt on his part to try to help Caymanians. I have said to them already . . . and let it be known that I will continue to question them. We know how many of their partners we gave Cayman status to. The question is: how many Caymanians did they give a partnership to? They come in with all kinds of things, again, but they think people fool-fool.

Madam Speaker, this legal aid, as much money as those law firms come . . . and by the way, Madam Speaker, they come in here, and they not even have to get anything to come in, you know. They can come and pitch their tent. Do not even have to go get business licence. Well, the Minister for Financial Services just did that and made sure that was a continuation. He's partly responsible for it! They come in from all over the world and pitch their tent and push Caymanians out.

Madam Speaker, if they meant this country any good, these guys are taking \$10 million a year out of our place here. Some of them, \$10, \$12, \$13, \$14 [million], I don't care. Madam Speaker, if they meant us any good, we shouldn't be here in Finance Committee trying to find \$2 million to support legal aid. So I don't want to hear anything about they made any consultation and they contribute anything to it. I don't want to hear it! They do it to every one of us.

Madam Speaker, you know I've always said you don't make friends in here. And I never made too many outside, either. But the caveat in that is I wasn't looking for any. I wasn't looking for any, Madam Speaker. I had occasion to meet one of the managing directors who has been here 20 years. I didn't even know who he was, sitting on the plane next to him. But you know his ears got cracked between here and Jamaica. Oh, I didn't hold back any punches, you know. I made him to know what my position was. But of course, you are not [going to] change them.

Madam Speaker, in my sixth decade, all has ever been under my feet has been sand; lone wolf in the desert all my life. I don't need any company out there either. And worse, that I have this little piece of real estate here on behalf of the people of East End, *unna* think I'm going to tell them they're taking advantage of the people of East End without my say. And I am joining, for those of you who don't know, I'm joining the Member for George Town in his fight to deal with this.

So let me publicly tell you now, Fifth Elected Member for George Town . . . if I'm as confused now, I wonder what could happen when we get single-member constituencies in here.

[Laughter]

Mr. V. Arden McLean: Fifth Elected Member for George Town, I am on your bandwagon to defend our people with these people.

Mr. D. Ezzard Miller: You can put me on that bandwagon too.

Hon. Osbourne V. Bodden: [INAUDIBLE]

Mr. V. Arden McLean: You stay out of this.

Madam Speaker, look (I see the press up there, too) . . . look, Madam Speaker, what they did to us as a people. Madam Speaker, all one needs to do is to go out to the opening of the Grand Court. And I'm going to tell you how many factions are there—the Attorney General and others. It's not CBA [Caymanian Bar Association] and CILS [Cayman Islands Law Society], you know, because the two of them won. That's what they have done to us, for total domination!

They do not even have the thought of assisting this Government with \$2 million. I'm not saying the Government needs to beg. But, Madam Speaker, they do nothing else. They do nothing in the carrying on of justice in our country—absolutely nothing except to charge their clients, which is fine. But at the very least, do some pro bono work, nah. Even that they won't do! And for \$2 million (I think that's what it is; it ranges somewhere between \$1.8 and \$2 million, or thereabouts) . . . for \$2 million, and they can't even do that?

How many lawyers do we have here, six-seven hundred? Mr. AG, how many do we have, 600–700?

[Inaudible interjection]

Mr. V. Arden McLean: Almost 700. And Caymanians are 150 or so?

[Inaudible interjection]

Mr. V. Arden McLean: Two-hundred.

Five-hundred left that migrated or were imported or drift in or whatever it is, to these fair shores.

Madam Speaker, I've got it though, you know. I've got paperwork. Remember that, Madam Speaker, I'm worse than you. *They came to our fair shores, called it paradise—*

[Inaudible interjection]

Mr. V. Arden McLean: Eagles. *They erected their neon signs and destroyed it.*

"You call someplace paradise, kiss it goodbye." That's what they did to us. Now, the likelihood of future generations going to school and getting anything out of becoming a lawyer other than being called a glorified librarian is slim.

We sit down here like the ostrich, stick our head in the sand on West Bay Beach and don't worry about it. It's time. Do not laugh at the Fifth Elected Member from George Town. He is defending a cause.

I'm there with you. Wherever there is injustice, you're going to find Arden McLean with a clenched

fist—not one, two. That's where we need to be. So I don't want the Attorney General coming here about, *Oh, they gave us advice on legal aid.* Tell me, what are they contributing to it? And I ain't talking about the two associations I'm talking about the one. They're one and the same. They're housing Maples, same directors, same partners. And we sit down and do nothing.

I was waiting for a chance to say this publicly, you know. I've been waiting if the Speaker does not stop me. I've been waiting, man, because it aggravates me that in 2017 I will have spent 16.5 years in this honourable House, and I have failed future generations when it comes to the their financial industry in this country, and, in particular, the legal. I have failed them! It is time those of us who are here stand and deliver. And all those who have a vested interest, it will be known. The people that I work for don't expect me to do it any other way.

Madam Speaker, I don't want the AG to go away from here making the AG think that I'm blaming him or anything of that nature, or mad with him or anything, you know.

[Inaudible interjection]

Mr. V. Arden McLean: I know the AG tried, and I see memos from him, or . . . you call them opinions, or things about, they could do amounts and that kind of stuff. They don't want to do it. And all of you out there who need to see me face to face . . . don't think now, Madam Speaker, I can't look them in the eye and tell them the same thing, you know. It's probably a little worse that I'll tell them straight-on, because you would stop me up in here. This is what we have. We are here scratching for \$2 million to meet a provision in our Bill of Rights.

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker, I see when this country was developing with people like the man there that is on the Law Reform Commission, Paget Brown, I was looking for all of that stuff he did in 2012, because that's going to be read.

[Inaudible interjection]

Mr. V. Arden McLean: The Attorney General wouldn't call him back.

[Laughter]

Mr. V. Arden McLean: Madam Speaker, when it was being built with them and people like Mr. Anton Bodden, Warren Conolly, Annie Bodden, were not lawyers, but they were grandfathered in, or something of that nature. Warren never got a cent out of it. Good thing David came along and became a lawyer or they

would have starved to death doing pro bono work. They come here now on this gravy train and look like the flag on the moon! They are pioneers. And they push everybody aside and do nothing for our country. And I am talking to all the big ones and how they're getting rid of Caymanians who have a fair opportunity, who have ambition.

And then they bring their friends in and undermine the Caymanians that are in there, and then call it redundancy.

Mr. D. Ezzard Miller: But they are going to need somebody to play hockey on their team.

Mr. V. Arden McLean: That's what happened in our country, Madam Speaker, and for \$2 million. Those guys bill \$2 million a day. You mean to tell me all of them can't get together and give back to the country that fed you? I'm going to tell them what I told Bruce Campbell one time from this floor. I didn't have to go anywhere to be somebody. They had to come here. They were nobody where they were. They came here and made it and continue to take. They take, they take, they take and the blood has been drained from the Caymanians, and the carcasses are littering the sidewalk.

And we as legislators sit down and do nothing about it. The reverse is true in the accounting industry. I just saw in the papers there must be five young . . . I don't know, some of them, Robinson this one, O'Dea [PHONETIC] and McGee. I know she's from Savannah . . . well, the papa and mama are. Four of them, CPA, CIAA or something like that—four! But of course, Maples are showing off that they've got four scholarship awards, too. You see their name changing now? You see all of a sudden the landscape changing? They're looking for something. They're going to get something, all of them.

No! We've got Dan Scott. We've got Roy McTaggart, the Second Elected Member for George Town—one little CPA. You mean, him and Dan and Small and those Hislop girls . . . they are the only smart people in the country, or what? You mean to tell me it's only accounting we can do? You mean to tell me we're that dumb when we pick law that we can't cut it, or what?

No, it's not that we can't cut it. It's not . . . Look at this one here too) . . . It's not that we can't cut it, it is just that we don't get the opportunity and that, because they're afraid. Madam Speaker, the last thing they do is . . . places like Bermuda and Bahamas, they can't become partners there. So the firms up there send them here so. So they send them here, and they're partners within six months, and Caymanians here for four or five, six years. You mean to tell me Caymanians that fool? They cannot be that dumb, Attorney General . . . Madam Speaker (sorry about that). It is impossible for me to comprehend.

We became ship captains and didn't finish school. The late Jim Bodden and Truman Bodden and John McLean, they all decided to do a little law firm. And they dismiss that when they get here. Mind you, biting the hand that feeds you doesn't necessarily take it off all the time, you know. *Mind!* It comes back to be Achilles' heels. Okay?

Madam Speaker, it bothers me. It really bothers me that these law firms can't do more. And the few Caymanians who can get something out of this legal aid, they're beating them up—*Oh, you can't do 120.*

Madam Speaker, when we resumed the House in 2011, the then Leader of Government Business talked about—and we revel in that—how there were two lawyers with one hundred forty-something thousand for the year out of legal aid, and one with . . . And that is what's happening. It's twisted.

And I may read, Madam Speaker: **“Madam Speaker, out of the Cayman Government funds allocated for legal aid for the year 2008/09, one attorney at law alone provided legal aid services, billed the legal aid fund the sum of \$146,042.14.**

“Our statistic also show that in Budget years 2008/09 legal aid billings by various attorneys amounted to the sum of \$187,142.21.” [2009/10 *Official Hansard Report*, page 233]

We revel in bringing our own down. That's what we do. We like to talk about what Caymanians get.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, I have a point of order.

The Speaker: Please state your point of order, Honourable Leader of the Opposition.

POINT OF ORDER

Hon. W. McKeever Bush, Leader of the Opposition: I have heard this Member on and on making references to what I said in 2010 or 2011, whenever it was. And now he's making this accusation that I was *reveling* in this matter.

I was pointing out the cost to the country. And at that time we couldn't afford it. I was not reveling in what our people were making; I was stating a fact, Madam Speaker, that legal professions—and particularly the law society, who was opposing—were not giving anything yet. This is what it was costing the country. That's what I was saying.

So if you want to beat up on me, go ahead. I will have . . . I didn't plan to speak, but I guess I will have to now, Madam Speaker.

The Speaker: Member for East End, please ensure that when you read from the Hansard, you don't enter into the realm of imputing improper motives, that you read it in its full context.

Mr. V. Arden McLean: Madam Speaker, all I can do is to oblige him by reading the rest that he said, then. And then that shall clear it up.

The Speaker: Please state the date of the Hansard and a page number when you refer to it.

Mr. V. Arden McLean: [Official] Hansard [Report] 21st October 2009, page 233.

The Speaker: Thank you.

Mr. V. Arden McLean: “Our statistics also show that in Budget years 2008/09 legal aid billings by various attorneys amounting to the sum of \$187,142.21 were not approved. Had that sum been approved, though, the legal aid cost to the Government of the Cayman Islands would have amounted to the sum of \$2,037,714.22.

“Madam Speaker, the McField-Pitcairn plan to reduce this spiraling and runaway legal aid cost to the Cayman Islands Government is not only timely, it is prudent.”

[Inaudible interjections]

The Speaker: Please pass the comments through the Chair.

Honourable Leader of the Opposition?

Hon. W. McKeever Bush, Leader of the Opposition: Really, Madam Speaker, if I should say so, someone reading a piece, and in fact not even reading the paragraph before which explains that at that point in time we had spent for various years over \$13 million. You're not saying . . . I don't know who it was paid to. I don't know. Maybe it was only Caymanians paid that, but maybe it was other people from outside, as well.

We were trying to get a system . . . and, Madam Speaker, I intend to speak. But the Member can't continue, Madam Speaker, going on like I was trying to do something to Caymanians, because I am not going to put up with that, Madam Speaker. I am a Caymanian, and I am as good a one as anyone else on this side or on that side. And there's nobody else who has taken any more licks for doing things for this country that McKeever Bush—good things.

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, I'm not saying the Minister was trying to do anything bad, you know.

Hon. W. McKeever Bush, Leader of the Opposition: You said I was revelling in it.

Mr. V. Arden McLean: I said *we revel*.

Hon. W. McKeever Bush, Leader of the Opposition: No, no. You said *he*.

Mr. V. Arden McLean: I did not say you. Go and get the Hansard.

Hon. W. McKeever Bush, Leader of the Opposition: Go get it. That's why I rose.

Mr. V. Arden McLean: Go and get it! I said what you said here. And I said we revel in the fact that Caymanians collect some of these monies, and they should not be collecting it.

Hon. W. McKeever Bush, Leader of the Opposition: What were you saying?

Mr. V. Arden McLean: Well go ahead then nah. Go get it.

The Speaker: Order.

Hon. W. McKeever Bush, Leader of the Opposition: You said what you were saying!

The Speaker: Order.

