

OFFICIAL HANSARD REPORT
MONDAY
6 DECEMBER 2010
9.25 AM
Eighth Sitting

The Speaker: I will call on the Second Official Member responsible for Legal Affairs to say Prayers.

PRAYERS

Hon. Samuel W. Bulgin: Let us pray.

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

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

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

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

The Speaker: Good morning everyone.
 Proceedings are resumed. Please be seated.

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

Apologies

The Speaker: I have apologies for absence from the Honourable Minister of Education, Training and Employment, and the Honourable Minister of District Administration, Works, Lands and Agriculture. I do not have apologies from anyone else.

I would also like to apologise for the late start due to a technical problem this morning, and not really the fault of the Members, but of our operation here.

**STATEMENTS BY
 HONOURABLE MINISTERS
 AND MEMBERS OF THE CABINET**

The Speaker: I have received no Statements by Honourable Ministers and Members of the Cabinet.

GOVERNMENT BUSINESS

BILLS

The Speaker: When we finished the last sitting, we had concluded the Second Reading of the two Bills on the Order Paper, the Dormant Accounts (Amendment) Bill, 2010, and the Tax Concessions (Amendment) Bill, 2010. The House will now go into Committee to consider the Bills.

House in Committee at 9.29 am

COMMITTEE ON BILL

The Chairman: The House is in Committee. Please be seated.

With the leave of the House, may I assume that, as usual, we should authorise the Honourable Second Official Member to correct minor errors and suchlike in these Bills?

Will the Clerk please state the Bill and read the clauses?

Dormant Accounts (Amendment) Bill, 2010

The Clerk: The Dormant Accounts (Amendment) Bill, 2010.

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| Clause 1. | Short title |
| Clause 2. | Amendment of section 2 of the Dormant Accounts Law, 2010 - interpretation |
| Clause 3. | Repeal and substitution of section 4 - dormant accounts |
| Clause 4. | Repeal and substitution of section 5 - notification procedure |
| Clause 5. | Amendment of section 6 - publication of notice |
| Clause 6. | Repeal and substitution of section 7 - transfer and vesting of monies in dormant accounts |

The Chairman: The question is that clauses 1 through 6 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Clauses 1 through 6 passed.

The Clerk:

- Clause 7. Amendment of section 8 - register of dormant accounts
- Clause 8. Amendment of section 9 - claims
- Clause 9. Amendment of section 10 - inspector
- Clause 10. Amendment of section 11- inspection
- Clause 11. Amendment of section 13 - disclosure to the inspector
- Clause 12. Amendment of section 15 - regulations for disclosure
- Clause 13. Insertion of section 17A - declaration by Governor in Cabinet of account provider
- Clause 14. Amendment of principal Law

The Chairman: The question is that clauses 7 through 14 do stand part of the Bill. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Clauses 7 through 14 passed.

The Clerk: A Bill for a Law to amend the Dormant Accounts Law, 2010, to limit the scope of the Law; and to provide for incidental and connected purposes.

The Chairman: The question is that the Title do stand part of the Bill. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Title passed.

Tax Concessions (Amendment) Bill, 2010

The Clerk: Tax Concessions (Amendment) Bill, 2010.

- Clause 1. Short title
- Clause 2. Amendment of part III of the Tax Concession Law (1999 Revision)—exempted companies
- Clause 3. Amendment of section 6—Governor to give undertaking

Clause 4. Amendment of section 7—savings re exemptions

The Chairman: The question is that clauses 1 through 4 do stand part of the Bill. All those in favour, please say Aye.

Mr. D. Ezzard Miller: Madam Chair [*Member's microphone not turned on*]

The Speaker: I am sorry, I missed your—

Mr. D. Ezzard Miller: [*MEMBER'S MICROPHONE NOT TURNED ON*] My apologies, Madam [Chairman], but I have been [INAUDIBLE] and I have some concerns about the use of the word "Governor" in clause 3(a)(i) because the principal Law it is amending defines "Governor in Council" and I have questions that this should be reworded "Governor in Cabinet" and we just [INAUDIBLE] the Bill before us, but if the Attorney General could give me an explanation on that, that I am incorrect and what is here is correct, then I apologise for that, Madam [Chairman].

The Speaker: I am sorry, which clause was that?

Mr. D. Ezzard Miller: Clause 3(a)(i). It says, "[3(a)(i)] by inserting after the words 'any exempted company' the words 'or any other company whose operations the Governor deems to be in the national interest.'"

The legal advice I have been given is that under the new Constitution that came into effect on 6 November [2009], that should be "Cabinet" and not "Governor" because the definition of "Governor" in the principal Law reads "Governor in Council" and that does not exist any more.

