



**CAYMAN ISLANDS  
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT  
ELECTRONIC VERSION**

**2015/16 SESSION**

**18 November 2015**

*First Sitting of the Fourth Meeting  
(Pages 729-758)*

**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 G Wayne Panton, JP, MLA	Financial Services, Commerce and Environment
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

**OFFICIAL HANSARD REPORT  
FOURTH MEETING OF THE 2015-16 SESSION  
WEDNESDAY  
18 NOVEMBER 2015  
10:43 am  
First Sitting**

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

**The Speaker:** Good morning. I will invite the Fifth Elected Member from the district of George Town to grace us with prayers this morning.

**PRAYERS**

**Mr. Winston C. Connolly, Jr., Fifth Elected Member for George Town:** Thank you, Madam Speaker. Please bow our heads, let us pray.

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

*Bless our Sovereign Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established among us. Especially we pray for the Governor of our Islands, the Premier, the Speaker of the Legislative Assembly, the Leader of the Opposition, Ministers of 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.

**ADMINISTRATION OF OATHS  
OR AFFIRMATIONS**

**The Speaker:** None.

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

**The Speaker:** I have not received any apologies for this morning.

**PRESENTATION OF PETITIONS**

**The Speaker:** None.

**PRESENTATION OF PAPERS  
AND OF REPORTS**

**REPORT OF THE STANDING BUSINESS  
COMMITTEE—THIRD MEETING OF THE 2015/2016  
SESSION OF THE CAYMAN ISLANDS  
LEGISLATIVE ASSEMBLY**

**The Speaker:** I recognise the Honourable Premier.

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

I beg to lay on the Table of this honourable House the Report of the Standing Business Committee of the Legislative Assembly of the Cayman Islands with respect to the Third Meeting of the 2015/2016 Session of the Legislative Assembly.

**The Speaker:** So ordered.

Does the Honourable Premier wish to speak thereto?

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

**INFORMATION COMMISSIONER'S OFFICE—  
2014/2015 ANNUAL ACCOUNTS—FISCAL YEAR  
ENDED 30<sup>TH</sup> JUNE, 2015**

**The Speaker:** I recognise the Honourable Deputy Governor.

**The Deputy Governor, Hon. Franz I. Manderson:** Good morning, Madam Speaker.

I beg to lay on the Table of this honourable House the 2014/2015 Annual Accounts for the fiscal year ended 30<sup>th</sup> June, 2015 for the Information Commissioner's Office.

**The Speaker:** So ordered.

Does the Honourable Deputy Governor wish to speak to this Report?

**The Deputy Governor, Hon. Franz I. Manderson:** Madam Speaker, just briefly to say that once again the Office has produced or received a clean bill of health from the Auditor General's Office and the fact that we are laying the audited financial statements on the Table of this House demonstrates that we are promoting open government.

The Auditor General has been critical in the past of our efficiency in getting the reports down here and made public, and I think we are achieving this now in record time and we are seeing more and more of our audits of financial statements receiving clean accounts.

Thank you.

**The Speaker:** Before I call on Madam Clerk to proceed, could I just get an understanding of what is happening with the television and the recording? Is it being recorded?

*[Pause]*

#### **PUBLIC MANAGEMENT AND FINANCE LAW REVIEW COMMITTEE REPORT—FEBRUARY 2015**

**The Speaker:** I recognise the Honourable Minister responsible for Finance and Economic Development.

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

Madam Speaker, I beg to lay on the Table of this honourable House the Public Management and Finance Law Review Committee Report from February 2015.

**The Speaker:** So ordered.

Does the Honourable Minister of Finance wish to speak to his Report?

**Hon. Marco S. Archer:** Thank you, Madam Speaker.

Madam Speaker, I propose to make a statement next week with respect to all of the issues surrounding the Report and the audit opinions and I will address the Report in that statement.

Thank you.

#### **CAYMAN ISLANDS CINICO NATIONAL INSURANCE COMPANY 2011/2012 ANNUAL REPORT**

**The Speaker:** Honourable Minister for Finance.

**Hon. Marco S. Archer:** Thank you, Madam Speaker. Madam Speaker, I beg to lay on the Table of this honourable House the Cayman Islands CINICO National Insurance Company 2011/2012 Annual Report.

**The Speaker:** So ordered.

Does the Honourable Minister of Finance wish to speak further on the Report?

**Hon. Marco S. Archer:** No, thank you, Madam Speaker.

#### **CAYMAN ISLANDS ANTI-CORRUPTION COMMISSION INTEGRITY IS NON-NEGOTIABLE ANNUAL REPORT 1<sup>ST</sup> JULY 2014 – 30<sup>TH</sup> JUNE 2015**

**The Speaker:** I recognise the Honourable Attorney General.

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

Madam Speaker, I seek the leave of this honourable House to lay on the Table the report of the Anti-Cayman . . . Anti-Corruption Commission for the period 1<sup>st</sup> July, 2014 – 30<sup>th</sup> June, 2015.

*[Inaudible interjection]*

**The Speaker:** No, I am pausing and trusting it was a fraudulent slip, but . . . so ordered.

*[Inaudible interjection]*

**The Speaker:** Anti-Caymanian.

**The Attorney General, Hon. Samuel W. Bulgin:** Anti-Corruption Commission, just for the record.

**The Speaker:** So ordered.

Does the Honourable Attorney General wish to speak to his Report?

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

Madam Speaker, the Report itself is –

*[Inaudible interjection]*

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

The Report itself is very comprehensive, Madam Speaker, and I commend it to all.

*[Inaudible interjection]*

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

Just for the record, Madam Speaker, I commend the Anti-Corruption Commission Report to all Honourable Members of this House.

Thank you.

**CAYMAN ISLANDS DEVELOPMENT BANK  
FINANCIAL STATEMENTS FOR THE YEAR ENDED  
30<sup>TH</sup> JUNE, 2014**

**The Speaker:** I recognise the Honourable Minister of Financial Services, Commerce and Environment.

**Hon. G. Wayne Panton, Minister of Financial Services, Commerce and Environment:** Thank you, Madam Speaker.

Madam Speaker, I beg to lay on the Table of this honourable House the Cayman Islands Development Bank Financial Statements for the Year ended June 30, 2014.

**The Speaker:** So ordered.

Does the Honourable Minister wish to expound on his Report?

**Hon. G. Wayne Panton:** Madam Speaker, no thank you.

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

**The Speaker:** I recognise the honourable Member for North Side.

**QUESTION 21: SPEAR-GUN LICENSING REGIME  
UPDATE**

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

I beg to ask the Honourable Minister of Financial Services, Commerce and Environment the following question: Can the Honourable Minister give an update on the new spear-gun licensing regime?

**The Speaker:** Honourable Minister of Financial Services, Commerce and Environment.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker.

The answer: Part 5 of the National Conservation Law deals with permits and licences. The National

Conservation Council under the National Conservation Law has been looking at this issue. But that part of the National Conservation Law has not yet been commenced.

The Department of Environment and the Council have been working through the preparation of a variety of licensing directives, including those necessary to give effect to the new spear-gun licensing regime in preparation of commencement of Part 5 by the end of this calendar year.

Thank you.

**The Speaker:** Are there any supplementaries?  
Member for North Side.

**SUPPLEMENTARIES**

**Mr. D. Ezzard Miller:** Madam Speaker, is the Minister confirming that by the end of this calendar year the National Conservation Board will have in effect the new spear-gun licensing requirements?

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker.

I have stated several times in respect to questions on this issue, and I will say it again in response, that the National Conservation Council is reviewing the implementation of Part 5 which deals broadly with permits and licences. And, yes, that specifically includes the consideration of the relevant aspects of implementation of the spear-gun licensing provisions.

Thank you.

**The Speaker:** Member for North Side.

**Mr. D. Ezzard Miller:** Madam Speaker, can the Minister confirm that that new licensing requirement will allow and include the ability of Caymanians to purchase new spear-guns and to purchase parts for existing spear-guns, and also for Caymanians who do not currently hold a spear-gun licence, to obtain a spear-gun licence?

**The Speaker:** Honourable Minister.

**Hon. G. Wayne Panton:** Madam Speaker, I thank the Member for the question.

The circumstances which he has outlined are certainly circumstances that the National Conservation Council is working through. So I would anticipate that it will include all of those. I do not know for certain at this point, as I have not had any further update from them specifically on every aspect of the Member's questions, but, certainly, I would anticipate that that is the case. Thank you.

**The Speaker:** Member for East End.

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

I wonder if the Minister can tell us if the current regime under the regulations under the Marine Conservation Law is still in place.

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Madam Speaker, there are provisions under the current Marine Conservation Law that I think are still in place. I am not going to say I am 100 per cent sure whether it is all of them or some of them in some respects. Thank you.

**The Speaker:** Member for East End.

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

I wonder if the Minister can tell us if spear-gun licences are currently being renewed, and under what conditions. It would be under the regulations of the Marine Conservation Law that we repealed the law when this came into place.

**The Speaker:** Honourable Minister responsible for the Environment.

**Hon. G. Wayne Panton:** Madam Speaker, thank you.

In response, I would say that there is a provision of the National Conservation Law which, when commenced, will repeal the Marine Conservation Law altogether. So, the provision in the National Conservation Law, when commenced, will repeal the Marine Conservation Law entirely.

Regulations that exist under the Marine Conservation Law are intended to transition under the National Conservation Law as if they were made pursuant to that Law.

I do not know the answer to his specific question on whether spear-gun licences are currently being renewed. I suspect the answer is no. But I cannot definitively indicate that. I am happy to obtain the answer and provide that to the Member.

**The Speaker:** Member for East End, do you have a follow-up?

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

I would appreciate if the Minister could follow up on that and let this House know. But he said he suspects [the answer] is “no”. I wonder if he can expand on that, on his suspicion, and tell us why he would think that it is no.

**The Speaker:** Honourable Minister.

**Hon. G. Wayne Panton:** Madam Speaker, may I just clarify with the Member whether he is asking about a renewal of existing licences, or a grant of new licences?

**The Speaker:** Member for East End.

**Mr. V. Arden McLean:** Madam Speaker, it was in relation to a renewal of licence. He said he suspects that [the answer] is “no”. I am asking him why he would suspect that, and if he could expand on that for us.

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker.

I apologise. I thought the Member was referring to the grant. In relation to renewals, as far as I am aware, renewals are being granted, but I do not know the specifics.

Again, I am happy to get the information to answer the Member’s question on that. But as far as I am aware, renewals of existing licences to the extent that they are renewed annually are being granted. I do not know specifically. I am happy to confirm.

**The Speaker:** If there are no further supplementaries, we will move on to the next question on today’s Order Paper.

**The Speaker:** The Elected Member for North Side.

#### **QUESTION 22: OLD MAN BAY—BUOYS IN THE NO DIVE ZONE**

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

I wish to ask the Honourable Minister of Financial Services, Commerce and Environment the following question: Can the Honourable Minister state: (a) Who authorised and installed the dive buoys in the “NO DIVE” zone off the coast of Old Man Bay; (b) Who will remove them; and (c) When will they be removed?

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker.

The answer: To our knowledge (and that is the Ministry of Environment and the Department of Environment) there are no dive moorings inside the boundaries of the Old Man Bay no dive zone.

The Department of Environment has installed 380 public moorings around the Islands in an effort to protect coral reef from anchor damage. But none of the public moorings are located in any “no dive zones.

The eastern boundary of the Old Man Bay “no dive” zone is gazetted as longitude 81°10'0” and the nearest public mooring is longitude 81°9'57”, which is 222 feet east of the zone.

If a private individual has installed an unauthorised mooring, it would be the responsibility of the Port Authority, under section 29 of the Port Regulations, 2011, to have the unauthorised mooring removed at the owner’s expense. Thank you.

**The Speaker:** Member for North Side?

### SUPPLEMENTARIES

**Mr. D. Ezzard Miller:** Madam Speaker, can the Minister state where the markings are currently located for the “NO DIVE” zone? And, are there any markings on those latitude positions, which he has given?

**The Speaker:** Before I call on the Honourable Minister, I recognise the Honourable Premier. We have reached the hour of 11:00. I will ask him to move the suspension of Standing Order 23(7) and (8).

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

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

I beg to move the suspension of Standing Order 23(7) and (8) in order that questions may be taken after the hour of 11:00.

**The Speaker:** The question is that Standing Order 23(7) and (8) be suspended to allow Question Time to be extended beyond the hour of 11:00.

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

**Ayes.**

**The Speaker:** The Ayes have it.

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

**The Speaker:** I recognise the Honourable Minister responsible for Environment.

**Hon. G. Wayne Panton:** Madam Speaker, in response I would say that I understand that there are markings on the land side. And I can tell the Member for North Side and this honourable House that I have asked the Department of Environment to ensure that the markings are appropriately set out in the correct locations.

I have no information to suggest that that is not the case at this point. Again, I will happily verify the information being requested and provide that to the Member. Thank you.

**The Speaker:** Member for North Side.

**Mr. D. Ezzard Miller:** Madam Speaker, I need to make this statement, through you, to the Minister prior to asking the question, with your permission.

**The Speaker:** Please make it brief.

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

Madam Speaker, I can assure the Minister that there are no markings, neither in the sea nor on land for these “NO DIVE” zones. Markings were put up in 1988. They were taken down and I have been to the Department of the Environment almost annually since and nobody will put the markings back up.

Madam Speaker, can the Minister give the assurance—because he knows that I know that these longitudinal markings are not accurate, and the Department of the Environment knows that they are not accurate. Will he give this House the assurance that he will instruct the Department of Environment to properly demarcate these dive zones in the correct positions that they are supposed to be in, as a matter of urgency? And that these two dive buoys which will fall inside of the properly and correctly demarcated zones will be removed forthwith?