Mr. V. Arden McLean: Madam Speaker, I bow to your ruling. But he thinks he can just get up here and bamboozle me. He's not going to bamboozle me, you know.

Hon. W. McKeever Bush, Leader of the Opposition: Jesus God, well you, for an hour and a half, you bamboozled me.

The Speaker: Member for East End, please keep to your topic.

Mr. V. Arden McLean: Madam Speaker, you know what? Make the Leader of the Opposition get up, because I don't want to get in any hard business with him.

Hon. W. McKeever Bush, Leader of the Opposition: We don't need to.

Mr. V. Arden McLean: We don't need to, because we are on the same side.

Hon. W. McKeever Bush, Leader of the Opposition: All right. I am right.

Mr. V. Arden McLean: But you jump, because you're there writing and not hearing what I'm saying, and Bernie must have told you.

Hon. W. McKeever Bush, Leader of the Opposition: You think so. Yeah right!

[Laughter]

Mr. V. Arden McLean: Madam Speaker, I don't want it to be felt, or the Leader of the Opposition to feel I am trying to insult him or anything. I'm talking about . . . we try to cut down these costs, and it's really Caymanians . . . the majority of it are little sole practitioners, in many instances, who try to cut their teeth to get in to be able to survive, because nobody else is helping them. Nobody! And they have empathy, sympathy for the poor Caymanians. And they're trying. And that's what they have been reduced to.

We need to get a little deeper into our own financial thing. Shouldn't only be a couple of kids coming out of school, like Roy McTaggart, and start pushing coffee in the office, and somebody takes pity on him, and he rises to the point of managing director. It shouldn't only be him. The legal profession should have the same thing, too.

Anyway, Madam Speaker, I've got enough now. I guess I've done enough now. And I don't want to insult the Leader of the Opposition, and neither do I want to insult the Premier who I see just walking back in here, didn't want to listen to me.

Madam Speaker, we all are in this together. We need to do something about it. And I challenge the Government to let's get this thing done and stop allowing this thing to fester and fester. And then you get the passionate pleas like I make, and then the Leader of the Opposition gets up and does the same thing and goes at everybody. We all need to get together and deal with this.

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

Mr. V. Arden McLean: You think I'm only saying that so you don't beat me or what?

Hon. W. McKeeva Bush, Leader of the Opposition: No sir. Beat you? No, that's not going to help you, my son.

Mr. V. Arden McLean: No, that doesn't help me. Never did then, it won't do now.

Hon. W. McKeeva Bush, Leader of the Opposition: That's right.

Mr. V. Arden McLean: So, Madam Speaker, I want to hear what the Attorney General is going to say about my interventions, my contribution on this Bill. And, if I am correct, how are they going to correct it? Thank you, Madam Speaker.

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

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, it's a good thing that we do have Standing Orders that recognise that people can mislead in reading Hansard, particularly. And, Madam Speaker, it's a good thing that the Member for East End, in winding down, was not as wound up as he began.

Mr. V. Arden McLean: You going support me against those law firms?

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, I always support what is good for this country.

Mr. V. Arden McLean: Ah, that how you'll answer me.

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, this subject of legal aid has been talked about for a long time. And—

Mr. V. Arden McLean: Do you want a Hansard so you can correct me?

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, in fact, I am going to read extensively from the Hansard, as I am permitted to do.

Madam Speaker, I have said this before in this House, but since I was being quoted so much and I was being referred to so much, let me get back to it. You would have this Hansard, Madam Speaker. I could go to the one before, but that was what . . . the Member for East End, I don't think was complaining about me at that point. He was complaining about the Premier on the meeting of our Finance Committee on October the 12th. And he wasn't complaining about me, but complaining now about the Premier, what the Premier had said.

He raised some good points. And I'm not going to get into that. But there have to be some corrections here. Because for one, Madam Speaker (before I get into reading the Hansard), I don't know of any place that I said that we shouldn't give people who needed it, legal aid. What I remember pounding a lot about was that legal aid was not, as I was accused, being put under the Leader of Government business. The funding was being put in the Finance Committee, where the courts would have to apply to the department to get its funding. I didn't control it. And I said at that time, Madam Speaker, that it seemed we were spending money for those on the other side of the law, but old people and children were suffering for want of support. That's the point I was making at a time when we had a budget that we had to find ways and means to cut. That's what we were told, and that's what the House was telling us. That was what was the UK was telling us, and that is what it demanded for us to try to get the budget through, to cut where we could, and

put off for another day to do something that we could do another day.

So, where the Member for East End gets this thing that I didn't want to give anybody legal aid . . . I don't know where he got that from, but it must have been from somewhere else. It wasn't from McKeeva Bush. I always said that it was too much money being spent. There had to be some other controls on it. I always said that. And, Madam Speaker, I always grumbled, complained because people were complaining to me about the amount of money being paid out in legal aid, yet we couldn't do certain things for children and the elderly in need. That was the crux of the matter of the complaint. Yes, we tried to get a different system.

Let me go to the Hansard, because maybe people need to know this. They might not remember it, and those new ones might not know.

“Madam Speaker, before 1975 the concept of providing the Caymanian people with legal assistance paid by the Government was unheard of.

“The Legal Practitioner’s Law, enacted in 1969, provided initial guidelines under which qualified attorneys at law were authorised to practise Cayman Islands’ Law, and grandfathered in those unqualified persons at that time practising as law agents.” (That’s what that law did.) **“This legislation, however, made no provision for legal aid. Attorneys practising in the Cayman Islands were left alone to set their fees for the legal services they provided for legal aid work.**

“By the 1970s, attorneys practising in Cayman (except for a few of them) were immersed in developing offshore financial practices. As their practices grew and developed, they became less interested in the matters of the Caymanians who were poor and unable to pay their fees, namely, legal aid. On occasions some of them would assist a Caymanian in matters before the courts, but many of them considered that assistance as a charitable donation of their time.

“Between 1972 and 1975 the number of persons appearing before the courts who could not pay” (I’m reading from the Hansard of a statement I made, Madam Speaker) **“for legal services began to increase. The Government took the view that those persons appearing before the courts could not rely on charitable representation and enacted the Poor Persons (Legal Aid) Law, 1975, which was revised in 1997 becoming the Legal Aid Law. The Legal Aid Rules were similarly enacted.**

“The Legal Aid Law, by its initial title, implied that it was enacted to assist the Cayman Islands poor people. The sum of \$20.00 per hour paid to attorneys assisting the poor before the courts is also an indication that this modest per-hour sum would not attract those attorneys who were then billing \$200.00 to \$300.00 per hour to leave their lucrative practices for \$20.00 per hour.”

(Some of what the Member for East End was referring to.) **“Representation by legal aid was left to the few Caymanian attorneys who could not break into the lucrative financial market, or who did not have the resources and relationships to make the right connections.”**

“Between 1988 to 1997 the then Caymanian Bar Association executive, namely, Mr. Steve McField, the late Mr. Ormond Panton and Mr. Orren Merren, lobbied the Government and had meetings with various judges with a view to increase the per hour payment for Caymanian attorneys to provide legal representation to those who needed it before the courts but could not afford to pay for it. That lobbying and those meetings with Government resulted in a gradual increase of the legal aid hourly rate from \$20.00 to \$100.00 in 1992.”

I don't know what the rate is today, Madam Speaker, but up until that point I was speaking it was something like \$135.00 per hour, maybe more. I don't know.

“Before 1997 the majority of attorneys providing legal aid service were Caymanian.” (Not all of them, the majority of them.) **“They carried the legal aid caseload for the scheduled criminal offences legally aided under the Law and the civil cases granted legal aid certificates. Although they represented essentially poor clients in those proceedings, they had to wait up to three to four months before being paid the low rate for giving up hours of their profitable practice. That scheme of putting Caymanian attorneys out of payment for such long waiting periods drove most of the Caymanian attorneys away from the legal aid practice. When that happened, the cry went up that there was a shortage of attorneys to do legal aid work. That cry was far from the truth—Caymanian attorneys were willing and able to do legal aid service provided they were paid in a timely manner.**

“The Government [then] responded and agreed that there were insufficient funds to fund legal aid service. They suggested that the wealthy Law firms give the legal aid fund money in lieu of their services. That suggestion was accepted (sic) by the Cayman Islands Law Society when the Legal Reform Committee presented its report in July 2008.”

The Speaker: *Unaccepted.*

Hon. W. McKeeva Bush, Leader of the Opposition: Sorry. Yes, sorry. That suggestion of legal aid fund money in lieu of their services **“was unaccepted by the Cayman Islands Law Society when the Legal Reform Committee presented its report in July 2008. Some Caymanian legal aid attorneys turned away to try and build a successful practice.**

“Between 1998 and today, some law firms added legal aid sections to their practices and brought in foreign attorneys to do legal aid work funded by Government. Two legal commissions, one in 2005 and the other in 2008, recommended changes in the way legal aid is delivered in the Cayman Islands. Those reports were commissioned as a result of numerous complaints of escalating cost of legal aid, as stated, but the concept of providing legal aid began as a charitable scheme to be funded by the Government. However, there was no established independent legal aid institution to dispense this fund for legal aid services.

“The provision of legal aid services, was and is still voluntary (as opposed to structured) which makes the scheme ineffective and costly. Because there is no independent institution created specifically for the provision of legal aid services, successive governments provided monies allocated for legal aid to the court to decide who gets legal aid and who is refused legal aid.”

I went on to say, Madam Speaker, **“In most other jurisdictions that I have checked, legal aid has its own independent governance structure, funding agreements and service mandate. Research has revealed that many other jurisdictions were forced to make significant restructuring of their legal aid schemes to meet their proliferating cost.**

“Research shows that in British Columbia, Canada, for example, legal aid services are established by a law that gives an independent body responsibility for the administration of legal aid. In British Columbia they have controlled rising legal aid cost. The escalating cost of legal aid in those other jurisdictions has been the primary reason why their Governments decided to make legal aid services independent and more responsible.

“In Quebec, research shows that legal aid is administered by an independent legal aid commission responsible for administering legal aid services in Quebec. This service has kept legal aid funding in Quebec stable. The cost of legal aid in the Cayman Islands . . .”—Madam Speaker, kept rising.

I said then, **“Our statistics show that since 1999 the Cayman Islands Government expenditure on legal aid is as follows:”** 1999, \$556,818.56; 2000, \$567,353.21; 2001, \$766,099.96; 2002, \$1,203,660.25; half year for 2003, as we had a half-year budget, \$421,014.60; 2003/04, \$821,909.76. Madam Speaker, 2004/05, \$1.5 million; 2005/06, \$1.7 million; 2006/07, \$1.7 million; 2007/08, it was continuously rising; 2007/08, \$1.8 million; 2008/09 at that time, \$1,850,000 at least. And that was a total of \$13 million at that time.

So, to read what the Member for East End was reading, he only jumped to the second part of that. You can see.

“Madam Speaker, out of the Cayman Government funds allocated for legal aid for that year, 2008/09, one attorney at law alone providing legal aid services, billed the Legal Aid Fund the sum of \$146,042.14.

“Our statistics also show that in budget years 2008/09, legal aid billings by various attorneys amounted to the sum of \$187,142.21 were not approved. Had that sum been approved, though, the legal aid cost to the Government of the Cayman Islands would have amounted to the sum of \$2,037,714.” [Ibid. pp 231-233]

I didn't look to see what it is today, Madam Speaker, or what it was since then. But I guess it kept rising; I'm not sure. Maybe the Attorney General knows and if he cares to say now, maybe he will say so at the end. Today it is [\$]2.6 [million].

So, Madam Speaker, I am not against what the Government is trying to do. No. I welcome the Government making some attempt to see how this thing is going to be controlled. And, Madam Speaker, we cannot stand here or sit anywhere or go on the radio and talk about we are making efforts to curb expenditure here, there and everywhere else, and then just leave it alone to grow in certain sections, whether they are criminal or not. And I said that then, and I say so again because, Madam Speaker, from my perspective, I'm a social thinker. I got into Government because of the lack of things for the poor people in this country. I got into Government because of the lack of assisting handicapped people and young people and the elderly.

When we can't give our own young people, we can't find money, Madam Speaker, to help people who have no money to send their children to school, who can't pay school fees, who can't buy school lunches, but we have to pay \$2.6 million for somebody who came and beat you up in your house—you can't sleep good—robbed your company, robbed your business. Your wife can't sit on the porch. She can't walk the street now. But when the time comes and the police do get some kind of conviction, Madam Speaker, what happens? Huh, they just go and get money now and get a lawyer. I had to get one, too. It cost me . . . I think it was just over \$1 million. Lawyers are not cheap. They are not inexpensive.