The Chairman: Ah—

The Premier, Hon. W. McKeever Bush: Madam Chairman, the principal Law defines "Governor" to be "Governor in Council" which means "Governor in Cabinet." "Council" has been changed to "Cabinet." So, therefore, the Constitution definitely recognises the "Council" to be "Cabinet." Whatever Law reads "Council" since we had a Cabinet, and since the Cabinet was introduced, means "Cabinet."

Mr. D. Ezzard Miller: My understanding of the new Constitution is that we have a Cabinet now in which the Governor is not allowed to vote. And the "Governor" in this instance, I would assume, would mean the Governor in his reserved powers, in his exclusive right. And the conflict that I have there is that the original legislation for this Tax Concession certainly envisages what is now the Cabinet, would have been the Council before, giving this and not the Governor in his reserve powers.

Mr. Alden M. McLaughlin, Jr.: Madam Chairman.

The Chairman: Yes, [Third Elected] Member for George Town.

Mr. Alden M. McLaughlin, Jr.: If I may make this intervention, which I hope will be helpful . . . the change—and it is a significant change, this is not just a matter of semantics—is that under the 1972 Constitution it was the Governor who actually made policy.

Section 7 of the 1972 Constitution subsection (1) provides, Madam Chairman: **“The Governor shall, subject to the following provisions of this section, consult with the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him by the Constitution or by any other law for the time being in force in the Islands, . . .”** And then it goes on to talk about the special responsibilities.

The significant change is that under section 44, and this is quite deliberate and there was significant debate with the FCO over this. Section 44 of the new Constitution transfers responsibility for the formulation of policy from the Governor to the Cabinet. It is no longer the Governor in Cabinet that makes decisions in relation to all matters except those within the Governor’s special responsibility. That is, matters relating to the public service, national security and . . . I have forgotten off the top of my head what the other one is. But that is his responsibility.

Now, section 44(3) of the new Constitution provides that, **“The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government except those matters for which the Governor has special responsibility under section 55, and the Cabinet shall be collectively responsible to the Legislative Assembly for such policies and their implementation.”**

So, the concept of Governor in Cabinet or Governor in Council, which was its forerunner, no longer exists in our Constitutional Law. And we need to ensure that the necessary changes are made to existing legislation and we ought, certainly, not to be amending legislation using the old language of the 1972 Constitution.

Hon. Samuel W. Bulgin: Madam Chair.

The Chairman: Honourable Second Official Member.

Hon. Samuel W. Bulgin: Thank you.

I think the discussion is a little bit different from what I understood it to be. It is not so much the concept of whether it is the Governor in Cabinet or as opposed to what the actual description in legislation should be saying. “Governor” means “Governor in Cabinet.”

My understanding of the new Constitution, Madam Chairman, is that the expression “Governor in Cabinet” is a confluence, if you will, of a couple of sec-

tions in the Constitution itself. Certainly, section 46, which speaks to the office of the Governor and his responsibilities, one of which is that he shall preside over Cabinet.

Section 45 speaks about meetings of Cabinet.

[Inaudible interjection]

Hon. Samuel W. Bulgin: Well, it . . . (*heh, heh*) semantics.

Well, presides over the Cabinet because the Cabinet in itself cannot formulate a policy unless the Governor approves it.

An Hon. Member: No, no, no, no, no, no.

[Inaudible interjections]

Hon. Samuel W. Bulgin: Madam Chair, the five elected Members of Cabinet, unless they want to delegate the person [who] presides, namely the Deputy Governor or the Premier, someone who basically plays the role of the Governor. The Cabinet itself, the five elected Members; if it is going to be a policy that is going to be crystallized under the Constitution [it] requires the imprimatur of whoever presides over the Cabinet. And the Constitution contemplates . . . it does not say “may” it says “. . . **shall, so far as is practicable, . . . preside**” over the Cabinet.

[Inaudible interjection]

Hon. Samuel W. Bulgin: So, the real issue here is whether the legislation should say, “Governor in Cabinet” or “Cabinet” or some other nomenclature.

My view is that constitutionally it does not make much of a difference. Having said that, if it is that it is more palatable . . . and you know, I was not aware that this was going to be discussed this morning. I think, now that I am thinking about it, there might have been a Constitutional amendment where the expression was formerly recognised. I think. It was “Governor in Council” or “Governor in Cabinet.”

But, maybe the best that I can do is to undertake to have a look at it and report back to the House on Thursday, or whenever next we meet about it. But my view is that the legislation itself, if it speaks to “Governor” or “Governor in Cabinet” as long as “Governor” is defined in the legislation to make it quite clear that it is not one of those that falls within his reserve powers, then it certainly does not, in my view, vitiate what is being proposed.

So, it may very well be, Madam Chair, that we might want to take a second look at the meaning of the expression itself in the context of legislation. But, again I mention that usually legislation, as in this case, would make it quite clear in the definition section that when it says “Governor” it means the Governor presiding at Cabinet. So, it is really a combination of the

Governor and the elected Members that would have formulated that particular policy.