**The Speaker:** Honourable Minister of the Environment, that is about three, possibly four responses you are being invited to respond to.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker, and I will say I might have to ask to be reminded, but, certainly, Madam Speaker, this is an issue, again, that the Member has asked about previously. And I have given an undertaking to the Member previously that I would insist that this be addressed. I did so. I will again commit to the Member that I will address it.

What I am not sure I agree with is his suggestion that the longitude given for the proper position of the markings is somehow incorrect. I will concede that it is entirely possible that where the markings are placed on the ground, may not reflect that specific correct longitude.

Again, I will certainly address that question because, frankly, it has been the subject of too many questions and I know the Member is consistent and persistent with his approach on this issue. So, I will absolutely commit to again trying to address that problem to his satisfaction. If I have to go on a visit with him to ensure it is done to his satisfaction, I will do so. Thank you.

**The Speaker:** Member for North Side, a follow up, and then the Member for East End with a supplementary.

**Mr. D. Ezzard Miller:** Madam Speaker, it is the Department of Environment that tells me these are inac-

curate, when I showed them where the markings are supposed to be, because these were calculated in 1986 and we really did not have GPS. It was not a common occurrence then.

This was done by somebody going out there with a sextant, right? And it is not easy when you are drawing down a sunset to get to this many minutes and seconds to 200 feet. But it is the Department of Environment that has now, in their most recent re-drawing of these, shortened them substantially, even incorrect with these markings.

And, Madam Speaker, he is right. If he wants I can meet him there 6:00 tomorrow morning. I know where Grape Tree [Point] is. I know where Coburn Miller's House is. I know where Old Robin Point is. And I know where Chisholm's shop is. And, Madam Speaker, I know the Minister has been trying to get this sorted out, but it is the people in the Department of Environment who will not sort this problem out for years!

**The Speaker:** Member, can you begin to turn it into a question?

**Mr. D. Ezzard Miller:** No, Ma'am. I do not need any more questions.

**The Speaker:** Member for East End.

**Mr. V. Arden McLean:** Madam Speaker, in the Minister's presence a few weeks ago, it was proffered that there should be no place in waters of the Cayman Islands that is a no dive zone.

My question to the Minister is: With the new marine zonings during this process, will the Government or the Department recommend no, "NO DIVE" zones?

**The Speaker:** Honourable Minister responsible for the Environment.

[Pause]

**Mr. V. Arden McLean:** Madam Speaker.

**The Speaker:** Member for East End?

**Mr. V. Arden McLean:** Madam Speaker, it might be me who confused the Minister, because I am rather confusing.

Madam Speaker, at the East End meeting it was proposed that Cayman should not have any "NO DIVE" zones. We should be able to dive wherever we want to in the Cayman Islands. I am asking if it is being proposed during this process of the marine zones that you will eliminate "NO DIVE" zones.

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Thank you, very much, Madam Speaker.

I believe I understand the Member's question. I think he is referring to the meeting in the district of East End, which was a part of the public consultation in respect of a proposed marine or of a marine protected area proposal under the National Conservation Law.

Currently, those proposals in respect to marine protected areas do, in fact, have proposed areas which are "NO DIVE" zones. For clarity, I mean zones in which no diving would be allowed.

There is recognition that, clearly, diving does have some impact on the marine environment. And this proposal, this aspect of the overall marine protected area is a recognition of that and a desire to protect the marine environment from that sort of impact, however limited it may be.

There are comments, Madam Speaker, that have been made verbally. I am not aware of any written comments being submitted to the National Conservation Council which propose that there should be no, "NO DIVE" zones. So, there should be no areas in which there should be a prohibition on diving. But those are just comments that had been made. As far as I am aware they have been fairly limited, but those comments are required under the process to be submitted in writing to the National Conservation Council and, clearly, those comments would be taken into account by the National Conservation Council in formulating their final proposals that they send through to Cabinet.

At this point, it would be purely speculation as to what those final recommendations may be, in light of those sorts of comments. Thank you.

**The Speaker:** Member for East End.

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

As much as I tried to clarify it, I think maybe I still confused the Minister. I understand the no dive zones being proposed. But, Madam Speaker, that is also the "no fishing" areas. The initial reason for the no dive zones, like this one the Member for North Side was questioning, was to facilitate the separation between fishermen and dive boats. Those are the ones I am talking about; not the ones where it is now being proposed that you have no fishing also, where you have no diving and you have no fishing.

The initial reason for these was that we would separate the fishermen from the divers, because we were having confrontation within those zones. And those are the ones I am talking about, if it is being proposed to eliminate those. Not the ones we are proposing where there is no diving, no fishing, period, and we are isolating it. I am talking about the ones where fishermen have their special little spots throughout the country, Cayman Brac and Little Cayman, but we decided to put no diving there because

we were having too many conflicts. Those are the ones I am asking, Madam Speaker, if we are proposing to eliminate those, or, better yet, are we going to increase them?

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker, and I thank the Member for his further clarification.

Madam Speaker, as I understand it, the Member is referring to the existing no dive zones under the existing Marine Conservation Law. As the Member articulated, those zones were designed to avoid conflicts between divers and fishermen in those areas. That concept remains, as far as I am aware (and I hope I am not misstating), in the new marine protected areas proposal, where there would be some areas that are “no dive” zones and, I believe, “no fishing” zones. There are also areas where there are no dive zones, but line fishing is allowed. Those particular areas under the new Marine Parks proposal will be analogous to the existing no dive zones under the current Marine Conservation Law.

As far as I am aware, there are proposals to actually expand the coverage of some of these no dive zones. In fact, if you look, for example, at the Island of Little Cayman, there is a rather extensive proposed no dive zone around the whole eastern side of Little Cayman. In the Member's district of East End, there is a significant area that would be proposed as a no dive zone. As far as I recall, a significant area of that, or perhaps the entirety of it, I am not sure, is proposed to also allow line fishing.

So, I think those proposals are analogous to what the Member is asking and, for clarity, the concept in relation to no dive zones that exist under the Marine Conservation Law today are reflected in the proposals in respect to marine protected areas that the National Conservation Council is currently considering. Thank you.

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

**Mr. V. Arden McLean:** I just have one, Madam Speaker, for right now.

Madam Speaker, one of the intents years ago when those moorings with the blue stripes around them were put down, which are clearly identified as being for the DoE and put in place by the DoE, they were put in specifically to stop boats using their own anchors and destroying the coral. But it was also agreed that they would serve two purposes, for fishermen and diving, and whichever came first, would be served.

There have been many instances where many boats from the dive industry have tried to run fishermen off of those. I have had it in my constituency on a

number of occasions. What is the Government doing to try and enlighten, in particular, the dive industry, since a lot of those boat captains are not from here and they do not understand the relationship between diving and fishing for the cultural aspect of it? What further educational process is the Government making to separate diving and fishing, or for them to understand that they cannot run people off those moorings?

**The Speaker:** Honourable Minister responsible for Environment, the question spans between you and the Minister of Education and the Minister of Tourism, but you may answer it if you are able to at this time.

**Hon. G. Wayne Panton:** Madam Speaker, I will answer it to the extent that I think I can.

I think the issue that the Member refers to that has arisen in respect to these public moorings that were put in place, what we, in fact, have are moorings that exist in some cases within marine parks, and some cases outside marine parks. So, we have a situation where in some cases dive boat operators may be accustomed to seeing only dive boats mooring on particular public moorings because those are in marine parks.

For example, off West Bay Beach and the western side of the West Bay peninsula, you will have public moorings there that are in water depths of 80 feet or less. Those would actually be within the marine park and, therefore, no fishing because they are less than 80 feet. I think dive boat operators are accustomed to not seeing fishermen tied onto those and I do think that there have been occasions where they have approached boats that they thought were fishing, or observed fishing, and suggested that they were in a marine park and should move.

Now, clearly, what happens as well, particularly based on what the Member is suggesting, is that there are other moorings, as I said, which are outside of marine park zones and, as the Member said, those are public moorings. And you may have a situation where dive boat operators will go and ask someone who they think is fishing, to move from these moorings. I agree with the Member that it is a first come, first served, and they should not be insisting that some other member of the public utilising that mooring should move and give way to them.

Now, as to what the Department of Environment is doing, there are consistent discussions that go on in the public domain. The Department of Environment has websites which are kept up to date to inform the boating public on each occasion, and there have been quite a few, where there are public discussions of the Marine Conservation Law, the marine environment. In fact, there have been many questions and discussions in this House over the last two years on this. But on each of those occasions that arise, the Department of Environment attempts to convey the correct perspective, the correct process and proce-

dures and the correct information in respect of these moorings.

I can certainly have further discussion with the Department of Environment to see whether it is appropriate, and if we can engage in a further educational process, as the Member suggested, and give further clarity to the position. I will certainly have that discussion at the time that I have the further discussion on this issue of the "NO DIVE" zone demarcation in North Side, but obviously, in a broader context than just that. Thank you.

**The Speaker:** Final supplementary from the Member for East End.

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

Madam Speaker, I believe the Minister was kind in his words by saying that he recognised that they may ask them to come off the moorings. I was not particularly talking about the marine park along West Bay; I was particularly talking about the two sister constituencies.

"Ask" is a kind word, because my boat, and yours (the private boats), Madam Speaker, have to stay 200 yards away from the dive boat when it has the flag up and it is moored. But they have a less than subtle way of letting my little fishermen know that they are not pleased with them tied on to those moorings by going within 50 feet of them at high speeds, creating quite a big wave, as you well know, Mr. Minister, Madam Speaker, that those little south seas, when moored, have difficulty to deal with.

My question, or suggestion, Madam Speaker, whichever way the Minister wishes to take it, would be that that educational process needs to be done soon, quickly, pronto, immediately, all those adjectives need to come into play. And I say no more.

**The Speaker:** Madam Clerk.

### QUESTION 23: SAND POINT, SAND OFFSHORE

**The Speaker:** Honourable Member for North Side.

**Mr. D. Ezzard Miller:** Thank you.

Madam Speaker, I wish to ask the Honourable Minister of Financial Services, Commerce and Environment, the following question: Can the Honourable Minister give an update on the plans to address the sand offshore at Sand Point?

**The Speaker:** Honourable Minister of the Environment.

**Hon. G. Wayne Panton:** Thank you, Madam Speaker.

The answer: The Department of Environment cannot provide a definitive answer on this, but we have provided information in respect of the matter to

which the Member has addressed his question, to the Lands and Survey Department. That also includes the advice given by the Department of Environment in respect of the matter.

The Department of Environment also went on a site visit with myself to assess the situation and concluded that, taking everything into account, it made more sense to try to work with the Lands and Survey Department and to prevent the registration of the newly surveyed mean high water mark, given the temporary nature of the accretion and the fact that the supply of sand could be attributed to Hurricane Ivan.

The Department of Environment is aware that the Lands and Survey Department is attempting to acquire advice from a professional coastal engineer in the event they are challenged on the decision to not register the survey and to have to take this matter through the courts. More detailed information will need to be sought via the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure. Thank you.

**The Speaker:** If there are no supplementaries . . . Member for North Side.

### SUPPLEMENTARIES

**Mr. D. Ezzard Miller:** Madam Speaker, while I accept that the Minister's answer may have some long-term implications and will probably need some further amendments to the Land Registry Law, in particular to coastal works, is there any timeframe on this consultation process?

**The Speaker:** Honourable Minister.

**Hon. G. Wayne Panton:** Madam Speaker, I have been involved in some discussions with the Lands Ministry on this. I am not sure if my colleague Minister who has responsibility is able to add anything to it, but at this point, my understanding is that they are examining the position, examining and seeking clarification of advice, on the options that are open to the Department.

From a personal perspective, I fully share the concerns of the Member for North Side on this issue, because we have certainly had evidence, Madam Speaker, and this is aerial photographic evidence which shows the movement of a sand-spit down the Rum Point peninsula over a period of probably 10 years. And it has ended up where it is at this point. But the fact is it continues to move because the beachfront is dynamic. I think our very real concern is that we end up with a situation where a boundary is registered which is significantly beyond the original registered boundary. Once the sand has moved on, in a few years that boundary ends up 100 feet out to sea which has, in the past, led to some very preposterous situations where people demand that they have the right to fill out to that boundary. The position should

always be that waterfront boundaries are, of necessity, not fixed boundaries and will vary based on accretion or erosion.

So, we are not, in principle, in favour, from the perspective of the Department of Environment, of having a registration of a new boundary on this parcel of land to the extent of the existing sand-spit. I believe that is a sharing of the concerns of the Member for North Side.

**The Speaker:** Member for North Side.

**Mr. D. Ezzard Miller:** Madam Speaker, while I will accept from the Minister that the registration of the new survey poses a difficulty, there is also a greater difficulty that the non-intervention by Government or the DoE is likely the cause; that is, that if this sand is not harvested by the DoE and stockpiled for replenishing other coastal areas, instead of importing yellow sand, like some people do, to mix with our white sand, it is going to eventually completely block the entrance to the cove.

Madam Speaker, you can see from the photographic evidence and other evidence that I have tabled in this Assembly, that the dock of one of these parcel owners which was built probably in the 1980s is 150 feet inland. What I have asked the Government to do, and the Minister to respond to, is to whether this is being considered or not. In the view of the people who live in the area and the North Side people, forgetting the registration problem, what we need to do is go back there and dig the sand out, harvest the sand, stockpile it, and give back to the man, water for his dock and create a little island offshore that anybody can use, which will eventually wash away. But, in the meantime, if the Department of Environment will agree to dig a channel through this sand-spit, then, the man cannot claim it. And the registration issue goes out the door.