My complaint then, Mr. Member for East End—and you say that you didn't want us to have an argument, because I think, by and large, we are on the same level with that thinking. But don't come and try to tell me that I was trying to do something which I was not. Hear what I said, Madam Speaker, what we were trying to do.

“It is intended that the Legal Services Office will provide a broader range of legal services than those now being provided, which are primari-

ly relegated to matters of criminal and civil courts. The Legal Services Office will not only continue to provide legal aid services for those matters but will provide legal services at the grass roots level to workers, the poor, tribunal representations, women and children.

“**The Government**” (and this is where I have to support the move) **“in order to reduce the escalating rise of the cost of legal aid in the country [looked at] that plan.”** Not to say that may have been the panacea. Maybe it would work; maybe it wouldn't.

“**That plan**” (would have ended) **“the historical regime of open-ended legal aid funding capping the amount of legal funds . . .”** [Ibid. page 233] That is what we were trying to do because we had to do that, Madam Speaker.

Madam Speaker, the Member for East End also talked about human rights. Yes. We recognise that. That is in the Constitution. We will not get out of that. I said that when we were putting it in. So, it is noted, Madam Speaker, what is required under the Human Rights Convention in terms of what citizens are entitled to, and at that time amendments to the Constitution were proposed but they are now part of our Constitution, and we have to pay them mind.

I said that to them. I have a letter here that I wrote to them then (meaning the UK): “The needs and the requirements of what is pushed on us for legal, for human rights, must take into consideration the cultural makeup of this country.” I said that in 2010 when I wrote to Bellingham about the cost. I said it then.

“This must be coupled with the fact that there are limitations in what this community can afford, especially during an economic turn-down and when far too many who are better placed and skilled have not volunteered to step up and assist Governments, past and present, in absorbing costs by assisting in providing pro bono services.” [UNVERIFIED QUOTE] I said “far too many” because some do.

So, does that sound like what that Member was trying to say? I don't think so. I don't think that he was right in that. He said I must not say anything until he got back, but he's not back yet.

“The Cayman Islands Law Society made it clear that legal service of this kind should be provided by Government and borne by the society as a whole and not by the legal profession. Any government that takes its responsibility seriously, Madam Speaker, must review costs and determine how services can be delivered effectively and efficiently.” And I guess that is what the Government is trying to do. And should I not support them? I have to.

Madam Speaker, I think that's enough of referring to that. I needed to clear that up. I made those statements on the 21st of October [2009], but I did have to go.

Now, where he was beating up on the Premier was on the matter of Monday, 12th of October. I don't have to get into that, Madam Speaker. We all knew

what we were trying to do. I made that statement on the 21st of October 2009 to try to bring clarity to what I was attempting to do because, of course, I was getting heat as I was trying to make some changes to it. We were not dissing anybody in the courts. No! Far from it! What we were doing was trying to bring a different level, some sort of programme in.

I can't help about what any Human Rights Commission is going to think. Government has to do what is right culturally and economically, what we can afford. That has to be the primary purpose in whatever we set up. And in this case, the Government, I think, is moving in the right direction.

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

I recognise the Honourable Premier.

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

Madam Speaker, I welcome the opportunity to say a few words with respect to this very important piece of legislation, which is being brought today by the Honourable Attorney General.

As has been indicated, I think, by those who have spoken before me, the road down which we have come to get here has not been an easy one. And the past discussions with respect to the legal aid system in Cayman have gone on for as long as I've been here. And every year the cry has been the same—that it's costing too much.

There have been challenges over the years to those who come to the Finance Committee to represent the judicial administration about the criteria that are used to award, or not, legal aid. And it really has never been satisfactory.

I heard the Honourable Leader of the Opposition just now echoing things he has said before about the question of the prioritisation of Government's always limited budget, no matter how big it is. And I've also heard his attempt to defend the decision which was taken in Finance Committee on 12th of October 2009 when the Finance Committee voted to transfer the responsibility for the legal aid budget to the Office of the Premier.

[Inaudible interjection]

The Premier, Hon. Alden McLaughlin: Madam Speaker, the Leader of the Opposition is challenging that assertion of mine. So let me read from the report of his own speech in Finance Committee on Monday, 12th of October, which is found at page 2 of the edited excerpt verbatim transcript of Standing Finance Committee for the fourth sitting, Monday, 12th of October 2009.

He says, **“One appropriation to the Cabinet on behalf of the Chief Justice output group, NGS-2—Legal Aid Services, by decreasing that output**

group by \$1,550,000 to reflect a new policy for the provisions of legal aid services, and, to revise the 2009-2010 appropriation will be \$300,000.

Appropriation to the Minister of Financial Services Tourism and Development,” (a position which he held) **“to insert a new out-put group appropriation, FTD-22—Services provided by Legal Aid Office, of \$500,000; that is to reflect a new policy for the provision of legal aid services.”**

So, the reality—

Hon. W. McKeeva Bush, Leader of the Opposition: No, Madam Speaker, on a point of order. If the Member reads further down in the Hansard, he will see where I clarified it.

The Premier, Hon. Alden McLaughlin: Madam Speaker—

The Speaker: Can you . . . one minute, can you—

The Premier, Hon. Alden McLaughlin: I will yield. I just wish to finish this point, and he can explain. I am quite happy to yield.

The Speaker: Honourable Premier, please continue.

The Premier, Hon. Alden McLaughlin: So, Madam Speaker, the challenge was that this wasn't being dealt with by the Office of the Premier. Well, semantics aside, the Minister of Financial Services, Tourism Development was, at the time, the Premier.

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

The Speaker: Honourable Leader of the Opposition.

POINT OF ORDER

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, that is not what I was challenging. He said “the Premier,” meaning that it could take . . . anybody listening could take it to mean that it was in the Office of the Premier. It was not. And that is what I'm saying. It was in the Finance Department, which I was responsible for at the time, yes.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: No, it was . . . well, the department . . . I think I went on. If you read the Hansard, you see that it went on. Check it back.

In any event, Madam Speaker, that is what the proposal was. For instance, when they had to make . . . and I think I explained it, because Mr. Miller asked the questions. I explained it. And this is here in this Hansard, that when they needed, then they would

make application to the Finance Department. That is whom they made an application to.

The Speaker: Honourable Premier.

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

And so, Madam Speaker, just for the sake of completeness, the Finance Committee on that date voted in those terms. The only noes expressed were by me and the Member for East End. But there were a number of absences. Honourable Rolston Anglin, Mr. D. Kurt Tibbetts, Mr. Moses Kirkconnell and Mr. Anthony Eden were all absent at the time of that vote.

So that, Madam Speaker, led to a whole lot of controversy, confusion and in the result nothing of substance changed with respect to the allocation of legal aid. There were protests from the Chief Justice, from other judges, from lawyers. And so nothing of substance changed.

This administration, which I have the honour and privilege to lead, decided that we could not allow this situation to continue indefinitely. There have been many false starts with respect to trying to come to a reasonable arrangement with respect to the provision of legal aid.

Many people within Government and outside Government expressed their understandable concern about spending public funds as part of the defence of persons who are charged with criminal offences. And the Leader of the Opposition, Madam Speaker, referred to the provision in the Cayman Islands Constitution Order 2009. I think it is section 8 of the Bill of Rights, which confers the right to a fair trial.

[Inaudible interjection]

The Premier, Hon. Alden McLaughlin: Section 7? Thank you.

But, Mr. Speaker, I am happy to read that provision for the record. **Section “7(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.**

Section 7(2) **“Everyone charged with a criminal offence has the following minimum rights—**

- "a) to be presumed innocent until proved guilty according to law;**
- "b) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;**
- "c) to have adequate time and the facilities for the preparation of his or her defence;”** (and this is the pertinent one here)
- "d) to defend himself or herself in person or through legal assistance of his or her own**

choosing or, if he or she has not sufficient means to pay for legal assistance and the interests of justice so require, through a legal representative at public expense provided through an established public legal aid scheme as prescribed by law . . .”

Madam Speaker, it goes on to set out further obligations, essentially, on Government and on the system to ensure that indeed everyone has the right to a fair and public hearing.

The Speaker: Honourable Premier, could I have the suspension of Standing Order 10 for the House to continue beyond hour of 4:30 pm?

Moment of interruption—4:30 pm

SUSPENSION OF STANDING ORDER 10(2)

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker. Madam Speaker, I beg to move the suspension of Standing Order 10(2) in order that the business of the House may continue beyond the hour of interruption.

The Speaker: The question is that Standing Order 10(2) be hereby suspended to allow the business of the House to continue beyond the hour of 4:30 pm.

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

AYES.

The Speaker: The Ayes have it. Accordingly, Standing Order 10(2) is suspended.

Agreed: Standing Order 10(2) suspended.

The Speaker: Honourable Premier, please continue.

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

Madam Speaker, to this point about the right to legal assistance to ensure whether or not you can afford it and that indeed there is a fair trial, this, is for the first time actually articulated in the Cayman Islands Constitution. But it is not the Cayman Islands Constitution that in fact has conferred that right and created that obligation. The reality is, Madam Speaker, and it has long been recognised throughout all common law jurisdictions, including the Cayman Islands, that for a system in which the rule of law is paramount to exist and to operate, those persons who are charged particularly with serious criminal offences must have adequate legal representation. Failing which, the verdicts that are rendered are likely to be determined to be unsafe and unsatisfactory, and, therefore, quashed.

So it is not just a case of people saying, as the Leader of the Opposition is fond of doing and has just done so, that—

Hon. W. McKeeva Bush, Leader of the Opposition: I was responding to what Arden said, you know. I was quoting what he said.

Mr. V. Arden McLean: Leave me out of it.

Hon. W. McKeeva Bush, Leader of the Opposition: Yeah, I was quoting you.

The Premier, Hon. Alden McLaughlin: —that we shouldn't be taking this money and using it to pay for the defence of these criminals. But the reality is that they are presumed to be innocent until they are proved guilty. And in order for us to get to that point where they can be proved guilty, there is a process which requires equality of arms, which requires that those who are charged, particularly with criminal offenses, have the benefit of adequate legal representation.

If we take all of that away, we undermine the credibility of the system. And we will wind up with no one who has been convicted of any serious offence actually remaining convicted, because on any appeal, the courts are going to say, *The verdict is unsafe and unsatisfactory because the individual did not have the benefit of adequate legal representation.* That is the reality. That is why particularly in a First World country like Cayman, a country which has regard for the rule of law, we have to have an adequate legal aid system.

And what the Government is seeking to do by this Bill is to modernise legislation which is . . . I've forgotten how many years old . . . that goes back to 1975 and to create a proper process to appoint a director of legal aid to take this away from the Chief Justice—really, the Chief Justice shouldn't be, with all the other things he has to do, determining who gets legal aid and for what—and to set out a proper process which accords with the rule of law, which accords with what international standards are and which accords with the Bill of Rights. That is what we are seeking to do.

As I said, Madam Speaker, next month it will be 15 years since I have had the honour of being a representative. And this has been an issue even before that, in my days when I used to practise, the whole question of legal aid was an issue.

I am not suggesting that this is going to sort out all of the problems. But this is going to create a proper modern framework, with adequate human resources available to be devoted to determining the applications for legal aid. I do believe that, ultimately, it is going to contain rather than increase the cost of legal aid, because there will be a better process in place.

So, Madam Speaker, I am delighted to hear that despite the usual wrangling, which is inevitable in

this House; that all those who have spoken on the other side are in support of the Government Bill. I wish to commend in particular the Honourable Attorney General, his office and all those who have worked so hard at it, including the Chief Justice and those in his office, as well, obviously, as the draftspersons who have had the difficult job of converting what all of us wish into the proper legal language contained in the Bill.

Madam Speaker, with those few observations, I wish to indicate my support and the Government's support, obviously, for the Bill, and to thank again the Members on the other side for their contributions and their support.

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

If not, I'll call on the Honourable Attorney General, should he wish to exercise his right of reply.

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

Madam Speaker, I will attempt to address some of the concerns.

[Inaudible interjections]

The Attorney General, Hon. Samuel W. Bulgin: I will attempt to address some of the concerns, especially those, Madam Speaker, expressed by the Honourable Member for East End. He spent quite some time expressing some concerns about what he perceived to be erosion of the separation of powers by the provision of the Bill.

Madam Speaker, let me just start off by saying that to the extent that safeguards are required for the proper administration of this law, the Bill itself when it becomes law, contains sufficient safeguards to ensure the proper functioning of the proposed legal aid system. And I think . . . I don't know if it is inadvertence, but the honourable Member seems to be conflating the judiciary with the Legal Aid Director, who is not a member of the judiciary.