[Inaudible interjections]

Mr. Alden M. McLaughlin, Jr.: Madam Chairman, if I might just say this, then I will shut up and the Government can do what it wants after that.

But, Madam Chair, I think that everyone in this House is aware that I was at the core of the Constitutional reform process. This issue . . . this issue . . . it is a fundamental issue. It is a fundamental issue and one of which we did much battle with the United Kingdom because it required acceding of authority from the Governor to the elected Government. And to continue with the Colonial vestige—

[laughter from the Premier]

Mr. Alden M. McLaughlin, Jr.: —of Governor in Cabinet—

[laughter from the Premier]

Mr. Alden M. McLaughlin, Jr.: —is to move the country back to where we were before.

Aside from that, Madam Speaker, I believe it would be not only a constitutional anachronism but actually constitutionally wrong. The concept of Governor in Cabinet no longer exists. The reason is that the Governor, under the 1972 Constitution, was the sole maker of policy.

The Premier, Hon. W. McKeeva Bush: Ah—

Mr. Alden M. McLaughlin, Jr.: Cabinet advised the Governor and the Governor took their advice. But the Governor made policy.

Under section 44 of the new Constitution, it is the Cabinet that makes policy. And that is quite clear. I do not need to read the section again. It is section 44(3).

Madam Chair, it is not a situation where the Governor does anything but preside at Cabinet. He does not preside “over” Cabinet. The Deputy Governor has no standing. The Governor cannot delegate the responsibility of Chairmanship to the Deputy Governor, a clear indication of the shift. It is the Premier, in the absence of the Governor, who chairs Cabinet.

This is a fundamental issue—

The Premier, Hon. W. McKeeva Bush: It is; very much so.

Mr. Alden M. McLaughlin, Jr.: —it is not semantics. And we cannot allow this anachronism to continue because if we do so we are going counter to the Constitution, counter to the advances which were fought for and obtained with the FCO and, while I can understand why there would be concerns at the official level

about this, this is the effect of the new Constitution, and it is the effect that was fought for and achieved. And this House ought not, and the Government ought not, to let the Attorney General, or anyone else take us back to where we were.

[Laughter]

The Premier, Hon. W. McKeeva Bush: I would advise the Attorney General not [to take] us back to where we were *[laughing]* but, Madam Chairman, I rather like the argument given by the Third Elected Member for George Town this morning, that we do not want to turn back the clock for anything in this world. And maybe they should expound upon that a little bit more so that some people do understand the authority that the elected Cabinet has in the country.

[Inaudible interjections]

The Premier, Hon. W. McKeeva Bush: As a Cabinet, the Governor sits as chairman. When the Governor is not there, the Deputy Governor sits—

[Inaudible interjections]

Mr. V. Arden McLean: Madam Chair, under 46 (1) and (2) . . . if I may, under 46(1) and (2)—

[Inaudible interjection]

Mr. V. Arden McLean: No, no, he cannot even as Acting Governor . . . Madam Chair, 46(1) and (2) is very specific.

The Premier, Hon. W. McKeeva Bush: Well, the question they would pose is: When would he not be the Acting Governor? He would have to be the Acting Governor in the absence of the Governor.

Hon. Samuel W. Bulgin: Madam Chair, just a matter of clarification.

The Chairman: Yes.

Hon. Samuel W. Bulgin: I think what is intended and what is hoped, and what is in the Constitution are two different things.

The Chairman: Ah—

Hon. Samuel W. Bulgin: He is correct, that the Constitution does speak to the Governor. But section 124 of the Constitution makes it quite clear that the Governor in the Constitution means the Governor or the person performing that duty in the absence of the Governor. And it is usually the Deputy Governor.

The Premier, Hon. W. McKeeva Bush: Yes.

Hon. Samuel W. Bulgin: So, section 124 makes it quite clear that the duty of the Governor collapses or is devolved to the Deputy Governor in those circumstances and he presides at or over Cabinet. I am not going to quarrel with whether it should be “at” or “over.” But, but . . . [*chuckles*]

[*Inaudible interjection*]

Mr. D. Ezzard Miller: Madam Chair, I am grateful for the Constitutional discourse—

Hon. Samuel W. Bulgin: It is a throwaway [inaudible] right?.

Mr. D. Ezzard Miller: —but I should—

Hon. Samuel W. Bulgin: But the point is that (sorry, Mr. . . .) what probably was intended or hoped is not what has been reflected in the Constitution itself. And, like the Honourable Member, I was at one of the meetings when this issue was ventilated exhaustively and the person who had lead responsibility for the UK made it quite clear that that was what was intended—that the Deputy Governor would preside in such circumstances.