And not harvesting this sand—could the Minister tell me why the Department of Environment does not seem to be willing or interested in harvesting the sand?

**The Speaker:** Honourable Minister.

**Hon. G. Wayne Panton:** Madam Speaker, first of all, I think it is important to clarify that the authority of the Department of Environment, in connection with an issue like this, is one which starts at the waterline, or the high watermark and goes . . . I think it is actually the waterline, and goes into the sea. That is where the authority of the Department of Environment exists under the law in respect to this particular issue.

Above that, it is actually a Planning issue. That is why the two Ministries have been discussing and collaborating on this. So, Madam Speaker, I can assure the Member that the Department of Environment, far from the inaction which perhaps he was

suggesting earlier, has been very proactive on the issue. I outlined earlier that I have personally gone out and made a visit to the site. So, it is an issue that we have been addressing proactively. We understand and share the concerns because we know that a coastal environment, particularly a sand based, beach environment, is one which is dynamic. The movements of sand are constant and, therefore, temporary in nature.

On the issue of harvesting the sand, that is an issue that has to be approached very carefully, because we are talking about a natural process, after all. And we know full well that interfering with a natural process unnecessarily could have adverse consequences, perhaps unforeseen consequences. You also have the potential for the impact in the marine environment on what is a natural environment which changes slowly, whereas during a harvesting, digging the sand up, is not a slow process. It is an immediate impact which can have immediate and drastic consequences. Those things we have to approach and consider them very carefully. But at the same time we are concerned about making sure that we do not allow land registry registrations to have a long-term negative impact on the situation either. So, we certainly share those concerns and those are things that we have been proactively discussing.

To the Member's point in terms of the entrance to the cove, certainly, if it got to a position where that was the threat and it was very obvious it was going to happen, then, at that point it would be appropriate to consider the immediate impact of doing a dredging or harvesting of the sand as he suggests, and to utilise it, either to stockpile it or utilise it elsewhere. But from my own observation, Madam Speaker, that is not an immediate threat. It is a *potential* threat down the road; it is not an immediate threat.

So, whenever we are talking about actions within, certainly actions by Government within the marine environment, we want to avoid taking those actions unless it is clear that immediate action is necessary to remedy the problem.

I fully accept that there may be occasions upon which you have to act well ahead of time. But this process, we know, is a slow process. We are not going to wake up on Sunday morning and find that this sand has shifted down and blocked the channel. It will take significant time. The only thing that would change that is a major hurricane event with specific wave action coming into that area. That is the only thing that is going to have an immediate impact to change the status quo. Other than that, it is going to be a gentle process. We can observe it and make sure that it does not happen.

That is not to say that we may not consider doing what the Member suggests. I am saying that at this point, consideration in relation to alleviating a potential blockage of the entrance to the cove at Rum Point is not an immediate concern and, therefore, it

does not necessarily require immediate action. Thank you.

**The Speaker:** I will allow one more supplementary.

**Mr. D. Ezzard Miller:** I beg for a little more than one, Madam Speaker, because this is troubling.

**The Speaker:** Providing you do not ask four in one, I will allow two.

**Mr. D. Ezzard Miller:** Well, I need to ask seven in one.

Madam Speaker, the Minister in his response says that this supply of sand could be attributed to Hurricane Ivan. I do not recall anyone believing that Hurricane Ivan was a slow process.

Madam Speaker, in his photographic evidence submitted into question, if you look at photograph 2004 and photograph 2013, you will see that the channel is already more than one-third blocked from what it was in 2004.

Through you, Madam Speaker, can the Minister confirm that the working relationship between the Department of the Environment and Planning is more productive than my experience? Part of this problem here, Madam Speaker, is created by one landowner being allowed to put rocks in the sea surf when he was remodeling his house. I happened to be in the area fishing while the rocks were placed there. I called the Department of Environment. They went during low tide and said the rocks were not in the water, so they could not do anything about it and it had to be Planning.

I called Planning. Planning went during high tide and said the rocks were in the water and therefore, it was DoE to deal with it. And we are now three years down the road and the rocks are still there.

So, Madam Speaker, just for the other Members who do not happen to live in the area, this area was dredged in the late 1960's, early 1970s, down to 11 feet. None of this is in a slow process. What is happening is the Government, because both the Ministry of Planning and the Ministry of Environment, are simply finding reasons not to do what needs to be done! And that is, we need to dig the sand out. Thank you, Madam Speaker.

*[Inaudible interjection]*

**Mr. D. Ezzard Miller:** When the sand will be removed.

**The Speaker:** Honourable Minister.

**Hon. G. Wayne Panton:** Madam Speaker, let me start with his ending.

I am not in a position to confirm when sand might be removed. I said, and as the Member alluded to, that this is a slow process. I do not know what his

version of slow is, but certainly a process that occurs over a 10 year period, to me is a slow process. And it is not something which is going to have an immediate impact.

I have said to the Member that I share his concerns with the matter. I have also clarified that I have personally visited the site. I have personally engaged in discussions to share concerns on it. I do not know what more I can tell the Member on this issue beyond what I have said. But I will confirm that I will continue to be engaged in the process to have an outcome that we think properly reflects the considerations that the Department of Environment, Planning and the Lands Ministry has in this respect. Thank you, very much.

**The Speaker:** Member for North Side.

**Mr. D. Ezzard Miller:** Can the Minister confirm that if an application was made to Cabinet by the North Side District Council for a coastal works licence to move the sand, whether he would support moving the sand in Cabinet, or not?

**The Speaker:** Honourable Minister responsible for Environment, obviously you can respond to the question as you feel like, but from the perspective of the Chair, listening clearly to the question, you may be committing yourself to divulging a position that is confidential in Cabinet even before an opportunity to consult with your caucus.

Honourable Minister.

**Hon. G. Wayne Panton:** Madam Speaker, I thank you very much for that guidance. Certainly, I was not intending to provide a confirmation as the Member has suggested. I would think that there would be issues with the standing or locus of the North Side District Council, as the Member has referred, to be in a position to seek or make an application in that respect.

So, Madam Speaker, certainly, an application could be considered. Where it ends up, I do not know. But I would say that they have some hurdles to overcome in making such an application. And it would certainly be to the extent that it is appropriate, would certainly be considered by the Department of Environment. Recommendations would be made to Cabinet and it would be considered by Cabinet.

## STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

**The Speaker:** There are none.

## PERSONAL EXPLANATIONS

**The Speaker:** I have given permission to the First Elected Member for the District of Bodden Town to make a personal explanation this morning.

I recognise the Honourable First Elected Member and Deputy Speaker from the district of Bodden Town.

**“IN REGARDS TO PRIVATE MEMBER’S MOTION  
NO. 3/2015-2016—PRESERVATION OF  
TRADITIONAL MARRIAGES”**

**Hon. Anthony S. Eden, Deputy Speaker, First Elected Member for Bodden Town:** Thank you, Madam Speaker, for giving me permission under Standing Order 31.

This is an explanation I needed to make about two or three months ago, but because of certain health issues I have been unable to get to it until now.

Madam Speaker, this personal explanation is in response to Mr. James Austin Smith, Chairman of the Human Rights Commission, and Mr. Leonardo Raznovich regarding my Private Member’s Motion No. 3/2015-16 titled “Preservation of Traditional Marriages” delivered in the Legislative Assembly on 13<sup>th</sup> August this year and their total apparent disrespect for the majority of residents in Cayman.

Madam Speaker, both Mr. Austin Smith and Mr. Raznovich tried to vilify, malign and partially crucify me on my stance of preservation of traditional marriages. Is Mr. Austin Smith, Chairman of the HRC, telling me that as a duly elected Member of this honourable House for over 23 years that I do not have my human rights and, as an elected Member by the people, cannot quote from my Bible and religious articles on this subject?

Madam Speaker, Mr. Austin Smith, an admitted atheist, how in the name of justice and fair play can Cayman have a person who does not believe in God, take issue and criticise objectively what I have said with extensive references to my Bible and other published sources?

*[Inaudible interjection]*

**Hon. Anthony S. Eden:** Mr. Premier, I strongly suggest that the Government appoint a person as Chairman of the HRC who is not an atheist, but an individual who can consider objectively the lifestyle and beliefs of the vast majority of Caymanians who have lived by it for over 500 years.

*[Applause-pounding on desks]*

**Hon. Anthony S. Eden:** Madam Speaker, it is my belief that we do not need an atheist chairing our Cayman Islands Human Rights Commission.

As publicised in the papers, Madam Speaker, Mr. Austin Smith wrote to the Honourable Premier, taking my statements out of context by not stating that

I said I was quoting from articles I have read about how the religious and the Bible people defend the situation. I would strongly urge Mr. Austin Smith and the public to get a copy of the official Hansard report of Thursday, 13<sup>th</sup> August 2015 and read my speech in its entirety in the context of which I spoke.

Madam Speaker, just to briefly comment on Mr. Raznovich, who seems to take issue with myself and a statement from the Church of God Chapel because of our biblical interpretation of his apparent lifestyle.

Madam Speaker, I am sick and tired of some people disrespecting my Caymanian people.

Madam Speaker, I beg to question if he notified our Immigration Department that he was a dependent of another man. What amazes me is how can a visitor to our islands on a work permit whose contract was not renewed by his employer be out in the public indicating he was going to participate in an International Bar Association Annual Conference, which I believe would embarrass our islands? It is a good thing, Madam Speaker, as an aside, that old time Cayman legislators are not here now.

Madam Speaker, this gentleman, Mr. Raznovich, has made a living in Cayman over the past years and because he does not agree with the lifestyle of the vast majority of Caymanians for over the last 500 plus years, he now wishes us to change our beliefs. Not on my watch, Madam Speaker! Not on my watch.

*[Inaudible interjection]*

**Hon. Anthony S. Eden:** I wonder if he could have helped to orchestrate the public lecture at the Truman Bodden Law School entitled *Legal Matters that Matter to All*.

Madam Speaker, I did not hear any residents begging that they wanted to learn more about misogyny and homophobia. Have any of you gentlemen and ladies in here heard any of our Caymanians requesting that, especially in light of the many other problems we have to deal with in Cayman when we are partially being beaten to death from over in the European Union and different countries?

**An Hon. Member:** *Hear, hear*

**Hon. Anthony S. Eden:** Mr. Raznovich noted that there are many Christian denominations around the world that have accepted same-sex marriage. How can he call them Christians when they have transgressed the word of God? And for him, read . . . or those interested from the New King James Bible 1Corinthians 6:9-10. And it states:

**“Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived. Neither fornicators, nor idolaters, nor adulterers, nor homosexuals, nor sodomites”**—reminded, Madam Speaker, which you would be famil-

iar, when God says, *in vain do they worship me, teaching for doctrine the commandments of men.*

Mr. Raznovich is quoted as saying, “**More fundamentally, such statements only serve to segregate society and lead to mental and even physical harm to individuals that are simply trying to live a peaceful and open life with their loved ones in the place they consider as home.**”

Madam Speaker, this sounds like the Gay Agenda over the past 25 years. He is simply parroting the same Gay Agenda blueprint.

Madam Speaker, with your permission I would like to Table this article for the edification of those people who want to know the real truth of how the world got to this stage. That article is entitled “The Gay Agenda Blueprint: A Plan to Transform America.” And Mr. Serjent-at-Arms, please put this on the Table.

**The Speaker:** So ordered.

*[Copy of article laid on the Table of the House]*

**Hon. Anthony S. Eden:** Thank you.

It comes, Madam Speaker, from a Good News Article, September/October 2015. The startling shift in American attitudes toward Gays and same-sex marriage is not the result of chance or random events.

Madam Speaker, more than a quarter of a century ago Gay Rights strategists laid out a plan to transform the nation and referring to the United States and with astounding success, I must add.

Madam Speaker, I would urge the listening public to get a transcript on my debate on preservation of traditional marriage from this Legislative Assembly dated 13<sup>th</sup> August, 2015. Read it for yourself and see if you believe this a poisonous hate speech as some of these people are trying to tear me down with. Please do not let some self-serving elements interpret for you, furthering the cause of their own Gay Agenda Blueprint, which I also strongly encourage you to read.

Madam Speaker, I take comfort in the words of my Holy Bible, which spoken words I do not have the right to compromise or change no matter what Cayman Human Rights Commission or the European Convention of Human Rights may dictate. The Holy Bible is what I will obey, Madam Speaker, come what may. My eternal life depends on that, not this temporary negative criticism and persecution by some of these people.

Madam Speaker, as I said, I take comfort in Proverbs 24:19-20: “**Don’t fret because of evil doers; don’t envy the wicked. For the evil have no future. The light of the wicked will be snuffed out.**”

And I also include Matthew 5:10, “**Blessed are those who are persecuted because of righteousness, for theirs is the Kingdom of Heaven.**”

Mr. Austin Smith and Mr. Raznovich, please note well, these are not my words; they came straight

from my Holy Bible. But if you wish to continue to vilify, malign and nearly crucify me for my religious beliefs, go right ahead. I really feel sorry for you and I pity you, I will pray for you, because, Madam Speaker, if he changed Saul at that time into Paul on the road to Damascus, he can do the same thing for you.

In closing, Madam Speaker, I want to personally thank those from the Christian community and all the churches here in these Islands who have given me their overwhelming support. Never in my 23 years have I had positive calls as I have in this through emails, text messages. I also extend some thanks to the United States and Jamaica for the support that they made to me. I just want to close in saying, may God continue to bless these wonderful Cayman Islands that have been built on a Christian background and by our Holy Bible.