The Legal Aid Director is what it says, a person with certain unrestrictive duties who happened to be housed in the judicial department. And may I just hasten to add, as well, that Cayman is one of the few places where legal aid is administered from the judicial department. In most countries it doesn't happen that way, including the UK. And in our neighbouring Jamaica, it's run by the Ministry of Justice. In most countries it's run by the Ministry of Justice.

So, in the Cayman Islands, for logistical convenience, the system has worked very well by having a judicial department base—legally, its office—and it has worked very well being ensconced there. And the policy decision has been taken to allow it to remain there.

The separation of powers, Madam Speaker, generally means that you have three branches of government. There is the legislative branch that enacts legislation. There's an executive branch that implements policies containing these legislations. And there's a judicial department that interprets the laws. So, the judiciary does interpret the laws passed by the legislature. The administration of Legal Aid by the Director has nothing to do with interpretation of the legislation that is being passed. It is providing administrative function as to the carrying out of the legal aid system, which happens to be housed in the judicial department.

Now, Madam Speaker, to the extent that there are safeguards that should be put in place, the Bill itself contains a number of provisions which ensure the independence, if you will, of the Director of Legal Aid. Now, the Member quite properly explains that Minister means "Minister or member" who is responsible for legal aid. Under our current Constitutional construct, the assignment of responsibility is done by the Governor and the advisor of the Premier. So, the law, Madam Speaker, makes it quite clear that if it is the Premier's wish, for example, that Legal Aid falls under the Attorney General's Chambers, he certainly will advise the Governor accordingly.

Madam Speaker, it is not a judicial function, because a judicial function will fall under section 55 of the Constitution, the Governor's special responsibilities.

Mr. V. Arden McLean: Go ahead and explain [clause] 20 then.

The Attorney General, Hon. Samuel W. Bulgin: All right, whilst you're at it, Madam Speaker, [clause] 20 [of the Bill] speaks to the recovery, a civil action to recover property, or deals with property where a contribution has been made or ordered, and property has been taken to deal with that.

Madam Speaker, the Attorney General is an attorney for the Government. If there is a civil action that is launched by the Government to recover land from someone who has gotten legal aid, the ultimate beneficiary of that land is the Government of the Cayman Islands, not the Chief Justice, not the judicial department. It is the Government of the Cayman Islands. The Government is a client, so the Government can instruct the Attorney General how to treat with that case. It is no different from the Government retaining someone from outside to deal with that.

Similarly, Madam Speaker, the way the legislation is crafted, if it is a Minister, they will act on the advice of the Attorney General. They may or may not accept the advice. If it is the Attorney General, then it falls to the Attorney General to make the decision as to whether or not, or how to treat the particular issue. That's all it does. There's no confusion in this [clause]. So, if the Portfolio is assigned to a minister, before the

issue is dealt with, the minister would seek under the law the advice of the Attorney General, which that minister may or may not accept.

If the Portfolio is assigned to the Attorney General, it falls to the Attorney General to make the determination as to whether or not the land should be taken on behalf of the Government. So, to the extent that it might seem a little bit confusing, I hope I have clarified it for the [Member].

Mr. V. Arden McLean: No, you haven't.

The Attorney General, Hon. Samuel W. Bulgin: And if I have not been able to, then I'm sorry for the honourable Member.

[Laughter]

The Attorney General, Hon. Samuel W. Bulgin: Madam Speaker, the Bill also speaks to the appointment of the Director in clause 6(6), which speaks to the Director being supervised by the Court Administrator. It speaks to issues or instances where the Director is supposed to provide limited legal representation. He or she does so after consultation with the Chief Justice.

Clause 7(5) of the Bill makes it quite clear that subject to the direction of the Court Administrator, the Director shall be responsible for the day-to-day administration of the law. It speaks to the prior approval of the Court Administrator and the Clerk of the Courts if there is going to be a spending cap. It speaks to the requirement for the Court Administrator and the Director to prepare and submit an annual estimate for the financial requirements for the following year, Madam Speaker.

Clause 10 of the Bill, which seems to cause some anxiety to the honourable Member, says, "**The Minister, after consultation with the Cabinet, may give such general directions as to the policy to be followed by the Director in the performance of his functions as appear to the Minister to be necessary in the public interest, and the Director shall give effect to any such directions.**"

Madam Speaker, this is not a new section. This provision is not unheard of. But the catchword there is *general direction*. So, the policy direction has to comport with the law. It cannot be *ultra vires* the law. And we all know from case laws around, I think, *Ebanks and the Planning Authority* is one such case where you have a functionary, such as a director. A Minister can't call up that director and say to him or her, *I don't think you should give legal aid to a particular person*, or vice-versa, *You should give legal aid to a particular person*. That sort of direction is *ultra vires* the powers of the Director. So, that is not what is contemplated by clause 10, Madam Speaker, not at all.

So, may I just comfort the honourable Member by saying that clause 10 was not meant to be a

provision where the person responsible for legal aid, where the minister or member would be able to usurp the function or the powers of the Director of Legal Aid.

Madam Speaker, clause 9 expressly sets out the powers of the Director as it relates to a number of things, including drawing up guidelines and so on in the exercising and carrying out the functions under the law.

Clause 18 makes it quite clear that Cabinet has to consult with the Chief Justice in prescribing how to calculate disposable income.

Clause 38 speaks to an appeal to a judge in chambers where decisions are made by the Director as it relates to legal aid. So there can't be an appeal to a Minister, but an appeal to a judge in chambers.

Clause 41, of course, speaks about the laying of a report before this House, of course, in the interest of transparency and openness to lay bare the operations of the law over the year before.

So, Madam Speaker, although the honourable Member does have some concerns, I can understand why.

[Laughter]

The Attorney General, Hon. Samuel W. Bulgin: I can understand why. But I seek to assure him, Madam Speaker, that there are adequate safeguards in the Bill that will ensure the effective operation of the Law as it's contemplated, and to ring-fence the independence of the Director of Legal Aid, except in instances where he or she will be required to consult to allow the Chief Justice and the Court Administrator in certain matters, Madam Speaker.

Madam Speaker, what I can say is that in respect of clause 20(6), where the Member points out that even where a contribution has been made and the . . . (May I just crave your indulgence?)

Yes, clause 20(6), which speaks to, "**If, despite the write-off, an assisted person repays some or all of a written-off debt, the Director shall return the amount that was written off.**" Madam Speaker, I take on board the observation of the honourable Member, and I have discussed with Legislative Drafter. And I think, in fairness, the word should be that the Director *may* return the amount that was written off, not *shall* return the amount that was written off. And so, the section would read . . . and I am proposing to move a committee stage amendment. The clause would read, if it is allowed, it would say that, *If, despite the write-off, an assisted person repays some or all of a written-off debt, the Director may return the amount that was written off.* Madam Speaker, I think that is a sensible compromise.

[Inaudible interjection]

The Attorney General, Hon. Samuel W. Bulgin: I am happy to take on board the suggestion, or the observation, of the honourable Member for East End.

Madam Speaker, in all other respects, I would certainly commend this Bill to this honourable House. As has been said repeatedly, and from what has been read, it is clear that this has been a work in progress and it has been a long journey. This is certainly not the end of this exercise. But it is a useful first step in an attempt to streamline the provision of legal aid for those who need it most in our administration of justice.

And so, Madam Speaker, I really want to thank all honourable Members, and I commend the Bill for safe passage. Thank you.

The Speaker: The question is that a Bill shortly entitled The Legal Aid Bill, 2015, be given a second reading.

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

AYES AND NOES.

The Speaker: I think the Ayes have it.

Hon. W. McKeeva Bush, Leader of the Opposition: Can we have a division, please?

The Speaker: Madam Clerk, please call a division.

The Deputy Clerk:

Division No. 5

Ayes: 9

Hon. Alden McLaughlin
Hon. Marco S. Archer
Hon. Tara A. Rivers
Mr. Winston C. Connolly
Mr. Roy M. McTaggart
Mr. Joseph X. Hew
Mr. Alva H. Suckoo
Hon. W. McKeeva Bush
Capt. A. Eugene Ebanks

Noes: 2

Mr. D. Ezzard Miller
Mr. V. Arden Mclean

Abstentions: 1

Mr. Bernie A. Bush

Absentees: 5

Hon. Moses I. Kirkconnell
Hon. D. Kurt Tibbetts
Hon. Osbourne V. Bodden
Hon. G. Wayne Panton
Hon. Anthony S. Eden

The Speaker: The result of the division: 9 Ayes; 2 Noes; 1 Abstention; 5 Absent. The Bill has accordingly passed.

Agreed by majority on division: The Legal Aid Bill, 2015, given second reading.

BILL

SECOND READING

PUBLIC MANAGEMENT AND FINANCE (AMENDMENT) BILL, 2015

The Deputy Clerk: The Public Management and Finance (Amendment) Bill, 2015, Second Reading.

The Speaker: I recognise the Honourable Minister responsible for Finance.

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

Madam Speaker, I beg to move the Second Reading of a Bill entitled the Public Management and Finance (Amendment) Bill, 2015, which I shall refer to as *the Bill* from here on in.

The Speaker: The Bill has been duly moved. Does the Honourable Minister of Finance wish to speak to it?

Hon. Marco S. Archer: Madam Speaker, yes, thank you.

Madam Speaker, it would be useful to provide information that explains the origin of the Bill that is now before this honourable House. Cabinet approved the appointment of the Public Management and Finance Law Review Committee to scrutinise the Public Management and Finance Law and its accompanying regulations.

Madam Speaker, I would like to thank the committee comprised of, Mr. Roy McTaggart, MLA and Counsellor in the Ministry (at the time it was the Ministry of Finance and Financial Services, or Ministries thereof. He is now in the Ministry of Health and Home Affairs. I don't have the exact names in front of me, but we know the gentleman to whom we are referring.) So I would like to thank Mr. McTaggart, who chaired the committee. And we know that Mr. McTaggart, of course, has extensive experience in the accounting and auditing field, and he's also the Second Elected Member for the District of George Town. The first name comes . . . the name comes more natural. So, the Second Elected Member for the District of George Town, Madam Speaker.

Also on the committee was Mr. Kenneth Jefferson, the Financial Secretary; Mrs. Debra Welcome; the former Accountant General, Mr. Alastair Swarbrick; the former Auditor General, Ms. Dorine Whittaker, who represented the Chief Officers of the Government; Mr. Vinton Chinsee, who represented the Chief Financial Officers within the Government;

Mr. Taron Jackman, who is a partner at Deloitte & Touche, represented the Cayman Islands Society of Professional Accountants; and Ms. Patricia Estwick who is in the private sector, Madam Speaker. And if memory serves me correctly, she is the Chief Financial Officer for the Cayman National Group of Companies.

So, Madam Speaker, I think it is fair to say that the members of this committee were well qualified and suited for the task that they were given.

Madam Speaker, the committee made approximately 40 recommendations and conclusions for possible amendment to the law and the regulations, which are intended to improve the efficiency and effectiveness of the government's financial management system.

Madam Speaker, the Bill that is now before the House incorporates a few of the committee's recommendations, and these recommendations are as follows:

1. Change the financial year from the current 1st of July–30th of June period to the 1st of January to the 31st of December period;
2. Adopt multi-year budgets and appropriations;
3. Change the deadline for the tabling of the Strategic Policy Statement, or what is commonly referred to as the SPS, in the Legislative Assembly and change the date by which the timing of the Budget is to be published in the government's gazette;
4. Change the holding period for trust assets from six years to four years;
5. Prohibit Ministries and portfolios from waiving government revenue.

Madam Speaker, since these are a few of the recommendations by the committee, there is intended to be another Bill to amend the law, and this will most likely be done in 2016.

Madam Speaker, let me now present details to the House with respect to the items that are in the Bill.

With respect to changing the 30th June financial year to 31st December year-end, the Government's financial year currently encompasses the 12-month period from the 1st of July to the 30th of June. Madam Speaker, it is a fact that a significant portion of government's revenue is derived in the January to March quarter of the financial year. Revenues earned during this quarter are mainly with respect to those provided from Financial Services. If there is a sudden reduction in such revenues, this does not become known to the government until late in its financial year and therefore leaves very little time and ability of the government to make any meaningful mitigating reductions to expenditures between April and June, which would then be the end of the financial year.

During the worldwide economic recession that started in late 2007, there were significant shortfalls in

forecasted revenues that did not manifest itself until late in the third quarter of the government's financial year at the time. This left very little time and opportunity to implement expenditure reduction measures to mitigate the shortfall in forecasted revenues. Madam Speaker, moving the financial year end to the 31st of December will allow the Government greater time, and therefore greater fiscal ability, to take measures to mitigate the impact of any revenue shortfalls.