Thank you.

## OBITUARY AND OTHER CEREMONIAL SPEECHES

**The Speaker:** None.

## RAISING OF MATTERS OF PRIVILEGES

**The Speaker:** None.

## GOVERNMENT BUSINESS

### BILLS

#### FIRST READINGS

##### WHISTLEBLOWER PROTECTION BILL, 2015

**The Clerk:** The Whistleblower Protection Bill, 2015.

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

##### ENDANGERED SPECIES (TRADE AND TRANSPORT) (AMENDMENT) BILL, 2015

**The Clerk:** The Endangered Species (Trade and Transport) (Amendment) Bill, 2015.

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

### BILL

#### SECOND READING

**WHISTLEBLOWER PROTECTION BILL, 2015**

**The Clerk:** The Whistleblower Protection Bill, 2015.

**The Speaker:** I recognise the Honourable Deputy Governor.

**The Deputy Governor, Hon. Franz I. Manderson:** Good morning again, Madam Speaker.

I beg to move the second reading of a Bill entitled the Whistleblower Protection Bill, 2015.

**The Speaker:** The Bill has been duly moved. Does the Honourable Member wish to speak thereto?

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

**The Speaker:** Please proceed.

**The Deputy Governor, Hon. Franz I. Manderson:** Madam Speaker, I rise to introduce the Whistleblower Protection Bill, 2015.

First, Madam Speaker, I would like to acknowledge the work of the previous Complaints Commissioner, Ms. Nicola Williams, who in her Own Motion Report entitled "Let the Whistle Blow" for bringing the issue of whistleblowing into the public arena. Her report of 2014 recommended that standalone legislation be enacted, similar to those in Jamaica, Australia or New Zealand. The Government has responded quickly to the recommendation, as good governance and transparency is high on our agenda.

I would also like to acknowledge the work of the Law Reform Commission, the Attorney General and his team, especially Ms. Neblett, in the work they have done which has allowed the Government to bring this Bill to this honourable House today.

Madam Speaker, whistleblowing has gained international and local exposure in recent years and I think we all agree that it is important for the Cayman Islands Government to demonstrate that we are proactive in dealing with the issue of whistleblowing. Although we have never had standalone legislation dealing with whistleblowing, successive governments have ensured that a number of our existing laws have whistleblower provisions in them, namely: The Standards in Public Life Law; The Freedom of Information Law; The Anti-Corruption Law; The Gender Equality Law; The Insurance Law; The Bank and Trust Companies Law; and The Monetary Authority Law. But, Madam Speaker, both public servants and private sector employees have complained for years that they have no real protection should they blow the whistle on wrongdoing.

Moreover, Madam Speaker, some employees have complained that they have been terminated or victimised in the workplace because they have blown the whistle on wrongdoing.

Madam Speaker, this Bill addresses their concerns in a fundamental way.

Madam Speaker, who is a whistleblower? A whistleblower is a person who exposes any kind of information or activity that is deemed illegal, dishonest, or is not correct with an organisation that is either private or public. The term whistleblower comes from the whistle a referee uses to indicate an illegal or foul play. US Civil Rights Activist Ralph Nader coined the phrase in the early 1970's to avoid the negative connotations found in other words such as "informers" and "snitches."

Madam Speaker, let me explain the objectives of this Bill and some of the key provisions in the Bill. First, Madam Speaker, let me explain that the provisions of this Bill cover both the private sector as well as the public sector. That means that all employers and employees in the Cayman Islands will be subject to the new law. The Bill provides wide definitions of employees and employers to ensure that the objects of the Bill are met.

The objectives of this Bill are threefold. First, and most importantly, we want to encourage all employees to report improper conduct and wrongdoing. Madam Speaker, we believe that this is fundamental to good governance and acts as a real deterrent to would be wrongdoers.

Secondly, we want to designate a public authority to facilitate the receiving of reports and to ensure that a proper investigation is carried out.

And thirdly, we want to ensure that the whistleblower is protected from detrimental action and to compensate whistleblowers who have suffered damage from making disclosures of improper conduct or wrongdoing.

Madam Speaker, the Bill provides for the Governor to designate an individual or public entity to deal with disclosures by whistleblowers.

Madam Speaker, we do not intend to create an additional agency to deal with disclosures of wrongdoing, but it is proposed that the Governor will designate an existing authority to receive the information.

Madam Speaker, it is our plan that the Office of the Complaints Commissioner will assume the responsibility of receiving, investigating, and dealing generally with disclosures in accordance with procedures under this Bill.

Madam Speaker, we see this as a natural fit for the OCC as the office is respected, it is trusted, and already deals with complaints of maladministration.

Madam Speaker, the designated authority is also required to publish such procedural guidelines regarding:

- the making, receiving and investigation of disclosures under this law as it considers appropriate;

- provide such assistance as may be practical to any person who seeks to make a disclosure under this law, or any person who is an employer or other person subject to requirements of this law;

on an ongoing basis, plan, implement and monitor public awareness programmes aimed at the informing and educating of employees, employers and the general public in the Islands about the making, in a responsible manner, of protected disclosures and about the procedures for receiving and investigating such disclosures. And I will mention this later, but ma'am, we see this as key in terms of educating the public, educating employees, [and] educating employers about what is required under this piece of legislation, what are their obligations, how they go about making a complaint, what are the penalties for persons who transgress the law. Public education, Madam Speaker, is going to be key for the success of this Bill.

Madam Speaker, all of this is designed to ensure that would be whistleblowers understand very clearly how they go about blowing the whistle and it also educates employers about their obligations and responsibilities under the law.

Madam Speaker, while the objects of this Bill are centred around the secrecy and confidentiality of the whistleblower, the Bill also requires some public reporting by the designated authority. A designated authority shall, at the end of each year in relation to that year or within such a longer period as the Governor may, in special circumstances, approve, cause to be made and transmitted to the Governor an annual report dealing with the activities of the designated authority during the preceding year.

Madam Speaker, their annual report should include the following particulars:

- a) the number of general inquiries relating to the law;
- b) the number of protected disclosures received and complaints made in relation to detrimental action and the number of them that were acted and those that were not acted on;
- c) the number of investigations commenced under this law;
- d) the number of prosecutions under this law;
- e) the number of recommendations relating to any other matter arising under this law made by the designated authority and the responses to such recommendations; and
- f) any other matter that the designated authority considers necessary to publicise.

Madam Speaker, I on behalf of the Governor shall cause a copy of the annual report to be tabled in this honourable House no later than three months after the annual report has been transmitted to the Governor.

The designated authority shall not disclose in an annual report, any information that would directly

or indirectly identify any person who has made a disclosure under this law or a person about whose conduct a disclosure was made. In fact, Madam Speaker, every effort has been made to keep the identity of the whistleblower secret. The designated authority, on receiving, investigating or otherwise dealing with a disclosure under this law shall regard and deal with the information as secret and confidential. The identity of the person making the disclosure and any disclosure made; and in a given statement or document information or thing provided to the person in carrying out an investigation; and any statement given or document information or thing provided given in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with the obligations for secrecy and confidentiality.

Madam Speaker, these provisions not only ensure transparency and accountability, but seek to give would be whistleblowers confidence in the system and provide a real deterrent to employers who may seek to punish whistleblowers.

Madam Speaker, while we believe that this reporting is necessary, I again reiterate that this regime that we have put in place makes every effort to ensure that we protect the identity of our whistleblowers.

Madam Speaker, I want to make it clear that the designated authority, which we are proposing is the Office of the Complaints Commissioner, is not required to investigate every disclosure that is made to that office.

So, Madam Speaker, if a disclosure relates to a criminal offence then we would expect that that matter would be referred over to the Police.

So, Madam Speaker, how does a person actually blow the whistle? An employee can make a protected disclosure of wrongdoing to the designated authority or to an attorney at law in writing. This means the employee who made a disclosure would be protected and not be liable to criminal, civil or disciplinary proceedings. However, Madam Speaker, we understand that not everyone will want to reduce their disclosure in writing, so the Bill provides that where the disclosure is made orally, the designated authority shall within 24 hours of their receiving the disclosure cause the disclosure to be reduced in writing.

Madam Speaker, a protected disclosure means disclosure of information made by a person where the person has reasonable belief that the information disclosed shows or tends to show that improper conduct has occurred, is occurring, or is likely to occur. So, we are encouraging people to not just tell us when something has happened, but tell us if you see something happening or it is about to happen or has happened, please tell us so that the information can be recorded and can be properly investigated.

So Madam Speaker, what is improper conduct? Improper conduct means:

- a) a criminal offence which has been committed, is being committed, or is likely to be committed;
- b) a failure to carry out a legal obligation;
- c) conduct that has resulted, is resulting or is likely to result in a miscarriage of justice;
- d) conduct which is or is likely to be a detrimental action;
- e) conduct that has resulted, is resulting or is likely to result, in a violation of the human rights provisions set out in the Constitution of these Islands;
- f) conduct that has resulted, is resulting or is likely to result, in a threat to the health or safety of a person or to the public;
- g) conduct that has resulted, is resulting or is likely to result, in a threat or damage to the environment;
- h) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds (and that is wide reaching, Madam Speaker); or
- i) wilful concealment of any of the acts I described above.

The Bill protects the whistleblower from any detrimental action, Madam Speaker, such as injury, loss, damage, intimidation, harassment, discrimination or adverse treatment in relation to employment, career or profession that may ensue from the disclosure of wrongdoing. So we have made every effort, Madam Speaker, to protect the employee in everywhere that we can . . . anywhere possible from any detrimental action.

Madam Speaker, a person takes detrimental action against an employee in reprisal for a protected disclosure if:

- (a) the person takes or threatens to take detrimental action against the employee because, or in the belief that—
  - (i) the employee has made, or intends to make, the disclosure; or
  - (ii) the employee has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- (b) for either of the reasons said above, the person incites or permits someone else to take or threaten to take detrimental action against the employee.

So again, Madam Speaker, we are putting a framework around the employee so that to ensure they are protected, and even if an employer threatens to take action against them, this law will protect them.

A person shall not take detrimental action against an employee in reprisal for a protected disclosure and a person who takes such action commits an

offence, and this is important Madam Speaker, and is liable—

- (a) on summary conviction, to a fine of \$20,000, to imprisonment for a term of two years or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term of five years or to both such fine and imprisonment.

So, Madam Speaker, we are putting very strong penal provisions in the Bill to ensure that it acts as a real deterrent against employers who want to take detrimental action against their employees who have made a disclosure.

However, Madam Speaker, the Bill provides further protection for whistleblowers who have been dismissed from their employment as a result of a disclosure.

Madam Speaker, the Bill states that, where, upon a hearing a complaint of detrimental action, a labour tribunal has determined that the employee has suffered detriment, it may, by order, require the employer to take off these necessary measures:

- it can require the employer to take the person back, put them back into the duties that they had before—

*[Inaudible interjection]*

**The Deputy Governor, Hon. Franz I. Manderson:**  
The employer.

- reinstate the employee or pay compensation to the employee in lieu of reinstatement;
- pay to the employee compensation in an amount not greater than the amount that, in the tribunal's opinion, is equivalent to the damage that the employee has suffered by reason of the reprisal;
- rescind any measure or action, including any disciplinary action, and pay compensation to the employee in an amount not greater than the amount that, in the tribunal's opinion, is equivalent to any financial or other penalty imposed on the employee;
- pay to the employee an amount equal to any expenses and any other financial losses incurred by the employee as a direct result of the reprisal (and, of course, Madam Speaker, we know that employees will want to avail themselves to legal representation, which cost a lot); or
- compensate the employee, by an amount of not more than ten thousand dollars, for any pain and suffering that the employee experienced as a result of the reprisal.

So again, Madam Speaker, real protection for any persons who make a disclosure. And Madam Speaker, there are also similar provisions where the

employee works in the public sector and we are going to be making a Committee stage amendment to make it clear to change where it says that the Chief Officer may transfer persons to the Deputy Governor.

*[Inaudible interjection]*

**The Deputy Governor, Hon. Franz I. Manderson:** Yes, sir.

**The Speaker:** Can I just inquire as to the Amendment? Has it been submitted and circulated?

**The Deputy Governor, Hon. Franz I. Manderson:** Madam Speaker, I can just check real-quick.

## ANNOUNCEMENT BY THE SPEAKER

### HOUSE VISITOR

**The Speaker:** While you are checking, the Chair would wish on behalf of Honourable Members to acknowledge the presence of the Honourable Dr. Rufus Ewing, Premier of Turks and Caicos, and the accompanying person with him, and just to extend a warm and hearty welcome to the Cayman Islands jurisdiction.

Thank you.

## WHISTLEBLOWER PROTECTION BILL, 2015

*[Debate thereon continuing]*

**The Deputy Governor, Hon. Franz I. Manderson:** Madam Speaker, I understand the Amendment is being finalised and will be circulated shortly.

Madam Speaker, an employee of a public entity who has made a protected disclosure and who believes, on reasonable grounds, that detrimental action will be, or is being taken against him in contravention of this Law may request a transfer of employment in accordance with this section. And the Law goes on to then give the Chief Officer—I am going to change that to the Deputy Governor—the authority to transfer a person to another entity so that they will not be further victimised, if that is the case.

The transfer of an employee, Madam Speaker, may be permanent [or] for a fixed term; and the transfer of the employee does not constitute a resignation or termination of employment and the post-transfer service is to be regarded as continuous with pre-transfer service.

So again, Madam Speaker, we are putting in place real protection for whistleblowers and real punishment for employers, both public and private, who seek to punish whistleblowers.

Madam Speaker, it is also important to note that the whistleblowers must act responsibly and they can, in fact, commit an offence if they make a disclo-

sure under this Law knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading; or aids, abets, procures or conspires with any other person to contravene this Law.

A person who commits an offence under this Law, under this section is liable upon summary conviction, to a fine of \$10,000, to imprisonment for a term of two years or to both; or conviction on indictment, to a fine or to imprisonment for a term of three years or to both such fine and imprisonment.

And Madam Speaker, I think it is important for me to reiterate that in order for whistleblowers to attract the protection under the provisions of this Bill, it must be noted that they have to make the report to the designated entity. Blowing the whistle to other persons or such entities such as newspapers, does not attract the protections under this Law. And it is important for persons to understand that we have set up a very comprehensive system where persons can blow the whistle if they want, so that they are encouraged to follow the rules that we have set out so that they will then have the protection that they deserve.

Madam Speaker, as with any new law, but I think so very important with this law, education is going to be key. I have already mentioned that the designated authority has a responsibility to educate the private sector. And as Deputy Governor my specific responsibilities under the law are to ensure that all public entities be made aware of the new law and to promote training and awareness to all public servants.

Madam Speaker, I want to assure all Members of this honourable House that we will do so. We will roll out a very extensive public relations campaign because we want everyone to understand and appreciate their rights and obligations under the law. Now, Madam Speaker, this will take some time, so I am going to propose . . . and, again, Madam Speaker, this is being drafted, a Committee stage amendment that will allow us to designate a time . . . for Cabinet to designate a time when this when this Bill will come into effect, will become law, so that we can engage in an extensive public relations training and a public relations campaign so that everyone understands their rights, duties and responsibilities under this law.

So, Madam Speaker, to wind up, we believe that this Bill promotes whistleblowing, it is a standalone piece of legislation that the public has asked for, that our Complaints Commissioner has recommended, it provides protection for whistleblowers, it provides real punishment—severe punishment—for persons who seek to take detrimental action against whistleblowers, and it provides a number of safeguards and a number of avenues that we can take to ensure the identity of whistleblowers are confidential.

And Madam Speaker, I think that is what everyone wants to be assured of, that if they go and they make a disclosure it is going to be kept confidential

and, Madam Speaker, there are a number of key provisions in this Bill that do just that. We believe that whistleblowers will now have the protection and they can have the confidence that any action taken against them as a result of whistleblowing will be dealt with severely.

Madam Speaker, I would ask all Members of this honourable House to support this important piece of legislation. We believe this is a key component of the Government's strategy to improve good governance and transparency. Again, I want to thank all Members of the Government for their support. I want to thank the Attorney General and his team, Ms. Neblett, the Law Reform Commission and the former Complaints Commissioner, who I said at the beginning of my presentation, Madam Speaker, who made the recommendations and who highlighted the need for this Bill.

So Madam Speaker, with that introduction, I would ask all Members to support the Whistleblowers Bill 2015. Thank you.

**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, Elected Member for East End:** Madam Speaker, you know, if I am going to speak I am going to get up.

Madam Speaker, I have called for and I have supported the provisions of single standalone legislation for whistleblowing. I rise here today supporting that objective. I hope that this would have come much earlier. I have thought about it extensively over the last few years because it certainly will give employees who value their principles and their work ethics the opportunity to ensure that any wrongdoing that they witness or they believe they are witnessing, they can fairly report it without reprisals.

Now, Madam Speaker, I have read the Commissioner's report on this, which she at the time took on her own initiative. And then the Law Reform Commission as well with their report, which was published I believe in 2014, and their proposed legislation in 2014 along with it.

Madam Speaker, I believe that by and large this Bill captures a lot of what was being proposed in both instances. However, Madam Speaker, I see areas in this Bill that do not encourage employees to come forward and the Government has not, in the presentation by the Deputy Governor, allayed my fears, my concerns, should I say, in any substantial way.

Madam Speaker, I want to support this Bill, I really do, but there are things in there, Madam Speaker, in one breath we are saying one thing, and in the next breath it contradicts it . . . or in the next provision, it contradicts it.

Madam Speaker, for instance, clause 3 of this Bill says—and Madam Speaker, I know the Attorney General is going to have some explanation for my confusion. That does not say that he is going to clarify it, but certainly I will have to listen to his explanation. Clause 3 says: **“This Law applies to any disclosure made after the appointed day, notwithstanding that the conduct to which the disclosure relates may have occurred before the appointed day.”**

Subsection (2) says: **“A disclosure of information is not a protected disclosure if the employee making the disclosure commits an offence by making it.”**

Madam Speaker, I thought of that quite a lot and I turn to the Confidential Relationships (Preservation) Law. Now, I [will] take one section of Government and paint a scenario in that of the Cabinet Office. And the Cabinet Office has belief or evidence, someone within there—and I am painting a scenario, Madam Speaker, I am not saying this is . . . I am just trying to relate this to a person wanting to do the right thing—and that person in the Cabinet Office is privy to confidential information and confidentially, under the Secrecy Act, that person cannot disclose that information to anyone else. However, one of the Ministers, they believe, is doing something . . . is conducting some wrongdoing, releasing information that is confidential to the press or to someone else for that matter, national security. And that employee goes and wants to report that, but to be able to report it, that employee is going to break the law, they are going to commit an offence by disclosing that confidential information to someone else. Where does that employee stand?

In essence, that Minister in his or her defence can say that that employee committed an offence by disclosing the confidential information to that designated authority. Madam Speaker, I do not know how we are going to fix that, but I see a looming concern that I believe needs to be addressed. And I want it addressed, not that I do not want it addressed, I want it addressed in order that we do not . . . how many, Madam Speaker—the question is how many of our employees, be it in the private sector or public sector, are going to know that when they go . . . which the law . . . they are committing an offence, they are breaking by disclosing that? They are not going to know. Some provision needs to be made to protect them from that.

I understand we do not want people to disclose something and, at the same time, commit an offence. I am saying there needs to be some protection included to prevent that employee who is in good faith recognised that a Minister is committing something wrong or whatever . . . his boss is doing some wrongdoing, he does not know what offence he is committing, what are the laws he is encroaching upon by doing it, in particular, the Confidential Relationships (Preservation) Law, and he then finds himself in trouble. How do we . . . how do we protect him in that regard? Because as soon as that employee—him or

her—opens their mouth to that lawyer who is the other person, that attorney, who is the other person that it can be disclosed to, and says *oh Minister so-and-so is doing something wrong*, the employee has to explain what it is they are doing wrong and there needs to be . . . he or she is immediately breaking the Secrecy Act that he has sworn to, to maintain confidentiality. And at that very moment it creates a defence for that wrongdoer. And that is where I am concerned.

It confuses any employee reading this and is going say, *Listen, I'm not going to do that because I might be breaking the law*. And if we are going to protect that person who is disclosing that information, we need to do it in its entirety. You cannot tell him we are going to . . . No, Madam Speaker, certainly if it is frivolous then I see no reason why we should sit here and try to protect someone who is making frivolous and unfounded disclosures just to get back at their boss or someone else. But certainly, if we are going to protect them we need to do it in its entirety.

Madam Speaker, then we turn to clause 13 and it says, "Subject to section 3"—that I just read—**“this section applies notwithstanding any duty of secrecy or confidentiality or other prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract or practice.”**

Now what we need to do is to sit an employee down and let him read that and immediately it is confusing. And Madam Speaker, I must say I heard the Premier on the radio talk show Monday, I believe it was, saying there were so many . . . he was saying that where we have reached has gone through so many . . . so many issues of this—

*[Inaudible interjection]*

**Mr. V. Arden McLean:** —iterations, he says. Yes, because it is forever it has been going, but we still cannot say that we have . . . and the first thing that came to mind was when I heard the Premier that morning, I do not listen to him often, it was just that I was turning . . . switching the dial—

*[Laughter]*

**The Speaker:** Member, please keep on track.

**Mr. V. Arden McLean:** Madam Speaker, I am on track, trust me. That means shut the radio off.

And—

*[Inaudible interjection]*

**Mr. V. Arden McLean:** —I did . . . and I said to myself that we still haven't reached, I believe, where we want and I trust that it will be explained upon the introduction of this Bill.

Madam Speaker, that is under Part 3 which is Disclosures, generally.

Clause 10(3) refers now to the Confidential Relationships (Preservation) Law, which, incidentally, needs to be updated too because I think it probably has about four pages and it was enacted in 1976 and amended in 1979 and . . . a small amendment in 1993 and a small one in 2012 and consolidated in 2015. And we have been talking forever about repealing and renewing the Confidential Relationships (Preservation) Law.

Madam Speaker, I do not want to hear this thing about . . . and I know a response to what I am saying will be that the employees will be protected because the law will be such that it will protect them.

Madam Speaker, the Premier on that radio show said that the difficulty is that we can never get laws that are user friendly, and because of them being lawyers, lawyers being who they are, and drafts people being who they are, they are speaking merely for the courts and themselves and they are out in their own language world, and he was right. The Premier was right because we need to have it user-friendly for those who use it. The lawyers only use it and the courts only use it when something happens and this is not very user-friendly and we are trying to encourage people to come forward.

Madam Speaker, the Government needs to tell me . . . clause 28 that the Deputy Governor spoke so passionately about, that he is going to bring some amendment to, where, **“An employee of a protected entity who has made a protected disclosure and who believes, on reasonable grounds, that detrimental action will be, or is being or has been taken against him in contravention of clause 18, may request a transfer of employment in accordance with this section.**

**“(2) Subject to subsection (3), a Chief Officer of a public entity may transfer an employee of the public entity who has made a protected disclosure to duties within another public entity or a different area of the same public entity on terms and conditions of employment that are no less favourable overall.**

**“(3) An employee may only be transferred under subsection (2) if-** (a) the employee requests or consents to the transfer; (b) the Chief Officer of the public entity has reasonable grounds to suspect that detrimental action will be, is being or has been taken against the employee in contravention of section 18; (c) the Chief Officer of the public entity considers that the transfer of the employee will avoid, reduce or eliminate the risk of detrimental action being taken against the employee; and (d) the Chief Officer of the public entity to which it is proposed to transfer the employee consents to the transfer.

**“(4) The transfer of an employee under subsection (2) may be permanent or for a fixed term.**

**“(5) The transfer of an employee under subsection (2) does not constitute a resignation or termination of employment and the post-transfer service is to be regarded as continuous with the pre-transfer service.**

Now, Madam Speaker, let us explain that to an employee who is a good employee, who wants to do the right thing and loves where he is at. If he discloses wrongdoing in that ministry or whatever, he or she runs the risk that whoever that disclosure is made on, that the Chief Officer . . . it might even be a Chief Officer. Now, the Deputy Governor is saying that he is going to take authority, I believe, in this thing to transfer him. So, why don't you transfer the person who the disclosure is made against and who is trying to commit an offence? If you are saying because we fear that detrimental action will be taken or is being taken against that employee who made that disclosure, it has to be someone that you suspect or you know. So you are moving the employee to protect him from that person and you are leaving that person there to continue his skulduggery. You cannot do that! That—

*[Inaudible interjection]*

**Mr. V. Arden McLean:** So, I just read it. I just read it.

Madam Speaker, they say that that is not what it says, but I just read it. Maybe I am dumber than they are, but . . . that . . . what an ambition—

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

**Mr. V. Arden McLean:** Yes, Madam Speaker, especially since the Premier is saying he has got good ambition.

**The Speaker:** We will be suspended now for a lunch break and we will reconvene at 2:30 pm.

**Proceedings suspended at 12:45 pm**

**Proceedings resumed at 2:40 pm**

## **BILL**

### **SECOND READING**

#### **WHISTLEBLOWER PROTECTION BILL, 2015**

*[Continuation of debate thereon]*

**The Speaker:** I recognise the Honourable Member for the district of East End with the continuation of his debate.

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

Madam Speaker, when we took the luncheon break I was on section 28 and talking about the re-

moval of an employee who would have made a protected disclosure. And my question was: Why should we move that person around when the person who the disclosure is made against would still be in that section and how we would get that across the employees? I believe that the Deputy Governor in his, during a private conversation, said, *Well, suppose it was a Minister?* And Madam Speaker, I understand that. If it is a Minister you cannot move the Minister, but still there needs to be a clear understanding to employees that they are not going to be pointed out because all of this is in confidence—the disclosure is made in confidence, the investigation is done in confidence. It just reeks of the employee being reluctant to do it because if you are telling an employee that we are doing this in confidence, you can do this in confidence, and the investigating authority will not disclose it, but in the same token there is a problem . . . the person who the disclosure is made against will eventually know that the disclosure has been made and when that person, at that time, that person tries some detrimental action against that employee, that is when it is most concerning.

Now, after the fact, if it is not founded, then we do have a problem if that disclosure is not proven. Then, there is a problem whether it was frivolous or not. I think in the instances that it is frivolous the employee needs to pay the penalty for that. But certainly if he or she would do it in good faith and it is not founded or even before the investigation has been completed, and to facilitate that a detrimental action not be brought against that employee who disclosed it, you move that employee, then everybody knows. And my submission is that those employees knowing that are going to be somewhat reluctant. And somehow I know that it is going to be difficult to find some way to address the concerns I have, but certainly we must recognise that there are concerns there that need to be looked at in order that employees feel safe to make these disclosures.

Madam Speaker, a couple of other things. The Deputy Governor said that the Complaints Commissioner's Office would be the authority appointed by the Governor as the Bill makes provisions for. Now, if that is the Government's intent then maybe they need to put it in the Bill. I do not particularly subscribe to going in that direction. I think the Deputy Governor knows what my position is on the amalgamation of some of those authorities—the FOI [Freedom of Information] and the Anti-Corruption and the Freedom of Information Commissions—I do not support that because, certainly, then we are going to have to change our Constitution, in my view, to make them one body. And I do not believe it is sufficient to say that the Complaints Commissioner's Office should also be the designated authority for whistleblowing. I do not support that.