In addition, a general election takes place every four years in May, which is within two months of the 30th of June year end. This leaves the incoming Government with insufficient time to prepare and then approve a credible budget for a financial year that starts on the 1st of July. Because of this, Madam Speaker, the Government is forced to have an interim budget of up to four months, during which time a full budget must be prepared and approved by the Legislative Assembly. This process is insufficient and an ineffective use of resources. Moving the financial year end to 31st of December will allow Government sufficient time to develop a budget in a timely and considered manner.

The move to a financial year end that ends on the 31st of December will firstly involve an 18-month financial period, which will start on the 1st of July 2016 and end on the 31st of December 2017. Thereafter, the financial year will end on the 31st of December, the first of which will then be the 31st of December 2018.

Madam Speaker, with respect to adopting multi-year budgets and appropriations, the Government currently prepares an annual budget that covers the period 1 July to the 30th of June. The committee recommended that the Government move to a multi-year budget that covers a two-year period, as it would:

1. bring greater discipline to the budget process, since the timeframe for the consideration of the impact of budgetary requests is greater and, in turn, causes the Government to have a longer view and focus on strategic policy and matters of national importance;
2. shift the focus of budgeting to a medium-term period rather than the current one-year outlook, and thereby make it consistent with the SPS (or the Strategic Policy Statement) document, which has a multi-year outlook;
3. allow the Government to better manage its capital projects over a long period of time and to present more meaningful and comprehensive information to the Legislative Assembly on capital expenditures;
4. allow the Government to better predict its spending and resource needs; and
5. provide the Government with additional time that can be devoted to strategic planning of the country's affairs, since there will be a reduced amount of time that is spent in the Legislative Assembly dealing with the budget process.

Madam Speaker, it is also important that I point out to the House that multi-year budgets and a single appropriation law providing more than one year of budgetary cover is well established and practiced in other jurisdictions. As an example, Madam Speaker, Jersey, in the Channel Islands, has for many years been producing multi-year budgets that are encompassed with a single appropriation law.

Madam Speaker, with respect to changing the deadline for the tabling of the SPS in the Legislative Assembly and for the SPS to cover a period of multiple years, the law currently requires the Government to prepare an SPS by the 1st of December each year. As a consequence of changing the financial year to the calendar year and changing to a two-year budget, the Bill proposes that in a non-general election year, the SPS will be tabled in the LA no later than the 1st of May, immediately prior to each budget period.

In a general election year, Madam Speaker, the Bill proposes that the SPS will be tabled no later than three months after the date of the general election. Therefore, in the year 2017, the SPS for the two-year budget period will start on the 1st of January 2018. It will be due by late August 2017, which is three months after the May 2017 general election.

Changing the tabling of the SPS means that the Government will not have to prepare an SPS in December 2016. The SPS that is scheduled to be tabled in the LA in this honourable House, Madam Speaker, in November of 2015 will be the last SPS prepared before the May 2017 general election.

Madam Speaker, I would also like to note that, although the Government will be adopting a two-year budget, the Government will continue to prepare its financial statement on an annual basis. These financial statements will be audited by the Auditor General's Office and tabled in the Legislative Assembly annually. Presenting the audited financial statements for the Legislative Assembly on an annual basis ensures transparency and accountability is continued.

With respect to changing the holding period for trust assets from six years to four years, Madam Speaker, section 74(1) requires the government to hold trust assets for six years. Trust assets are those assets that are transferred or paid to the government in trust on behalf of any person and includes assets that are (1) being held pending the completion of a transaction or a dispute; or (2) belong to or are due to any person and are collected under any agreement with that person. If the trust assets remain unclaimed after six years of having been received by or transferred to the government, the assets then belong to the government, Madam Speaker, according to the law.

The committee recommended that the six-year holding period for trust assets should be reduced to four years. Madam Speaker, although the holding period is being reduced to four years, a person or a claimant may still claim the assets and seek repay-

ment up to 10 years after the asset was first received by or transferred to government. The Bill proposes that a claimant's ability to seek repayment of an unclaimed trust asset expires after 10 years of the asset having first been received or transferred to the government.

With respect to prohibiting ministries and portfolios from waiving government revenue, Madam Speaker, the law does not explicitly prohibit a ministry or portfolio via its chief officer from waiving entity revenue. Entity revenue is defined in the law as being in relation to a ministry portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner or the Audit Office, where revenue earned by the entity from the production of outputs, including those outputs purchased by the Governor in Cabinet or any other of its own activities, but does not include any revenue of the core government declared by the Financial Secretary not to be revenue of that entity or allocated or transferred by him to another entity by regulations made under section 35 of the law.

The committee therefore recommended that the law be changed to explicitly prohibit the waiver of any form of revenue, including entity revenue by ministries and portfolios.

Madam Speaker, I will now turn to the clauses of the Bill, as these propose to effect details that I have just stated. The clauses of the Bill are as follows:

Clause 1 provides the short title and commencement of the legislation.

Clause 2 amends section 2 of the [principal] Law to revise the definition of the term "financial year." With effect from 1st of July, 2016, "financial year" means the period of 18 months commencing the 1st July 2016 and ending on the 31st December 2017. At the end of that period, Madam Speaker, "financial year" will mean a year ending the 31st of December. The clause also redefines the terms "Appropriation Law" and "Appropriation Bill" and inserts a definition of the term "budget period." The latter term, that being "budget period," allows appropriations to cover a two-year period.

Clause 3 amends section 17 of the Law to change the time frame for gazetting budget timelines to the 1st of April in a year in which there is not a general election being held and to provide that, in a general election year, budget timelines are to be gazetted not later than two months after the general election.

Clause 4 amends section 23 of the Law to change the deadline for the tabling of the SPS in the Legislative Assembly to a date that is consistent with the new fiscal year period of the 1st of January to the 31st of December. The new deadline is the 1st of May, except in a general election year, the SPS is to be tabled in the Legislative Assembly not later than three months after the general election.

Clause 5 amends section 41 of the Law to prohibit a ministry or portfolio from waiving revenue.

Clause 6 amends section 74 of the Law to reduce, from six years to four years, the period for which a trust asset must remain unclaimed before being treated as an unclaimed trust asset. This clause also provides that a claimant's ability to seek repayment of an unclaimed trust asset expires after 10 years of the asset first having been received by the Government.

Clauses 7 and 8 amend miscellaneous provisions in the Law to replace the terms "annual plan and estimates" and "annual budget statement" with the terms "plan and estimates" and "budget statement," respectively; in other words, by simply removing the word "annual."

And clause 9 amends miscellaneous provisions of the Law to replace the term "chief officer (Public Finance) of the ministry responsible for finance" with the term "chief officer of the ministry responsible for finance."

Madam Speaker, the Ministry of Finance is currently compiling further legislative drafting instructions for another public management and finance amendment Bill, which, as I said earlier, is likely to be brought to the Legislative Assembly in 2016. That Bill, Madam Speaker, will include the remaining changes to the Law which were recommended by the review committee.

So, Madam Speaker, I now commend the Public Management and Finance (Amendment) Bill 2015 to this Honourable House for passage. Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

I recognise the Honourable Member for the District of North Side.

Mr. D. Ezzard Miller, Elected Member for North Side: Thank you, Madam Speaker.

Madam Speaker, when I got the email notice that we were going to deal with the Public Management and Finance Law, I was elated, because I hoped that at long last we were going to get that comprehensive review of the PMFL law that we had been promised from 2010. That elation didn't last very long when I proceeded to read the proposed amending Bill, because, once again, Madam Speaker, as was done by the past Government, we are amending selective sections of this Law to fit our agenda.

The past Government (past-past when they were in Government past-past) made this change from the calendar year to July to June. And I think the biggest reason they gave at that time was because the election was held in November. I didn't support it then, because, Madam Speaker, elections are every four years. And the truth of the matter is that it is not the elected people who actually prepare the budget. The budget is prepared by the civil servants, and mostly what the elected officials, elected members get to stamp their policy position on is capital develop-

ment and any other changes that they may make in policy within their Ministry that is reflected in future budgets.

For many years, the allocation provided in the law which allowed the approval of four months of the previous year's budget to allow the incoming elected part of government to deal with the capital side and to make any changes that were possible in terms of the policy changes, which affect the cost of running the government, because it's not that big a deal. And, Madam Speaker, we had Mr. Luck, which I think was his name, was brought in by the previous Government. He reviewed this Bill, made some recommendations. They haven't seen the light of day. We don't know what that unlucky man recommended. I was pleased and happy that this Government had appointed a committee, a little more than a year ago, I believe, to review this Law. And I hoped that we were going to get this comprehensive review of the Bill.

I fail to see the urgency in selecting these two pieces of their recommendation and bringing it into law now. And I have some serious concerns, Madam Speaker, about the two-year budget and the two-year appropriation. I don't have a problem with two-year budgeting, but with annual appropriation. What that means to people like me who sit on this side is we're only going to get two opportunities in the four-year life of the Legislative Assembly to scrutinise the Government Budget and Finance Committee. And that is the only opportunity that nongovernment people get to scrutinise government expenditure, and hopefully, the generosity of the Government will allow them to get some things put into the budget for their constituencies. And if we're going to reduce that to only twice during the four-year life of Parliament, I think that severely reduces non-government members' opportunities to influence government expenditure and finances.

I don't see the point of auditing half of the Appropriation Law, particularly in those things that relate to capital expenditure and stuff like that. Now, long, long ago, Madam Speaker, when I went to school, we learned about a term called *programme budgeting*, which would allow, in my view, much better . . . If the Government went to programme budgeting for its capital expenditure, it would give the Government much more control of that expenditure to develop that project. And even if it was multi-year, the programme should be able to be represented in the budget.

I can tell you, Madam Speaker, my involvement in the very small project in my community over the last couple of months leads me to believe that we, the elected arm of Government, including the Ministers, need every opportunity to hold expenditure on these projects under control. And if you're going to let them go for two years, I think you're asking for trouble. And if you think projects are overrunning the budget now, imagine what's going to happen when they know there's no scrutiny to come for two years? Because, I

mean, Madam Speaker, simple little things like performance according to contract are completely ignored.

Just to give an example, on this small project they hired a consulting firm to provide MEP (mechanical, electrical and plumbing). I believe that those people are likely to be well paid based on an FOI that I sent in to the Ministry. The Building Control Unit within government failed that consultant's report on all three—mechanical, electrical, plumbing. Now, Madam Speaker, we're not talking about any 15-story building. The total plumbing is three washbasins, three sinks (I would call them), three sinks—they forgot two of them. For the mechanical side of it, the stuff that they had, had ducts going through ducts, interfering with ducts. I believe they cut the wall, to my recollection, five times so far those ducts and the return. We're talking about knocking out eight-inch blocks, plastering them and come back next week and knock it out again and plaster it up.

For the electrical, the electrical contractor had to tell them what size wire had to be used for the incoming means, because they had specified the wrong one. And if we are going to have these projects out there that are going to be managed by non-elected people who are going to be held responsible for two years, and no scrutiny . . . Madam Speaker, I don't support that.

I have no problem with supporting an extra year being budgeted and that budget year rolling forward annually. But the appropriation is annual. And the Finance Committee is annual. And the audit report is annual. And I would still encourage the Government to consider . . . I don't know what the fancy term is for it, Madam Speaker, in accounting vernacular. It might not be programme budgeting; I'm sure there's a much more fancy word for that, but basically, you properly budget to complete the project.

Madam Speaker, I accept the Finance Minister's reasoning on terms of government revenue coming in, in the first three years, and if there's any serious fall-off in that, the Government needs to know early in its year. And that is one of the reasons why I didn't support moving it to June in the first instance. But, Madam Speaker, you know, this complication came up because we had a hurricane called Ivan, which put off the elections from November 2004 to May 2005. Madam Speaker, I can't speak for the rest of the country, but I clearly understood that that was a one-off; that that was only because of the hurricane. The next election was going to be November 2012 . . . 2008, sorry, because it was 2004 that was moved, right? In 2008.

For whatever reasons, it was not moved back, because some people said, *Well, you know, I'm not giving up six months of my term.* And then the next group that came in said they're not giving up six months of their term. And the Opposition said, *We are not going to give that Government an additional six*

months to move it to November. So, we created that ourselves as politicians. But even now, Madam Speaker, this Bill that's before us, although it moves the financial year back to a calendar year, we still have to make adjustments for election year in relation to the SPS, in relation to the other projections.

So, Madam Speaker, the election is every four years. I believe that there are adequate provisions to allow for opportunities for, if a new Government is elected, to stamp its brand on the budget in that four-month period. Because the greater portion of the budget is recurrent expenditure that we as elected officials can't do anything about.

So, Madam Speaker, I have difficulty in once again being asked to support a piecemeal Amendment to the PMFL. I would much have preferred to see the 40 recommendations, whatever they are. At least table a report and let us see what they are. Because if you are only going to do them four at a time or five at a time . . . I think the Minister said this Bill represents five of the recommendations. So, that is several Bills we have to do if we're going to do them five at a time, to get to forty, right?