As a matter of fact, Madam Speaker, the same Complaints Commissioner . . . Freedom of In-

formation . . . was it the Complaints Commissioner that did that? The Complaints Commissioner that did the report on her own initiative—at the time it was a “she,”—recommended that the designated authority be placed under a Minister. And I believe, too, the Law Reform Commission made those recommendations as far as I can recall. I believe that was specific to separate these things from those commissions, to separate this whistleblowing, and in the interest of transparency then I believe that is the right way to go. So if the Government is mindful to do that I believe they need to put it in law.

Madam Speaker, one of the things that I believe the Law Reform Commission spoke of in their report was the legal proceedings for whistleblowers and who would pay for their defence (because we know law suits come a dime a dozen nowadays, this place is getting like America). I do not see any provision in this Bill for that. There may be, but certainly we must recognise that if someone blows the whistle on someone else and the investigation looks towards a criminal or is referred by that designated authority, that authority for criminal action or investigation, then we are faced with that employee who did that disclosure having to defend oneself as well. Now, I do not know if an unintended consequence would be that, in the Government’s case, the Government would have to defend that employee in a court of law. Because certainly someone who feels aggrieved, the alleged wrongdoer would certainly be defending themselves in criminal proceedings and civil proceedings, but I did not see any provisions for a . . . who will defend that whistleblower if it is proven . . . if it is proven.

Madam Speaker, a classic example of that happened to be when I was Minister and my Chief Officer signed the search warrant and I think it was the judge that objected to that and Government had to defend my Chief Officer. The Attorney General had to find outside lawyers to defend my Chief Officer in his actions of having signed that search warrant. And I believe that some provision should be made for that as well unless it is a given. Certainly, in the private sector, if we are going to make the law, we need to also make provisions for that, whether it is in the public sector or in the private sector. Who is going to pay for the defence of the whistleblower?

Madam Speaker, I think the Attorney General may have to enlighten us on that aspect because I have not seen anything in the law to that effect.

Madam Speaker, a couple of areas that I think there are some mistakes in this that I will draw to the attention of the Deputy Governor, too. But one of the other things that I would like to turn to Madam Speaker is . . . clause 30 where it says in clause 30(1)(2) and (3):

- (1) The designated authority acting in good faith, may, in any of the circumstances set out in subsection (2)—**

**(a) refuse to deal with the disclosure, or commence an investigation into any improper conduct alleged in the disclosure; or**

**(b) cease an investigation.**

**(2) The circumstances are—**

**(a) the disclosure is not a protected disclosure;**

**(b) the subject matter of the disclosure or the related investigation has been adequately dealt with;**

**(c) the subject matter of the disclosure is frivolous or not sufficiently important to warrant an investigation; or**

**(d) the circumstances surrounding the subject matter of the disclosure have changed (whether by reason of insufficiency of evidence or otherwise) so that it renders the investigation unnecessary.**

**(3) Where the designated authority refuses to carry out an investigation, the designated authority shall provide reason in writing to the employee who made the disclosure within 15 days of the refusal.**

Now, Madam Speaker, here is where the Deputy Governor and I part company. Who is to know when that authority has refused to go any further or ceased an investigation? No one knows that. But what they do know is when that disclosure was made, because it is very specific, it says that the disclosure must be dated and the like. So the person who is the whistleblower knows the date that the disclosure was made, but the whistleblower does not know when it is refused. So that is . . . what do you call it? It is 15 days after the refusal is a timeframe that we will never know and we cannot hold anyone accountable.

*[Inaudible interjection]*

**Mr. V. Arden McLean:** Madam Speaker, the Deputy Governor asks why.

So, six months down the road we see a refusal. They are notified that we have not carried on this investigation, we have stopped the investigation, or we do not think that there is sufficient evidence. It has taken six months to reach that point. In the meantime, everybody is in limbo. So, my submission is that there should be other timelines tied to the original date of that disclosure. So in three months, within three months, so to speak, there must be communication to the person who made the disclosure saying whether or not it has been refused or what the status of the investigation is.

Madam Speaker, I am trying to avoid that designating authority dragging these things out. It could be a year down the road and we do not know if it was

15 days ago that they refused it. It could have been nine months ago that they refused it. So I believe, maybe, we need to tie some timelines into the date of the disclosure because we all know what that is or the people who are making it and those who it is made against and the authority would know the date and they have some deadlines in which to work with. And the person who is making the disclosure knows within three months it has to be resolved one way or the other. That is all I am saying. You know, it is one of those Reagan things—“*Trust but verify.*”

So, Madam Speaker, if the Government is mindful I would respectfully ask that we look into that matter.

Now, Madam Speaker, the one that really gives me additional concern is where we are saying that an employee can refer the matters to the labour tribunal. I do not know, Madam Speaker, if that does not necessarily conflict with it going to court and the likes. It may be for the matter of the person being terminated. But then, that is a detrimental action and, certainly, the detrimental action means that the designating authority can take it further to court. So, I do not know if there is not a duplication of services there, so to speak, or punishment for the employer because the court can impose whatever the appeals tribunal can.

Now, Madam Speaker, the other one is where on summary conviction there is a \$10,000 or two years, I think it is. I am trying to find it here now, Madam Speaker.

**The Speaker:** [Clause] 33?

**Mr. V. Arden McLean:** I think it must have been somewhere there, but there is another spot it is in as well. That is one; that is the employee, but I believe it is in 17 or 18. I think it is 18.

Madam Speaker, I look at so many of these things that my eyes are . . . yes. In both instances, Madam Speaker, we are talking about . . . in the case of 18 there is detrimental action against the employee if they do such, on summary conviction a fine of \$20,000 to imprisonment of a term of two years or to both; on conviction on indictment, to a fine or imprisonment for a term of five years or to both, such fine and imprisonment. And in the case of the employee it is the same thing. Now, Madam Speaker, there is half of it for the employee; it is \$10,000 as opposed to \$20,000 with the employer.

Madam Speaker, on indictment—and I know we are going to say that it is wide open when we do not put down the amount that the person can be fined. And I know we are going to say and hear the old age response that you cannot tie the hands of the judges. I know that is what we are going to say, but we tie the hands of the magistrates and say up to \$10,000 or \$20,000.

Madam Speaker, we need to put something in there because they could fine them \$5. And I believe it is serious enough that this is a Bill that is important enough that will eventually turn law into this country and we must ensure that it roots out the corruption and the wrongdoing of people in a position of authority in spending people's money and people that the country has reposed their faith and trust in. Too many times we hear that this one did that and that one did that and it is all rumour. But the reason no one knows is because everybody is afraid to come forward. We have preached this one million times.

Therefore, there must be stringent provisions in place (1) to ensure that people do not just do it on a whim and a fancy, but certainly more stringent when we have people in positions of trust that are doing things that erode that trust. Those are the ones that we are looking to penalise; it is not those that are making the disclosure. We must assume that it is all done in good faith and the occasional time, it must be the exception, when we find it was a frivolous disclosure. That is the exception.

We want to send a message to the world, we want to send a message to the people of this country, we want to send a message to the hierarchy, the lowering of that hierarchy, that if you see something that you genuinely believe is wrong and breaches the trust that the public or the clients of someone has placed in them, that you need to and can feel free that you are going to be protected and we are going to take that person out of our society and do what is necessary to remove them in their entirety.

Madam Speaker, if we do not get this right we are as bad off as we have ever been. Regardless of how many times we say that . . . we talk about the ACL, the Anti-Corruption Law, I think it is; we talk about the FOI; we talk about CIMA Law, that there are provisions for whistleblowing. Madam Speaker, we did not hear it then. I know I have done my part because the Anti-Corruption Law says that I am just as guilty as the offender if I do not report it. I have done my part, Madam Speaker. I reported many of them. I do not know what will come out of it, but I did what I had to. But that is Arden, Arden is not afraid.

Madam Speaker, what about those employees who are fearful of their . . . they have got to take their two pennies home that they are making and their first responsibility, Madam Speaker, is to their family and buying milk at the supermarkets on pay day. That is their first responsibility. Do you think they are that loyal to the country or to their employer that they are going to put their chances of maintaining their jobs on the line? No, they are not going to do it. That is what we have been plagued with all our lives.

Now, if we are going to do it, let us do it right. Let us make sure those people feel comfortable that if they see Arden or any other Member of this Parliament—I am talking about civil service—or anybody in the private sector, too, doing anything, that you have a

right to question it, and they must feel free that they will still be able to go to supermarket at the end of the month and no one will be able to do anything to them. But if we do not, we are going to be faced with them of that same worry, they are going to worry that they do not . . . that no matter what, *I may be breaking something that is confidential and I am not going to be protected.*

It is just not coming together, Madam Speaker. And mind you the lawyers over there may say that the provisions are the proper ones. Well, Madam Speaker, I know I have been here long enough (and many of us have been here long enough) to know that when one of these cases comes up the first thing the judges do is rush down here to find out the intent of these laws. And, therefore, we must each register our position in order that the judges get an understanding of what the crafters and the legislators intended for the people of the country when the laws were passed. It is important. I notice a lot of us sit down and do not say anything on these laws. It is of utmost importance that we record what the intent of what these things are for our people.

Madam Speaker, my good friend the Member for North Side, the other side of this twin relationship, has asked me to point out, which I saw it too, but I did not think it was of as such importance as he has attached to it, but he has asked me to point out that there is no enactment provision in this law, whether it is sections of it or whenever it is going to be enacted, by gazette or whatever the case may be.

*[Inaudible interjection]*

**Mr. V. Arden McLean:** So, Madam Speaker, a couple of things . . . and I would ask the—

*[Inaudible interjection]*

**Mr. V. Arden McLean:** —and you know, Madam Speaker, sometimes we try to be helpful and we are not. And most times the Attorney General will say that that was what the intent was.

I would draw their attention to clause 6(3)(d) and that says, “**In furtherance of the functions specified in subsection (2), the designated authority shall**”—and (d) says, “**make recommendations to any person arising from any review under paragraph (c) or (d).**” I do not know if that is (b) and (c) because it is (d) we are saying it in and there are no recommendations in (d). So that is something that might be required to be changed.

Next, Madam Speaker, Part 3, clause 12(1), “**A disclosure shall be in writing and shall contain, at a minimum, the information specified in Schedule 1.**”

“(2) **Notwithstanding subsection (1), if a disclosure is made orally, the designated authority shall, within 24 hours after receiving the disclo-**

**sure, cause the disclosure to be reduced into writing containing the same particulars as are specified in subsection (2).**”

We are talking about subsection (2). Should that be subsection (1)?

*[Inaudible interjection]*

**Mr. V. Arden McLean:** Clause 12.

At the end of subsection (2) it says. “. . . **reduced in writing containing the same particulars as are specified in subsection (2).**” But there are none specified in subsection (2). It is specified in subsection (1) as Schedule 1, which says what the particulars must be. So maybe that was a typing error there that needs to be looked at.

Madam Speaker, a couple of other things I could talk about but I want this law to be in place, I really do.

*[Inaudible interjection]*

**Mr. V. Arden McLean:** Well, as quickly as possible. But I agree with the Premier, not too often I do that, but we have not finished it and my fear is that we will soon be coming back for amendments to it. And that is my only concern. I want to make sure this law . . .

Madam Speaker, there are too many punishment provisions in it for the whistleblower, you know? I want to make sure the whistleblower feels free to whistle blow and I want to see those—the wrongdoers—get punished and severely punished, because they have been entrusted with certain offices that require that they maintain honesty, integrity and those are the ones who encroach on that, that we shall build gallows for . . . or we should build gallows for. There is nothing worse than a nation feeling that its security, which includes the ability to trust someone in position that they have put there, particularly for the 18 of us, Madam Speaker, that they have put there, that they can trust, that is part of the sub consciousness of our people that they feel safe. They feel like they can trust us and that we—we—will be their guardians. It is not only about police, it is also keeping the secrets of this country close to us, not using it as a means of furthering our financial causes. And any time a nation does not feel comfortable in that, they are lost. And it generates into anarchy. Because they you cannot trust the people they put in positions, they are going to take it over themselves and we lose our country.

Those who feel that someone genuinely is doing something wrong (I do not know if that is the right way to say that, Madam Speaker—“genuinely doing something wrong”). If they feel genuine in themselves that there is a wrongdoing being committed, we want them to feel like it is an obligation and the country will protect them. They have an obligation to report it without fear of favour, without concern of reprisals, victimisation, whatever, and they will be able to go

home to their family and lay their heads down like they have done for many, many years with their conscience clear. That is the objective of this law that I believe it should represent and that is what I want. And, anyhow we can get that, Madam Speaker, I am here to support it.

Thank you.

**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 recognise the Fifth Elected Member for—are you giving way to the Member for West Bay?

*[Inaudible interjection]*

**The Speaker:** Do not let me pull names out of a bag now.

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

**Mr. Winston C. Connolly, Jr., Fifth Elected Member for George Town:** Thank you, Madam Speaker.

Madam Speaker, the Bill entitled the Whistleblower Protection Bill 2015 is very timely. It has taken some time to be brought to this stage and it is something that is absolutely necessary for any modern society. Because we all know that the risk of corruption is significantly heightened in an environment where the reporting of wrongdoing is neither supported nor protected.