I believe the country would be better served if the Amendment to the Bill was comprehensive in nature and it was done one-shot. Because, Madam Speaker, we politicians are going to be spending this all kinds of "hows", you know. Because is it by accident that the first 18 months that cover the first 6 months of 2017, which is an election year, and there isn't going to be any scrutiny? And then we're setting it up for an incoming government to have to produce a two-year budget when they get elected in May 2017, from January to . . . 2018, right?

[Inaudible interjection]

Mr. D. Ezzard Miller: But they still have to do the two years, right?

And, Madam Speaker, we say that one of the reasons they're doing this is because we spend so much time in the budget process.

Now, Madam Speaker, I must tell you that if it is one aspect of the PFML Law that actually works, according to the law, other than the complications of outputs and all that other stuff that you cannot audit, was the budget process. And if we're only going to have to prepare a budget every two years, what are we going to do with all these specialised civil servants for that one year when they're not doing anything? Or are we saying that we expect the budget process to be so complicated that it's going to take two years to develop a two-year budget?

Madam Speaker, I notice we haven't put back the deadline for the budget to be tabled, which was in the old Law. I think it had to be tabled by April the 30th for the financial year July to June, which would have given us elected officials May–June, two months, to scrutinise the budget, debate it and pass it in the Law.

That safeguard was in the Law. I don't see it being put back here, where even in the two-year budget we would get two or three months, and it's not a situation where the Government can bring a two-year budget here to the House a couple of weeks before it has to pass into law, and we're here sitting down at four o'clock in the morning in Finance Committee because we have to get it completed by the end of the financial year.

So, Madam Speaker, that's why I would much prefer if the Government would bring comprehensive review of this Law so we can look at it in its entirety and see what effect it's going to have. I really don't think that this Bill before us today is going to do a lot to improve the transparency and the scrutiny and address many of the concerns of the Auditor General in his various reports over the last couple of years. And I think it is as important to have those things addressed in the amendments that I hope that some of the recommendations of the most recent committee includes ways to streamline, but also ways to improve transparency and effectiveness in the management and the performance of the thing, without having to do this output business which nobody seems to be able to quantify and qualify in order to audit it properly.

Madam Speaker, again, in my humble view, this provides some opportunities for governments to spend money in that period leading to the election that is not going to be scrutinised for long, after the election itself takes place. I have some concerns with that. We have to legislate for best practices, and not because we might not do it, we can't assume that any other elected person down the road would not do it, because I think under the PMFL we were allowed 10 per cent of the annual budget?

Mr. V. Arden McLean: Five per cent.

Mr. D. Ezzard Miller: Five per cent of the annual budget. At the level of our budget, that's not a small amount of money.

[Inaudible interjection]

Mr. D. Ezzard Miller: Well, whether it's 5 or 10, it is still a substantial amount of money that a Government could spend in that six-month window, which would not be scrutinised until six months after the election.

So, Madam Speaker, with those concerns, I cannot support the Bill before us. Thank you, Madam Speaker

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, Second Elected Member for George Town: Thank you, Madam Speaker.

[Inaudible interjections]

Mr. Roy M. McTaggart: Thank you, Madam Speaker, for the opportunity to speak in support of the proposed Bill that is before us.

Madam Speaker, I'd like to first to acknowledge the kind comments of the Minister of Finance in the work of the committee. The Member for North Side quite rightly pointed out that these are but a few of the amendments that are to come. But I would say at the very outset, Madam Speaker, these are the most critical, time-critical and time-sensitive amendments that we're being asked to approve here today, simply because if the Government is to be able to get this and put this fiscal year change into place, then it needs to be done now rather than later.

I acknowledge, on behalf of the committee, that the report which finally went to Government was delayed. But Government has considered the report, and to the best of my knowledge, has accepted the recommendations made therein. So they are to come. And I promise the Member for North Side as well, that we will table that report in its entirety in this House. The people of the country and this Legislature deserve to see that report and to digest it.

I would like, Madam Speaker, to comment briefly, as well, on some of the comments and observations that the Member for North Side made. And I'm sure, too, that the Minister of Finance will have some in his reply to the debate.

The whole change in the year end is far more complex and extremely time-consuming than I think we appreciate. And I saw the effects of the misalignment of year end with the election cycle first-hand in 2013 when, you know, right after being elected the Government was then faced with that four-month window in which to produce a budget. And this was not simply a matter of civil servants and CFO's and financial accountants and stuff just cranking out a budget. The elected Government itself spent an inordinate amount of time and energies ensuring that the budget being presented reflected the aims and aspirations that it wished to achieve, but also was compliant in terms of the plan and commitment to comply with the FFR [Framework for Fiscal Responsibility]. And I do know that many hours and months were spent in trying to produce that budget, and we struggled even to make the four-month deadline of October 31st.

Madam Speaker, having done that and committed all that time and all those resources, much of the work within our ministries and portfolios, in terms of the day-to-day accounting and reporting, was put aside in order to deal with budget. And what happened afterwards is that at the end of October, we had a budget that would take us through the year. Our ministries and portfolios were behind in their actual

accounting and reporting and meeting deadlines for their audits. And then two months later, they have to start the whole process of preparing the next year's budget.

So, literally, Madam Speaker, for an entire year, the Government and civil service were essentially consumed with having to devote their time and energies to budgets. And that, to me, Madam Speaker, is not particularly healthy or where we wanted to spend the time and resources. And so, this whole thing of sinking the year end of the government's financial cycle in order to deal with the issues of our elections is far more important and much more complex than I think we all do appreciate. It needs to be fixed.

We set out in 2003/04 with the first edition of the PMFL to deal with it. But the Member for North Side quite ably points out, Ivan changed everything. And we found ourselves with not even one year into that cycle before we were back to where we were before. So we never have really been able to adjust it. And at the end of the day, the committee looked at it objectively and said it's more likely that we'd be able to fix it by trying to adjust the fiscal year-end rather than simply . . . Rather, we were more likely to be able to get success by switching the year end and the fiscal year than trying to get 18 politicians to agree that the terms should be three years and nine months, or four years and three months, whatever the case might be. It just didn't seem likely that it could work. Never mind the Constitutional requirement that it could not be past four years.

So, changing the year-end is, in my opinion, the right way to go. And in order to achieve this in this administration, we need that process to start now. It is going to take the Treasury and the Ministry of Finance many months of work and many thousands of man-hours to prepare the country for the change.

Mr. D. Ezzard Miller: Millions of dollars.

Mr. Roy M. McTaggart: I hope it won't be millions of dollars. But it's a cost attached to it that the Ministry is working with. And Government has pledged to give them the resources that they need in order to accomplish this, to put this into effect beginning in July 1 of 2016 and to ensure that, you know, the transition is as smooth as we can make it.

Now, if I could speak briefly, Madam Speaker, to the issue, too, of multiyear budgeting. And certainly the committee's recommendation did not anticipate that there wouldn't be . . . I think it's fair to state that, as it now stands in the PMFL, except for the amendment with the framework for fiscal responsibility, the intention would be that Government wouldn't be completely locked into that two-year budget period without any possibility of amendments or alterations. Any government needs to have the flexibility, Madam Speaker, to be able to respond to changing economic

climates, whether it is on the revenue side or the expense side, to be able to adjust a budget as it moves forward. And that flexibility needs to be built in and needs to be there. Therefore, any changes to a second-year budget would need to have to come back to the House for its consideration and debate if those changes are going to be implemented.

[Inaudible interjections]

Mr. Roy M. McTaggart: With the change in the year end, Madam Speaker, it would also have to be a shift in the days in terms of the deadlines and schedule for preparing a budget. And all of those changes would be determined, as well, by the Ministry, as part of that whole budget process. And what we look at here with the change, since the PMFL itself include specific dates with regard to the preparation of the Strategic Policy Statement, it was felt appropriate, too, to change it to adjust that date in light of the proposed changes and to allow these things to more closely align with this whole process of budgeting and reporting.

Madam Speaker, looking through my notes here, I think that I have basically covered everything that I had hoped to say with regard to contributing to this debate on this proposed Bill, and just to say to this honourable House that I do support the Bill and the amendments. They are absolutely needed if we are to move forward with the change in the fiscal year end. And I fully support the Minister's statement, too, that further amendments with regard to the PMFL law will be coming forward from the Government in the next year, and that we will also table that report in this honourable House. Thank you, Ma'am.

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

I recognise the Honourable Premier.

[Inaudible interjection]

The Speaker: Honourable Member for East End, the Premier has yielded to you. Do you wish to take up the offer?

Mr. V. Arden McLean: No, Madam Speaker, I would not allow the Premier to yield to simple me. I wouldn't do that. I will not deprive him of that opportunity.

[Pause]

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

If not, I will call on the mover, the Honourable Minister of Finance to exercise his right of reply if he so wishes.

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

Madam Speaker, I would first like to thank the Member for North Side for his contribution to the debate, and the Second Elected Member for the District of George Town for his contribution, as well.

Madam Speaker, I would just like to point out that the committee in reviewing the PMFL law did take into consideration the Luck report, just for the benefit of the Member for North Side. And, Madam Speaker, with respect to the point of scrutiny, we do intend that the annual reports will provide an opportunity for this honourable House to scrutinise the way in which the money that has been appropriated previously is being spent, so it provided services for the country. So I take his point with respect to runaway costs on capital projects. But it would just at that stage require those who are being paid to manage those projects to, of course, perform their duties even more diligently.

Madam Speaker, the five amendments that I just spoke of, as the Second Elected Member for George Town correctly pointed out, those are the more time-sensitive, the most critical of the 40. The remaining 35 that are in the report, given the nature of those amendments, Madam Speaker, we would not have had time to amend the Law and try to implement those changes before the 1st of July next year.

Let me say it this way. Had we tried to make the change now, we would not have had time to amend the Law and then everything in time for next year. So therefore, we brought forward the most important amendments at this time. The others require changes to the system, the computerised government accounting system, and that, Madam Speaker, is no small undertaking. So, we had to be careful as to how we went about amending the Law and coordinating the amendments to the government systems.

As the Member for North Side suggested, and as the Second Elected Member from George Town also mentioned, Madam Speaker, perhaps it would be prudent to table the report, and at the same time provide the country with all the necessary information as to what is being done and an explanation as to why they couldn't all be done at once. At the end of the day, Madam Speaker, I think the calibre of people who sat on that PMFL Review Committee and the fact that none of them stood to gain from it financially, speaks to the fact that perhaps all they wanted is what is best for the country.

[Inaudible interjection]

Hon. Marco S. Archer: Madam Speaker, again the Committee was chaired by the Second Elected Member for the District of George Town. Also on the committee was the Financial Secretary, Mr. Ken Jefferson; and the former Accountant General, Mrs. Deborah Welcome. Mrs. Dorine Whittaker represented the

Government's Chief Officers. Mr. Vinton Chinsee represented the Government's Chief Financial Officers. Mr. Taron Jackson represented the Cayman Islands Society of Professional Accountants. And Mrs. Patricia Estwick was another member on the committee. And, of course, we've already mentioned that she was a former head of the Internal Audit Unit in the Government, so she knows quite a bit about the Government's financial operations. And she's now the Chief Financial Officer for the Cayman National Group of Companies.

So, I am pleased to say that the suggestions, the 40 proposed amendments to the PMFL, were proposed with the best of intentions for the country and not for any political reasons. So I will do as the Member for North Side has suggested and as our colleague, the Second Elected Member for George Town has agreed.

Sorry, Madam Speaker, I'm being reminded that the former Auditor General, Mr. Alastair Swarbrick, who just left his post as Auditor General of the Cayman Islands, was also on the committee.

[Inaudible interjection]

Hon. Marco S. Archer: So, Madam Speaker, I say that at this stage, the PMFL was implemented with the best of intentions, but it also created quite a bit of difficulty for the civil service to meet all the requirements of the Law. And the auditors base their audits on what the law requires to be done. And if there are difficulties in doing what the law requires, then of course, the audits are qualified, are disclaimed or adverse opinions or whatever the case be, based on the complexities of the Law.

So, the Auditor General's input, of course, Madam Speaker, would have been the ways in which we could have simplified the Law and still achieve the proper accounting and reporting that is required to provide a scrutiny and transparency and accountability that comes with the positions that we hold, and the Government using the country's money to provide services.

Madam Speaker, having said that, I will bring the committee's report to the Legislative Assembly as soon as possible and provide it for it to become a public document.

So, Madam Speaker, even though we will do the budget over a two-year period and we will have Finance Committee that reviews and approves the budget once for the two years, we would still have an opportunity on an annual basis for the House to scrutinise the expenditure of the previous 12 months.