Madam Speaker, as I read the Bill my immediate thoughts were it is a good first step in the right direction to build integrity, to fight corruption, to encourage the reporting of misconduct, and fraud. We know that the fear of retaliation, intimidation, harassment, dismissal, or violence by fellow colleagues or superiors is a major impediment for people coming forward, especially in a small society, Madam Speaker, where everyone tends to know everyone.

In the past, Madam Speaker, we have all heard stories and allegations of black-balling from various sectors of society, various jobs, because people chose to stand up and call out wrong. And there was little support, Madam Speaker, for their well-being and that is something that is very sobering in terms of someone trying to make the decision of whether or not to whistle blow or to stay quiet. Do I feed my children? Do I pay my bills? Or do I try to eat my principles?

Madam Speaker, providing effective protection for whistleblowers supports an open organisational culture where employees are not only aware of how to report, but also have the confidence in the reporting procedures. Most importantly, to me, Madam Speaker, is, that this Bill will also help businesses prevent and detect bribery in commercial transactions. Because, Madam Speaker, in my brief time in this House, some may call me inexperienced and naive, I do know of situations where people have come for-

ward to a certain stage. They will come to the politicians, they will come to someone they trust, but then when you ask them if they want you to take it further or if they are willing to come forward, the answer is mostly no. *No, I am afraid for my life. No, I am afraid for my children. No, I am afraid for my salary.*

Madam Speaker, when those situations exist and do not go checked, it is only a matter of time before the whole society implodes on that word corruption. When good people are afraid to do the right thing, when good people have to choose a pay check over their principles without any intervention by the Government, by the laws of this country, then we all have lost, Madam Speaker. Because you see, these things that need to come to light have a way of costing us all and that is the kind of hidden cost of corruption, the one that no one really talks about. If other people are getting unfair advantages because of position, because of what they are willing to do, et cetera, that means somebody is paying for that loss. And those “somebodies” tend to be Joe Public.

So Madam Speaker, anybody that comes forward in good faith on any suspected acts of corruption and other wrongdoing, that protection is paramount. The protection in this Bill is paramount. In fact, it is integral to any efforts to combat corruption and safeguard integrity. It also enhances accountability, Madam Speaker, and it shows the country that the Government, the legislators, support a clean business environment. And that not only reverberates here on these three Islands, but internationally, Madam Speaker, because lest we forget we are on the world stage. And those people that would think that their selfish actions, their criminal actions, only affect the people around them or only reach the people around them, the economic effect might soon come back to all of us. Because if people lose faith in the jurisdiction and they stop investing and they stop coming, then we all suffer, Madam Speaker.

At the same time, as we need to protect the whistleblower, we also need to ensure that people are not targeted because of someone’s bad experience or something that does not warrant whistleblowing and they just do it frivolously or, as we like to say, out of bad mind.

Madam Speaker, balance needs to be looked at very carefully in terms of what we are trying to do. And, like I said, it is a good first step because it appears that a lot of that balance was contemplated and the considerations for repercussions for the whistleblowers and the protections for frivolous accusations have been highlighted.

Madam Speaker, it is also telling that in Part 4 section 16, there is also liability for “own conduct” and I think that is also important because this is not a “Get out of Jail Free” card by any means if someone has some liability for their own conduct.

Madam Speaker, when I was looking at the Bill and really trying to focus on that word balance and

to see whether or not businesses were adequately protected as well because we cannot have businesses thinking that they are open for all types of allegations and that they have to spend time fighting that to clear their names, et cetera. It is important that the legislation be both comprehensive and clear. And the terms “reasonable” and “in good faith,” cannot be stressed enough in this Bill.

Like anything on paper, any law in these Islands, the only way that they are going to be taken seriously is through enforcement, Madam Speaker. So, I asked myself as well, are these sanctions robust enough to be effective? And if they are, are we willing to enforce them? And I truly hope so, especially that latter part, Madam Speaker, because that is the key thing here—are we willing to put familiarity aside? Are we willing to uphold the rule of law at all cost? Are we willing to sometimes make the hard decisions because it is people we know, it is people who also have families, et cetera? It comes down to both political will, the will of the courts, and also the will of the people that the whistleblowing first comes to and in here it is both the authority and the attorneys-at-law, I think, who are the two people you can whistle blow to. And each of those have an integral part in this process because it is what they do with that information, it is how they pursue and gather evidence, and it is how then the courts take that and prosecute wrongdoers that is going to make an impact, not just the title of this Bill, not just the sections of this Bill when they become law, but it is what we do—each of those separate bodies do—when it comes to enforcing the law.

Madam Speaker, when I was looking at the retaliatory actions and trying to see if they are clearly defined and the protections, comprehensive, it occurred to me that some of these things, especially under the definition of “detrimental action” could, perhaps, be more comprehensive or go a bit wider in that I mentioned “black-balling” when I started my contribution to the debate and I do not think that something like that is adequately covered because it is hard to prove, Madam Speaker. How do you go around and tell people that you have been black-balled because of something that you have reported? But I guess, Madam Speaker, it is one of those things that you may never do or you may never get to that to cover that. But that was my only observation on that section, Madam Speaker, that some of the things that are harder to prove, perhaps, need more definition.

Madam Speaker, the other bit that needs to happen with this Bill is the awareness raising. And I think the Deputy Governor spoke about that when he stood to present the Bill. Because the one thing that I have found, again, in my time as a Member of this honourable House, Madam Speaker, is that a lot of people do not know sometimes what corruption and other things really are. They think they know, or sometimes it is not as obvious to them as it is to other people. So one of the things that I would like to encourage

the Government, be it through the Deputy Governor or the Attorney General, whoever in the Civil Service arm is responsible, is awareness raising, that education. Because if ordinary people do not know what they should be whistleblowing on, then, we are already defeated, Madam Speaker, and all the paper in the world, all the ink in the world, is not going to fix that, all the sanctions in the world.

Madam Speaker, I have heard some points raised, that I had some concerns over, so I will not go through those again. I think they have been properly ventilated. But as long as this Bill provides the man on the street with the necessary armour where they feel that if they come forward they are going to be protected, where they feel that if they do the right thing they will not have to pay for it out of pocket with losing a job, and especially if they think they are going to be losing more than that because of some lack of confidentiality, some lack of procedure, then I support this Bill. Because we need to ensure that that Joe Public, that man or woman on the street, feels protected by the system, especially when they do not have means, Madam Speaker. It needs to be the counterbalance in that equation.

Fairness and equality, Madam Speaker, you have heard me talk about that over and over in the last two and half years and I have always fought for that, even before I came into politics.

Madam Speaker, as someone in the legal profession previously who upheld the rule of law and who believes that that has to be the cornerstone of any society, this Bill will go a long way to upholding that rule of law, I think.

There is also the rule of unintended consequences, Madam Speaker, and I would hope that through these contributions by Members, through points raised that may not have been contemplated or perhaps overlooked, that any tweaks which present themselves as chinks in that armour can be corrected before we tell the people that this is their best protection.

So, I would encourage, Madam Speaker, as many of us in here to speak on this Bill because of the awesome responsibility that we and it shares in the society because if it works we are all better for it. If it does not, then we will have put another rung in the ladder of distrust for laws, distrust for Government, distrust for enforcement that I see so often in our people when people tell you that they do not want to do the right thing, when they do not want to go to the powers that be because they are afraid that if they do, everyone will know it before they leave a room.

Madam Speaker, we cannot let that continue. And so I would hope that the people of this Island would welcome this type of legislation, but they need to be sure that those that have the legal backgrounds, the drafting backgrounds, the public policy backgrounds have properly vetted it, dissected it, and most importantly, Madam Speaker, endorse it so that they

know that when they read it using layman's eyes, when they ask the questions, those same persons can give them all the answers and the comfort that they need to do the right thing.

Madam Speaker, with those few words I fully endorse this Bill and what it is trying to do. If we can shore it up during this process then we should because when we present it to the people, when we pass it in this house, each and every one of us needs to answer the questions: Is it robust enough? Is it something that will remedy any retaliation and will achieve the outcome that every single person in here would like it to achieve?

The only thing that I would add is that we need to keep reviewing periodically this Bill because there will be test cases that come out of this and we need to assure the public that when those things come and if we find chinks in the armour we will pound them out and polish it out.

Madam Speaker, thank you for allowing me this time to add my contribution.

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

I recognise the Fourth Elected Member for the district of West Bay—the Third Elected Member, I beg your pardon.

**Mr. Bernie A. Bush, Third Elected Member for West Bay:** Madam Speaker, thank you.

I would like to thank the powers that be for finally bringing this before the House. This is something that the Hansards will show that was seconded by me in the famous meeting in the Brac.

I would also like to start off, Madam Speaker, by complimenting the Deputy Governor for giving some respect or thanks to the former Complaints Commissioner who it was that brought it to my attention seeing that I sit as the Deputy Chair of the Oversight Committee that looks over the Complaints Commissioner's Office. To give her props, Madam Speaker, was very nice of him. And even though the original that she and I have a copy of, there are a lot of things as to how things were set up, and the Elected Member from East End brought a few of those to attention. But it is nice, Madam Speaker, to see her finally get her props and seeing that she was not good enough to remain here in this country it seems that some of her work is now coming to the forefront.

Madam Speaker, I too support this Bill. And I will not go over what the Fifth Elected Member for George Town or the Elected Member for East End went over. So it has cut me down to about two or three issues.

Madam Speaker, my first question to the Deputy Governor is, seeing the fact that there has been a big fight all along for the police force to remain where they are, make their own laws, make their own rules it seems, does this extend to the police force?

Madam Speaker, the other part that gives me some concern and was slightly touched upon by the Member for East End are concerns where, once again, we see this going over to the Governor having too much say instead of just someone with a legal or a group with legal background to oversee this or run this. Because, Madam Speaker, the people will not feel comfortable, especially having just seen the shenanigans of the former Governor and what he just put this country through and what he is going to cost this country. So, are we going to put it back in the hands of these people again, Madam Speaker, is my concern.

Will the people who we want to be protected feel comfortable enough to come forward if they have to whistle blow on someone from the motherland or one of our European masters? Will they get fair treatment? Or will it be another case where they are thrown down and trampled and taken advantage of?

Those, Madam Speaker, are the two concerns that I did not hear addressed too clearly which I hope are addressed. But this Bill is something that we need, but going over what the two Members who have spoken have said, Madam Speaker, we must do everything to protect our whistle blowers and we must make it so that they do not feel that if they bring a complaint that before they finish talking, certain people will have the facts and they are in trouble.

Thank you, Madam Speaker.

**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?

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

**Mr. Roy M. McTaggart, Second Elected Member for George Town:** Madam Speaker, thank you for the opportunity to make my contribution to the debate on the Bill that is before us today.

Madam Speaker, this Bill is a long time coming and I am grateful that we have gotten to the point now where it can be before this House for its assent and consideration. I am grateful for the leadership provided by the Deputy Governor in bringing it and steering it forward and for others who have played their role in contributing to its drafting.

Madam Speaker, the Bill itself gives, I think, the public at large the confidence to know that Government and our leaders are very much in favour of and supporting transparency. In putting legislation like this into place it gives people the courage and the confidence to know that they can make legitimate complaints of wrongdoing by, not just public officials, but by private individuals as well with regard to their conduct that can lead to action and exposure and ultimate prosecution. That is something that is widely adopted throughout the developed world and there are many countries that have legislation similar to this.

I believe that time will prove the value and the worth of this Bill that is before us here today, that it will result in putting more power back into the hands of the people, that it will give them confidence to be able to stand and to report wrongdoing. But also, Madam Speaker, it will also, I believe, ensure that before speaking up and making reports that they are certain of their facts; that in making reports they know that if they are ultimately proved to be wrong or that their actions were frivolous or vexatious, that there are consequences. So there are two sides to this sword. But I believe overall the effects will certainly be very positive to our community and will give the public the assurance to know that we are serious about transparency and about holding Government and everyone in this community to high standards of conduct and behaviour.

Madam Speaker, in my former life in the private sector I had to implement whistleblowing policies in my firm that was a directive from the international firms, but we had to do so. And I can say that in the years we did have the policy and we did have the facilities and the means in place for whistleblowing that there was never a time when it was actually used. But I do know that those who understood and knew of it—and everyone did—that they appreciated what was there, that they had that avenue where, if circumstances ever presented themselves, they had that avenue available that they could make a report and that something would be done about it.

Now, Madam Speaker, the one thing that I have seen and believed that there is not a widespread knowledge in our community about this Bill is the fact that it applies both to the private and public sector. And I know that the Deputy Governor has said that there will be a comprehensive campaign to educate the people and I believe that this is an important element that must be stressed in order for this Bill truly to be effective and to achieve all that it has intended to do so.

Madam Speaker, I believe in this Bill and I commend it to this honourable House and look forward to its safe passage.

Thank you, Madam Speaker.

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

I recognise the Honourable Minister responsible for Education.

**Hon. Tara A. Rivers, Minister of Education, Employment and Gender Affairs:** Thank you, Madam Speaker.

Madam Speaker, I would also like to stand as a Member of the Government and in particular a Member of Cabinet that is bringing this Bill forward on behalf of this Government to commend this Bill to this honourable House.

Madam Speaker, as the Deputy Governor outlined in his contribution on behalf of the Government with respect to the aims and objectives of this Bill, the Government is attempting to address an issue which has been a concern for this community and certainly for this Government for a very long time and since taking office for sure.

Madam Speaker, we have had a number of attempts, I would say, with respect to addressing these issues since taking office. And I rise only to say that the Government hears the concerns, and I am sure the Deputy Governor will speak to this more when he does his wrap up of the Bill, but for the benefit of the listening public and those in the Chamber, we certainly too are concerned about trying to ensure that this Bill has not just the legislative teeth, but the ability to be enforced and enforceable and workable. And so in the context of the broader legislative regime that we have in the Cayman Islands, I know that the Deputy Governor's Office along with the Attorney General's Chambers are diligently working on some amendments to the Bill that is presented in its current form.