Mr. V. Arden McLean: How? Four months after the fact? Unna just laid reports here and we can't do anything with them.

[Inaudible interjections]

Hon. Marco S. Archer: So, Madam Speaker, we will do all that is necessary to ensure that transparency and scrutiny remain. But we can't spend seven . . . For the sake of the public, Madam Speaker, and this honourable House, we have spent . . . Chief Officers, Chief Financial Officers, the Managing Directors of the Statutory Authorities and the Ministers and Councillors all of last week Thursday, starting preparations for the Strategic Policy Statement. We met several hours yesterday. The Government's budget process starts in October and ends in June. It takes seven, eight months sometimes, in order to produce an annual budget.

Madam Speaker, we have to find some way, if not reducing that time, reducing the number of times that we have to do it. So, we're doing it on an annual basis right now, and it takes a lot of time—time that could be spent doing more productive things, thinking more strategically and doing the work of our constituents. If we can reduce that to once every two years and achieve the same result and provide the same opportunities for scrutiny, Madam Speaker, I don't see where we are in any way taking away from what currently obtains with respect to an annual finance committee.

So, Madam Speaker, with that, I would say thank you for the opportunity to make these closing remarks. And I would ask this honourable House to support the passage of the Public Management and Finance (Amendment) Bill, 2015.

The Speaker: The question is that a Bill shortly entitled the Public Management and Finance (Amendment) Bill, 2015, be given a second reading.

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

AYES AND NOES.

The Speaker: I think the Ayes have it.

Mr. V. Arden McLean: May we have a division please, Madam Speaker?

The Speaker: Madam Clerk, please call a division.

The Clerk:

Division No. 6

Ayes: 13

Hon. Alden McLaughlin
Hon. Moses I. Kirkconnell
Hon. D. Kurt Tibbetts
Hon. Osbourne V. Bodden
Hon. Marco S. Archer
Hon. Tara A. Rivers
Hon. Anthony S. Eden
Mr. Winston C. Connolly
Mr. Roy M. McTaggart

Noes: 2

Mr. D. Ezzard Miller
Mr. V. Arden McLean

Mr. Joseph X. Hew
Mr. Alva Suckoo
Hon. W. McKeeva Bush
Capt. A. Eugene Ebanks

Absent: 2

Hon. G. Wayne Panton
Mr. Bernie A. Bush

[Pause]

The Speaker: The results of the Division are as follows: 13 Ayes; 2 Noes; and 2 Absent. The Ayes have it.

Agreed by majority on division: The Public Management and Finance (Amendment) Bill, 2015, given a second reading.

The Speaker: Is it the wish of the House to go into committee now or to take the afternoon break?
Honourable Premier?

The Premier, Hon. Alden McLaughlin: Thank you, Madam Deputy Speaker. We can proceed to committee if you are inclined. Otherwise . . . I am easy either way, quite frankly.

[Inaudible interjections]

The Speaker: The House will now go into committee.

[Pause]

The Speaker: Please be seated.

House in Committee at 6:09

COMMITTEE ON BILLS

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

The Chairman: Please be seated.

The House is now in Committee. With the leave of the House, may I assume that, as usual, we should authorise the Honourable Attorney General to correct minor errors and such the like in these Bills?

Would the Clerk please state the Bill and read the clauses.

LEGAL AID BILL, 2015

The Clerk: [The Legal Aid Bill, 2015.](#)

Clause 1	Short title
Clause 2	Interpretation
Clause 3	Statement of purpose
Clause 4	Scope of legal aid
Clause 5	When legal aid certificate may be granted in civil cases

Clause 6	Appointment of the Director
Clause 7	Functions of the Director
Clause 8	Financial activities
Clause 9	Powers of the Director
Clause 10	Minister may give policy directions
Clause 11	Removal of attorney-at-law from list
Clause 12	Listed attorney-at-law may decline to provide services
Clause 13	Withdrawal of services by assigned attorney-at-law

The Chairman: The question is that clauses 1 through 13 stand part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Clauses 1 through 13 passed.

The Clerk:

Clause 14	Opportunity for legal advice in criminal proceedings
Clause 15	Method of application
Clause 16	Power to make inquiries
Clause 17	Grants of certificates generally
Clause 18	Disposable income
Clause 19	Contribution by assisted person

The Chairman: The question is that clauses 14 through 19 stand part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Clauses 14 through 19 passed.

The Clerk: Clause 20 Minister may decide not to recover debt in certain circumstances.

AMENDMENT TO CLAUSE 20

The Chairman: Honourable Attorney General,

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Chairman.

In accordance with Standing Order 52(2), I seek leave of the Chair to move a minor committee stage amendment to clause 20(6) by deleting the word "shall" after the word "Director" and inserting the word "may".

The Chairman: The amendment has been moved. Does any other Member wish to speak to the proposed amendment?

If not, does the Honourable Attorney General wish to state anything further on the amendment as to the reason why I see some quizzical looks?

The Attorney General, Hon. Samuel W. Bulgin: No, Madam Chair, it's just in keeping with the undertaking given during the debate where, instead of the Director "shall" we, the Government, seek to change it to "may" thus give discretion as to whether or not the amount that has been repaid will be returned.

The Chairman: I put the question that the amendment stands part of the clause.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 20 passed.

The Chairman: I put the question that clause 20, as amended, stands part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Clause 20 as amended passed.

The Clerk:

Clause 21	Roster of attorneys-at-law
Clause 22	Choice of attorney-at-law, etc
Clause 23	Remuneration of assigned attorney-at-law in standard legal aid cases and remuneration of duty counsel
Clause 24	Remuneration of assigned attorney-at-law in complex legal aid cases
Clause 25	Remuneration of attorney-at-law -fee limits
Clause 26	Case management
Clause 27	Payment of all fees, expenses etc by Treasury
Clause 28	Bill of costs; taxation
Clause 29	Re-taxation by a judge
Clause 30	Money or property recovered in civil proceedings
Clause 31	Director may exempt property from charge
Clause 32	Transfer of charge
Clause 33	Prohibition against taking fees from assisted person

The Chairman: The question is that clauses 21 through 33 stand part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Clauses 21 through 33 passed.

The Clerk:

Clause 34	False information
Clause 35	Variation of grant of legal aid
Clause 36	Revocation and discharge of legal aid certificate
Clause 37	Reconsideration
Clause 38	Appeal by applicant or assisted person to judge in chambers
Clause 39	No costs payable if all parties assisted
Clause 40	Power to increase figures to maintain values
Clause 41	Annual report
Clause 42	Power to make regulations
Clause 43	Repeal of the Legal Aid Law (1999 Revision)
Clause 44	Commencement, savings and transitional provisions

The Chairman: The question is that clauses 34 through 44 stand part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Clauses 34 through 44 passed.

The Clerk: A Bill for a Law to reform the system of providing legal aid services to persons of insufficient means; and for incidental and connected purposes.

The Chairman: The question is that the Title stands part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Title passed.

**PUBLIC MANAGEMENT AND FINANCE
(AMENDMENT) BILL, 2015**

The Clerk: [The Public Management and Finance \(Amendment\) Bill, 2015.](#)

Clause 1	Short title and commencement
Clause 2	Amendment of section 2 of the Public Management and Finance Law (2013 Revision) - definitions
Clause 3	Amendment of section 17 - budget process
Clause 4	Amendment of section 23 - strategic policy statement
Clause 5	Amendment of section 41 - further duties and powers of, and prohibitions on, ministries and portfolios
Clause 6	Amendment of section 74 - unclaimed trust assets
Clause 7	Miscellaneous amendments - annual plan and estimates
Clause 8	Miscellaneous amendments - annual budget statement
Clause 9	Miscellaneous amendments - chief officer (Public Finance)

The Chairman: The question is that clauses 1 through 9 stand part of the Bill.

All those in favour—

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Chair—

The Chairman: Sorry, Honourable Leader of the Opposition?

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Chair, in the debate there were some concerns raised for political reasons. I think at least we understand, first of all, why Government is making the changes, which was long advocated. Madam Chair, I would like to have from the Minister, how he sees scrutiny taking place in that interim period. I think that is what people on this side would be concerned about, and members of the public. What kind of scrutiny process will exist in that interim period?

The Chairman: Honourable Minister of Finance.

Hon. Marco S. Archer: Thank you, Madam Chair.

During the interim period, presumably . . . yeah, I understand what the Member is speaking of. During the interim period there will, of course, be annual reports that would come to the House and we can scrutinise those. Once they are presented you could then have the opportunity to scrutinise expenditure from that 12- month period.

Hon. W. McKeeva Bush, Leader of the Opposition: If you stop there, though, when you say reports—

The Chairman: Honourable Leader of the Opposition.

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

If it is a report that is laid, we can't debate unless a specific motion is moved to debate that, or we can't ask questions on reports. So, is that the kind of report you're talking about, or are you talking about something that is going to be debatable because then, we are going into a full scale debate? If we don't have a process for that interim period, then we can make one so that it is, as you said, open and transparent as possible.

Hon. Marco S. Archer: Madam Chairman—

The Chairman: Honourable Minister of Finance.

Hon. Marco S. Archer: Sorry, Madam Chair.

There will still be the requirement for annual audits; it is only the budget that will be on a two-year basis but the requirement for an annual audit would remain. So, therefore, we could then debate that audit report.

Hon. W. McKeeva Bush, Leader of the Opposition: No. No, no, no. Yes, I recognise—

The Chairman: Honourable Leader of the Opposition.

Hon. W. McKeeva Bush, Leader of the Opposition: Sorry, Madam Chairman.

It's not on the audit process but on the expenditure and the requirements for the expenditures that we would be interested in. We would be interested in the audit, of course, but that is far on in the game of expenditure. That's at the end. So we would be concerned about when Government is going to spend the money, what are we going . . . how are we going to scrutinise that expenditure?

The Chairman: Honourable Minister of Finance.

Hon. Marco S. Archer: To the Honourable Leader of the Opposition, we could still provide this honourable House with the interim reports that are necessary that would provide the expenditure for the entire government or by ministry that enables them to scrutinise and question what has transpired in the previous 12 months. So we could provide the . . . I guess you would call them management reports, as you would find in private sector organisations.

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Chair—

The Chairman: Please proceed.

Hon. W. McKeeva Bush, Leader of the Opposition: When we change the system, take 2003, we had an interim budget to tie us over that period. And so there

was ample room for Members to scrutinise what was going to be spent because that was an interim budget to get us into this new system.

An Hon. Member: That was six months.

Hon. W. McKeeva Bush, Leader of the Opposition: That was a six-month budget; that's what I'm saying. It was an interim budget.

[Inaudible interjection]

Hon. W. McKeeva Bush, Leader of the Opposition: Eighteen months. Is that what you're saying? Sorry.

[Inaudible interjection]

The Chairman: Honourable Minister responsible for Planning.

Hon. D. Kurt Tibbetts: Madam Chair, I think if I understand the Honourable Leader of the Opposition correctly, I think what he is questioning, which is similar to a point raised by the Member for North Side. The fact that the budget is exceeding a year, the actual budget itself, is more than one year. Normally, because it's an annual budget, you would be able to scrutinise that budget that is brought for the beginning of that year, and when the year-end report is done for the next budget, you get the final figures of what was spent during the course of that year, what was not spent, and what your surplus is, or what your deficit is and what your loan position is, and everything else, and how much has been paid down on loans and those kinds of things.

So, because this budget exceeds that one-year cycle, or will exceed the one-year cycle, I think the question is at various intervals in between how do you get to deal with the same process by way of scrutiny, is what the Leader of the Opposition is asking for, rather than at the end of that entire budget because you'd want at some point in time to be able to have a check and balance to ensure that what is said to be spent within that period of time is being spent—

Hon. W. McKeeva Bush, Leader of the Opposition: Yes. That's what I'm talking about the scrutiny.

Hon. D. Kurt Tibbetts: Right.

Hon. W. McKeeva Bush, Leader of the Opposition: The Member for North Side made some valid points, that, certainly I would want to know too, how, for that period of time are we going to . . . we come here with a budget, as the Minister of Planning just explained, and, like any other time, you examine it. But that's for one year. If you go 18 months now—

Hon. D. Kurt Tibbetts: And then two years afterwards, is what is being proposed, you see.

Hon. W. McKeeva Bush, Leader of the Opposition: And then two years after . . . you're going to bring another budget to—

Hon. D. Kurt Tibbetts: Right. So the question is . . . yes—

Hon. W. McKeeva Bush, Leader of the Opposition: That is a long time.

Hon. D. Kurt Tibbetts: And I understand.

So the question is, and I don't think there is a struggle with that, but I think what is being sought is because the budget, for instance, cycles will . . . once you run the interim 18-month budget, after that budget will be done in two-year cycles. So the question is—

Hon. W. McKeeva Bush, Leader of the Opposition: Until it's regularised to the—

Hon. D. Kurt Tibbetts: Right. But the point I am making with that is that I think where the struggle seems to be is at what point in time does the entire membership of the Legislative Assembly get to examine, rather than at the end of that,—

Hon. W. McKeeva Bush, Leader of the Opposition: That long period of time—

Hon. D. Kurt Tibbetts: —and because Finance Committee itself would only be held outside of any tidying up exercise that needs to be done, would only be held at the beginning of each budget cycle then the question is, What vehicle would be used in between to be able to—

Hon. W. McKeeva Bush, Leader of the Opposition: Of that long period of time—

Hon. D. Kurt Tibbetts: —do the examination.
Right.

Hon. W. McKeeva Bush, Leader of the Opposition: We all know we have a year, once you pass a budget. But we have to scrutinise it—

Hon. D. Kurt Tibbetts: So the question is: What vehicle—

Hon. W. McKeeva Bush, Leader of the Opposition: But now going to that length of time—

Hon. D. Kurt Tibbetts: —can be used in between the Finance Committees that at a specific period of time, say, for instance, if it's a two-year cycle at the end of one year, how do you get to look at what's been done

within that year compared to what is projected for both years and where you're at in making sure that there is the check and balance.

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

Hon. D. Kurt Tibbetts: I don't wish to belabor, but I think that is what I understand to be the difficulty.

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

And it is a long period of time and certainly, as I said, I certainly believe that the Government is doing the right thing, because that's what we had proposed a long time to try to get done, was to bring it back to that one year, December/January, or December, January to end of December period. But to go off on a long period of time where there is no scrutiny, of not knowing—

An Hon. Member: But you just voted for it.

Hon. W. McKeeva Bush, Leader of the Opposition: We just voted for it because I want the system. What I said when I was asked, I said I would do exactly what I am doing now, is to question and see if we can get to a position where the Minister and the Government can agree that they would bring their expenditure at a given point so that we can scrutinise it. That's basically all.

Hon. Marco S. Archer: Madam Chair.

The Chairman: Honourable Minister of Finance, perhaps you may want to come back in with your response.

Hon. Marco S. Archer: Yes. Thank you, Madam Chairman.

To the Honourable Leader of the Opposition, that is what we will do. We will come on an annual basis with the report. Perhaps I was calling it a management report, but it would have the necessary expenditure information in there that would enable Members of the House to scrutinise and ask questions, similar to a Finance Committee setting, but it will obviously take us a lot less time to prepare that report than to prepare a budget and everything else that would otherwise be—

Hon. W. McKeeva Bush, Leader of the Opposition: And that's . . . I thank the Minister. That's the point that I want. I am in favour of what the Government is trying to accomplish here. What I want to make sure of is that we will have an opportunity to scrutinise the expenditure in that interim period. Once that is done, not (I must reiterate) by a report which is laid in Parliament, because we can't scrutinise it. It has to come

to a position of Finance Committee where we will have room to ask questions and government can answer questions at various points. So, it would be in a Finance Committee format, we're talking about?

Hon. Marco S. Archer: Yes sir.

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

Hon. Marco S. Archer: Yes.

Mr. V. Arden McLean: But, Madam Chair—

The Chairman: Member for East End.

Mr. V. Arden McLean: I don't know how the Minister for Finance can say what is going to happen. With all due respect, we are talking about a period post 2017. So, I don't understand how the Minister can say what's going to happen.

Hon. Marco S. Archer: Madam Chairman, through you, thank you for that—

The Chairman: Honourable Minister—

Hon. Marco S. Archer: Thank you for that revelation, Honourable Member for East End. And, Madam Chairman, having said that, no one can respond to his question.

Mr. V. Arden McLean: Absolutely, because, Madam Chair, what we are talking about is 2019.

[Inaudible interjection]

Mr. V. Arden McLean: No, no. What the Minister is saying is that's what they intend, that's what they are going to do to come with a report, and the Minister, with all due respect to him and everyone else, you can't say that. You don't know if you're going to be there.

Hon. Marco S. Archer: Madam Chair, that's a very valid point. So there is nothing more to say on it.

Hon. W. McKeeva Bush, Leader of the Opposition: We don't know, but we're hoping, right?

[Laughter]

Mr. V. Arden McLean: But, Madam Chair—

The Chairman: Member for East End, do you have a final comment?

Mr. V. Arden McLean: Yes. The Minister did say at one stage that he would bring financial reports to the

Legislative Assembly. The intent is to bring financial reports to the Legislative Assembly. Well, my thing is that it takes four months to get financial reports from the financial year. So you're one third away into the next budget and those financial reports are only on the previous year. And it certainly takes away the scrutiny from the scrutineers, and the scrutineers just happen to be this legislature, whether it's backbenchers, or Opposition. Those are the scrutineers in this legislature.

Hon. Marco S. Archer: Thank you, Madam Chair.

The Chairman: Honourable Minister of Finance.

Hon. Marco S. Archer: We have another round of amendments to make to the Public Management and Finance Law as we have stated earlier. And in that round of amendments we can incorporate the necessary provisions to ensure that we make provision for what the Honourable Leader of the Opposition has suggested; that we provide a period of time at which we would have the equivalent of a Finance Committee so that the scrutiny can be had. And then, as the Member for East End has said, the scrutineers will have their time to scrutinise.

Mr. V. Arden McLean: But that's the problem; that's your problem, that's what you don't want.

An Hon. Member: What do you mean 'I don't want'?

Mr. V. Arden McLean: You don't want anybody to question you.

Hon. W. McKeeva Bush, Leader of the Opposition: He can't take licks?

Mr. V. Arden McLean: Madam Chair.

The Chairman: Member for East End.

Mr. V. Arden McLean: I think I should make it clear that whilst I don't have a lot of problems with changing the financial year, the justification given seems to be rather mixed, depending on who you talk to. One says it's for . . . you have better chance to catch up financially because all of your money is right there around December, and then if there's a downturn in the economy it would be hopefully be in the early part of the year so you can catch up by December when you're getting your money in again. And I don't have too much problem with that. I just thought that this Government was going to bring it prior to, in an election year, because now we're 18 months. And under the current system, if we change the financial year which was the intent when Mr. Tibbetts and George McCarthy went down to New Zealand and brought the system here, that's what they changed it to. In 2003/04—

Hon. D. Kurt Tibbetts: Madam Chair, there are certain matters that need to be corrected.

The Chairman: Minister of Planning.

Hon. D. Kurt Tibbetts: I brought no system here.

Mr. V. Arden McLean: Well, George McCarthy brought it and introduced it, but it was you and him went on that fact-finding trip.

The Chairman: Member for East End, it has already been introduced. It's now minutes to seven. Could you please make your point so that the Minister of Finance can respond? Mr. McCarthy has long gone on from the Service.

Hon. Marco S. Archer: Madam Chair, thank you.

The Chairman: Honourable Minister of Finance.

Hon. Marco S. Archer: Madam Chair, the Public Management and Finance Law, was brought into force to facilitate the whole financial reform process that the Government undertook some years ago. And like everything else, Madam Chair, you have the best of intentions and I honestly believe that the people who initiated it, wanted the best for the country. But as time has moved on we have seen that there are some things that the Government has struggled with and they've had some pitfalls. And, like everything else, you change something. You realise it doesn't work, you change it back.

So, the fact that it was changed from January to December . . . the fact that the fiscal year was January to December, and that was changed from July to June, doesn't mean that you can't recognise the pitfalls of that change and then reverse it and return to January to December.

We have discovered that it is during January to December, because of the nature of our industries and the revenue cycle we are able to better manage any reduction in expenditure . . . we are able to better country any reduction in revenues with a reduction in expenditure with a January to December fiscal year much better than the current July to June fiscal year when the bulk of your revenue from the financial industry comes in between January and March.

So, I hear what the Member for East End is saying. But at the end of the day, I think the country has realised that we need to make certain changes to the Public Management and Finance Law. And, as I said before, the people who sat on this committee, the review committee, collectively understand the Government's finances and accounting generally, far better than any of the scrutineers in this House, except one, who is the Chairman of that committee.

So, I hear what the Member is saying. But, at the same time, it will be appreciated if some recogni-

tion of the knowledge that these people brought to the table and the best interest in which they were trying to do it could be recognised and appreciated.

The Chairman: Member for East End, do you wish to—

Mr. V. Arden McLean: Madam Chairman, I respect what the Minister is saying. But the Councillor who is chairman said that their consideration was because of election in his debate.

[Inaudible interjection]

The Chairman: I will put the question that clauses 1 through 9 stand part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Chairman, just before we move on, what I understood from the Minister was that they were giving an undertaking that they will address those issues in the next round of amendments.

Hon. Marco S. Archer: Yes sir.

Hon. W. McKeever Bush, Leader of the Opposition: That's not along far . . . I mean, way down the road, is it?

Hon. Marco S. Archer: It will be brought in the 2016 year, and, of course, prior to July 1st.

Hon. W. McKeever Bush, Leader of the Opposition: Next year.

Hon. Marco S. Archer: Yes sir.

Mr. Roy M. McTaggart: Madam Chair?

The Chairman: Please proceed . . . , I don't remember your title Councillor.

Mr. Roy M. McTaggart: Just a brief response to the comment by the Member for East End. I mean, my one comment should not be taken as the only reason why we were proposing the change. All of the reasons as enumerated by the Chair, by the Minister, are all the valid reasons for change, and need to be looked at collectively.

The Chairman: All right, for the third time, I will put the question that clauses 1 through 9 stand part of the Bill.

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

AYES.

The Chairman: The Ayes have it.

Agreed: Clauses 1 through 9 passed.

The Clerk: A Bill for a Law to amend the Public Management And Finance Law (2013 Revision) to change the financial year to a calendar year; to change the timeframe for gazetting budget timelines; to implement multi-year budgeting; and to make provision for incidental and connected matters.

The Chairman: The question is that the Title stands part of the Bill.

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

Ayes.

The Chairman: The Ayes have it.

Agreed: Title passed.

The Chairman: The question that the Bills be reported to the House.

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

Ayes.

The Chairman: The Ayes have it.

Agreed: Bills to be reported to the House.

House resumed at 6:40 pm

The Speaker: Please be seated.

The House has now resumed.

REPORT ON BILLS

LEGAL AID BILL, 2015

The Speaker: Honourable Attorney General

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker, I beg to report that a Bill entitled A Bill for a Law to reform the system of providing legal aid services to persons of insufficient means; and for incidental and connected purposes, has been considered by a committee of the whole House and passed with one amendment.

The Speaker: The Bill has been duly reported and is set down for a third reading.

PUBLIC MANAGEMENT AND FINANCE (AMENDMENT) BILL, 2015

The Speaker: Honourable Minister responsible for Finance.

Hon. Marco S. Archer: Thank you, Madam Speaker. I beg to report that a Bill entitled, A Bill for a Law to amend the Public Management And Finance Law (2013 Revision) to change the financial year to a calendar year; to change the timeframe for gazetting budget timelines; to implement multi-year budgeting; and to make provision for incidental and connected matters was considered by a committee of the whole House and passed without amendment.

The Speaker: The Bill has been duly reported and is set down for a third reading.

Honourable Premier, is it your intention to adjourn or take a break or go to seven?

[Inaudible interjection]

The Speaker: I recognise the Honourable Premier for the motion for adjournment.

ADJOURNMENT

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

We have made good progress today with respect to the business of the Government and the business of the House, and I am proposing to adjourn now rather than to move in to the Government Motions.

What I would indicate to the House, though, Madam Speaker, is that I am proposing to suspend the relevant Standing Orders to allow Government Business to proceed tomorrow in precedence to the Private Members' Motions. But as soon as the Government business is through, we will move to the Private Members' Motions and whatever time is necessary over the course of Friday and next week, we will allocate to ensure that all of the Private Members' Motions are dealt with. But I would rather not, to the extent possible, break the Government's stride with respect to its business.

The one caveat to that is that there are three Bills which are being brought by the Minister of Financial Services and he will not be back until Monday. So, when we complete the other Bill, the Dangerous Substances Bill, and the Government Motions, we will move then to the Private Members' Motions if the week is not complete. I hope that accords with the will of the House as that is the intention of the Government.

So, Madam Speaker, I now move the adjournment of this honourable House until 10:00 am tomorrow, Thursday, 15 October 2015.

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

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

Ayes.

The Speaker: The Ayes have it.

At 6:45 pm the House stood adjourned until 10:00 am, Thursday, 15 October 2015.