Madam Speaker, just to highlight and remind the Members in this honourable House that this has been a concern, the ability for employees to be able to sufficiently voice their reasonable concerns and suspicions with respect to any potential wrongdoing that they may be aware of or become aware of in the course of their duties. These whistleblowing type protections are actually also enshrined in the Draft Labour Relations Bill.

Madam Speaker, whereas the intention of this particular Bill is intended to be the omnibus, the overarching umbrella legislation—the Whistleblower Protection Bill, that is—for matters dealing with whistleblower protection for the relevant disclosures made pursuant to this Bill, the Government in trying to address these concerns as it relates to employees on multiple levels, we saw fit that at the time when the Labour Relations Bill—the Draft Consultation, Madam Speaker, which has only been put out in draft form for public consultation—we felt at that time that it was important to include, even though we knew and we knew that the Whistleblower Protection Bill was in the pipeline, from a timing perspective we were not quite sure which one would make it to the races first, so to speak.

So, Madam Speaker, the decision was taken to include some provisions specifically as it relates to the Labour Law and the Labour Law that is currently in force, of course, which deals only with persons who would be considered non-public servants or civil servants, just in the event that if that Bill would have been ready to move forward prior to the Whistleblower Protection Bill we would have, at least, addressed this concern right off the bat and then looked to make whatever amendments to make sure that the two laws are not in conflict.

So Madam Speaker, we are in the background looking now to see, once we have come forward with the amended version of this particular Bill, taking into consideration the concerns that have been expressed and also taking into consideration the internal kind of cross-referencing and checking amongst the relevant pieces of employment legislation, namely the Labour Law and that of the labour legislation governing the public sector, we will obviously make whatever amendments going forward as necessary to ensure that we do have a regime that is not as administratively cumbersome as it could be if you do not actually contemplate these types of overlaps, but one that, of course, Madam Speaker, as with every piece of legislation (and I say this for the benefit of myself more so than many people I think) it is never possible to get a perfect piece of legislation, no matter how hard you try.

What we are aiming to do is to get a piece of legislation that addresses key concerns that we have known as a result of various reports that have been brought forward through the office of the Complaints Commissioner and otherwise. And also through complaints that have been received to the Department of Labour and Pensions and other relevant labour authorities in the country to try to create a piece of legislation that will address, by and large, these issues in a way that is practical, workable and achieves the goal in trying to minimise the sense of victimisation people would be feeling as a result of fear of coming forward to make disclosures in the interest of good governance or in the interest in curbing wrongdoings that they may be aware of, but for fear of reprisal would otherwise not come forward.

So, Madam Speaker, with those few words I commend this Bill. I commend the Deputy Governor and the Attorney General for taking on board some of the concerns that I had expressed to them in private with respect to the drafting of the Bill in the current form. We look forward to seeing whatever the proposed amendments will be and hopefully we can do so in as expeditious a manner as possible to get this Bill not only passed, but enforced . . . and brought into force, I should say.

With that, thank you very much.

**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 Honourable Deputy Governor if he wishes to exercise his right of reply.

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

Madam Speaker, I just want to thank all of the Members for their contributions and I want to spend a few minutes just to respond to some of the concerns raised and some of the points made.

Madam Speaker, the Member for East End raised a number of issues. He talked about a commencement clause, exactly when this Bill would come into force. Madam Speaker, we do believe—and this has been raised by a number of other Members—in terms of a focus on education for the public on this Bill, so we do not believe that we should rush and do this and put this Bill into effect without the requisite public education. So, we will propose a Committee stage amendment that will allow Cabinet to designate a time for the Bill to come into force after we have done the education campaign. But we are all aware that this is badly needed and I would want to give the House an assurance that we will do this post haste.

Madam Speaker, the Member for East End said he did not support the Office of the Complaints Commissioner being the designated authority. We really do believe that that is the best place for this . . . for the complaints and disclosures to be made. The Office is respected; it is overseen by this House. I can see no reason why we would not want to allow them to carry out this most important duty. I have spoken very briefly with the Acting Commissioner there and they were happy to take on the responsibility.

Madam Speaker, the Member raised the issue of who will defend the whistleblower. Madam Speaker, clause 26 makes it very clear that if a whistleblower spends any money having to . . . as a result of detrimental action taken, that that can be recovered and also to give them full restitution of any loss in relation to their attempts to blow the whistle.

Madam Speaker, we are looking very carefully at the point made in relation to clause 30 in terms of we take the point that we do not want these disclosures to drag on forever. We want [it] to be a comprehensive but swift investigation into these disclosures, so I am discussing with the Attorney General how we can address the concern made by the Member for East End. We have also noted some of the other issues that he has raised in terms of some typos that were in the Bill.

Madam Speaker, the Third Elected Member for West Bay asked a question about whether the Police was covered and yes, they are. This Bill applies to all employees in the Cayman Islands, so yes, the Police would be covered. He also raised a point about the powers of the Governor in relation to this Bill.

Madam Speaker, the role of the Governor here is narrow in that the Governor basically designates the authority to deal with the disclosures, really nothing more than that, and the trust and the responsibility is put in the designated authority for investigating the complaints. But the Governor does have responsibility to also ensure that reports are made and that I will then lay them on the table of this honourable House so that we can have an open and transparent process and persons can see that the law is actually working.

Madam Speaker, I thought that the points made by the Fifth Elected Member for George Town were good as well. He emphasised the need for public awareness and I want to give him that assurance that that is something that is high on our agenda in terms of making sure that the education campaign is comprehensive. This was also echoed by the Second Elected Member for George Town. And I think the point that he made in terms of him having operated such a system but did not have any reports made, also, I think, speaks to the deterrent effect that just passing this Bill can have in that persons now know *I better not do anything because persons will blow the whistle on me*. So I think having this in effect will act as a deterrent and we will be able to, again, like I said, improve good governance and accountability.

Madam Speaker, I want to thank the Minister of Education for all of the helpful comments that she has made and we have had long talks in private and we have taken on board a number of her recommendations and addressed some of her concerns and I want to sincerely thank her for that.

So, Madam Speaker, I believe that we will have some Committee stage amendments. We have taken on board a number of the comments made here by the Members of the House and I want to sincerely thank everyone for their support.

So thank you, Madam Speaker.

**The Speaker:** The question is that the Bill shortly entitled the Whistleblower Protection Bill, 2015, be given a second reading.

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

**Ayes.**

**The Speaker:** I believe the Ayes have it. The Whistleblower Protection Bill, 2015 has been given a second reading.

**Agreed: The Whistleblower Protection Bill, 2015, given a second reading.**

## BILL

### SECOND READING

#### ENDANGERED SPECIES (TRADE AND TRANSPORT) (AMENDMENT) BILL, 2015

**The Clerk:** The Endangered Species (Trade and Transport) (Amendment) Bill, 2015.

**The Speaker:** I recognise the Honourable Minister responsible for the Environment.

**Hon. G. Wayne Panton, Minister of Financial Services, Commerce and Environment:** Thank you, Madam Speaker.

I beg to move the Second Reading of a Bill entitled The Endangered Species (Trade and Transport) (Amendment) Bill, 2015.

**The Speaker:** The Bill has been duly moved. Does the Honourable Minister wish to speak thereto?

**Hon. G. Wayne Panton:** Thank you, Madam Speaker.

Madam Speaker, I am pleased to present this Bill on behalf of the Government. It is a Bill which seeks to address certain deficiencies in the Endangered Species (Trade and Transport) Law, 2004 to bring that law into line with the international CITES [Convention on International Trade in Endangered Species] Convention standards.

Madam Speaker, I think most, or at least some, I should say, of the Members of this honourable House will recall that the Endangered Species (Trade and Transport) Law was passed by this honourable House in 2004, but it was not commenced at that time, I think, because there were a number of actions that needed to be taken prior to actual commencement. The Government at this point prioritised the protection of Cayman's endangered species and there was another imperative which I will get onto, so as a result the Law, the 2004 Law, was commenced by Cabinet on the 1<sup>st</sup> July of this year.

Madam Speaker, just for clarity, the acronym CITES stands for the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the UK's ratification of the CITES Convention was extended to the Cayman Islands in 1979, which means that for some 36 years we have been under an obligation to implement CITES compliant legislation. In March of 2013 there was a meeting of the Conference of Parties to CITES, referred to as the 16<sup>th</sup> Meeting or COP16, and that Conference agreed the parties to CITES with legislation that do not meet the requirements for implementation of CITES and who have been parties for more than five years should enact CITES compliant legislation by the 66<sup>th</sup> Meeting of the CITES Standing Committee. That meeting, Madam Speaker, is scheduled for January of 2016.

The risk in not meeting that requirement, Madam Speaker, is that there may be a recommendation for a suspension in the trade of CITES listed specimens which can lead to international trade restrictions or sanctions.

Madam Speaker, the Cayman Islands currently meets the criteria for Category 2 designation with regard to implementation of CITES compliant legislation. However, pursuant to the COP16 decision we are required to achieve and maintain Category 1, which is fully compliant, in order to avoid this risk of potential sanctions.

In order to achieve this we have had to commence the Law and also complete the following, Madam Speaker:

- We have had to designate the Scientific Authority required by the law;
- Prescribe and implement a permit and certificate system;
- Clarify the control over exports of Appendix III specimens in the Law; and
- Update the Law and Schedule which reflect the CITES Appendices.

Madam Speaker, on the 1<sup>st</sup> of July when Government commenced this Law, all parts of the Law, except for Part IV was commenced. Part IV deals with registration. We have now appointed the Scientific Authority, we have prescribed and implemented our CITES permit system and we have designated our ports of entry and exit for CITES listed plants, animals and other specimens or specimens thereof.

Part IV of the Law dealing with registration and control of local CITES listed plants and animals also increases our ability to track and control local trade in CITES listed species from local breeding or propagation institutions, scientific or otherwise. Even though the registration of the local breeding or propagation institutions is not a core requirement of CITES, the inability to register them under the Law could result in a minor limitation to Cayman's ability to implement CITES completely to the letter of the Convention.

So because of this, Madam Speaker, there is a slight possibility that the UK and/or the CITES Secretariat may require activation of Part IV before Cayman's CITES legislation will be considered Category 1, that is fully compliant with the International CITES Standards. Part IV of the Law, Madam Speaker, is scheduled to be commenced as of the 1<sup>st</sup> of December, so in approximately two weeks.

Given the above comments or the foregoing comments, I should say, Madam Speaker, the only remaining task in the sequence of events that I mentioned as being required to be achieved the Category 1 CITES status is for sections of the Law to be amended in order to update the Law and to include the new CITES listed species in the Schedule which were not listed at the time that the law was passed in 2004.

Madam Speaker, these amendments are not very extensive, nor are they complicated. The amendments basically deal with simplifying and clarifying matters and definitions in the Law in an effort to reduce ambiguity, inconsistency and to ensure that it matches with the internationally recognised CITES Standards.

Clause 2 of the Bill, Madam Speaker, seeks to amend the interpretation section of the principal Law. It provides for a definition of "readily recognisable part, derivative or hybrid" and, additionally, provides additional definitions of "introduction from the sea," "per-

sonal or household effects," "specimen" and "tourist souvenir" or amendments thereto.

Clause 3 of the Bill, Madam Speaker, seeks to amend section 6 of the principal Law to provide that a person does not require a permit or certificate for the import, export or re-export of personal or household effects except where the effects are above the limits set for specified specimens. These include specimens of exported things such as rhino horn or elephant ivory in hunting trophies, caviar, rainsticks, crocodile, queen conch, sea horses, giant clam and specimens of agarwood above the limits set in the legislation.

Madam Speaker, in particular, I draw attention to the reference to queen conch as being one which is certainly important to us. If we are not compliant, for example, with the CITES Convention jewellery, for example, that may be made locally with queen conch shell parts could effectively be prevented from being sold to a tourist who might buy them here visiting the Island and they might not be able to transport those pieces overseas. So that is just a small example of an area in which this can have a significant impact on our local people and local economy.

So Madam Speaker, the idea behind this is really to ensure that we can meet the requirements imposed by the COP16 meeting and the Bill, as presented, seeks to achieve that. In that respect I commend it to this honourable House for passage.

Thank you, Madam Speaker.

**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 Honourable Minister responsible for the Environment, should he wish to reply.

**Hon. G. Wayne Panton:** Madam Speaker, I would just acknowledge the tacit support of the Members of this honourable House and I thank them very much.

**The Speaker:** The question is that a Bill shortly entitled The Endangered Species (Trade and Transport) (Amendment) Bill, 2015, be given a second reading.

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

**Ayes.**

**The Speaker:** The Ayes have it. The Endangered Species (Trade and Transport) (Amendment) Bill, 2015 has been given a second reading.

**Agreed: The Endangered Species (Trade and Transport) (Amendment) Bill, 2015, given a second reading.**

**The Speaker:** I recognise the Honourable Premier.

## ADJOURNMENT

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

Madam Speaker, I move the adjournment of this honourable House until 10:00 am tomorrow, 19<sup>th</sup> November.

**The Speaker:** The question is that this honourable House be adjourned until 10:00 am tomorrow.

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

**Ayes.**

**The Speaker:** The Ayes have it. Accordingly, the House now stands adjourned until 10:00 tomorrow morning.

**At 4:29 pm the House stood adjourned until 10:00 am, Thursday, 19 November 2015.**