Mr. D. Ezzard Miller: Anyway, Madam Chair, to get back to the fundamental question that I asked . . . it is a simple question. Does it remain “Governor” in the draft Bill, or do we want to amend the definition of the Law to say “Governor in Cabinet” as we just did in the Dormant Accounts?

I do not see the point of continuing to write things that do not exist in legislation.

The Premier, Hon. W. McKeever Bush: Madam Chairman, I quite understand what the Member for North Side is asking. The principal Law says, “Governor means the Governor in Council”, which is now Governor in Cabinet. That is the principal Tax Concession Law.

What has been said here this morning is that “Governor” means the “Governor in Cabinet”, has now been changed. It has also been said that the elected Government is completely responsible for policy. But as a Cabinet are we still not advising the Governor?

Mr. Alden M. McLaughlin, Jr.: No, no. Constitutionally, no!

The Premier, Hon. W. McKeever Bush: Oh.

[*Inaudible interjection*]

The Premier, Hon. W. McKeever Bush: Madam Chair, as I said, what I will tell the Opposition is that they should say that on their morning show because it is something that —

[*Inaudible interjection*]

The Premier, Hon. W. McKeever Bush: Well, it is an issue!

[*Inaudible interjection*]

The Premier, Hon. W. McKeever Bush: It is an issue.

The issue is that if the Governor does not agree, he is doing what he did in the 1972 Constitution; he goes to London and says, “I do not agree with this” and he comes back and tells us what the Secretary of State says.

That is the way we are operating under, I can tell you.

[*Inaudible interjection*]

Hon. Samuel W. Bulgin: Madam Chair, just to confirm that that is how it operates. It still says the recommendation is still to the Governor—

The Premier, Hon. W. McKeever Bush: Yes!

Hon. Samuel W. Bulgin: —and the Governor approves or disapproves as the case may be on the Cabinet paper—

The Premier, Hon. W. McKeever Bush: Yes!

Hon. Samuel W. Bulgin: —and if he disapproves, he does a referral to the Secretary of State. But he does approve.

The Premier, Hon. W. McKeever Bush: Well, I can tell you a lot of things would have been moving ahead much faster if I never had to go through all of this, I can tell you!

[*Inaudible interjections*]

The Premier, Hon. W. McKeever Bush: Well, the Governor . . . it is a good thing that we have a Governor who is very cooperative. He is trying to work with us. But as I said, the points made by the [Third Elected] Member for George Town, are well taken. This is probably one time that I really want to take his advice. Mind you, I take it under serious caution, but I take it!

[*Laughter*]

The Premier, Hon. W. McKeever Bush: I take it!

[*inaudible interjection*]

The Premier, Hon. W. McKeever Bush: And I think out of an abundance of caution, if the Attorney General [does] find it not necessary, I would change it to say “Cabinet.” I do not know—

[*Inaudible interjections*]

The Premier, Hon. W. McKeever Bush: Well, I never came here with any . . . and I did not say my prayers last night or this morning believing that I was going to change the minds of the Opposition to vote with me. No. I asked God to guide them and I hope He does, because what we are doing is right.

So, Madam Chairman, if Members will agree, I will change that because I do not think the AG is saying much different than what I am saying.

The Chairman: Second Official Member.

Hon. Samuel W. Bulgin: Usually, I like to preserve my position on these matters, Madam Chair. So it is just subject to my confirming that it is in order for it to properly represent to it as such, in the legislation – that is Cabinet.

My understanding is that if it is Cabinet, it is Cabinet as presided over by the Governor or such other person contemplated to preside in the absence of the Governor as stipulated under the Constitution.

The Chairman: What is the definition of “Cabinet” in the Constitution?

[Inaudible interjections]

The Premier, Hon. W. McKeever Bush: Madam Chair, what I suggest is that we take five minutes, get the Clerk to do that amendment, and . . . yes, I think we will probably need about five minutes if the Clerk could get it done.

I am wondering if we cannot do it as a consequential amendment.

The Chairman: I would not agree for a consequential amendment because it can have far-reaching possibilities. I would prefer it to be done as a proper amendment.

The Premier, Hon. W. McKeever Bush: If we take five minutes, Madam Chairman.

The Chairman: Can we suspend the proceedings for 10 minutes, because it takes time to get my staff organised.

Proceedings suspended at 9.55 am
Proceedings resumed at 10.12 am

The Speaker: Proceedings are resumed, please be seated.

We will now continue the business of the House in Committee.

COMMITTEE ON BILL

Tax Concessions (Amendment) Bill, 2010
(Resumed)

The Chairman: Proceedings are resumed, please be seated.

When we took the suspension of the Committee proceedings, there was a question raised by the Member for North Side, which is a constitutional question. And, in view of sections 43(1) and (2) of the Cayman Islands Constitution Order, I think we need to have this process properly defined so that as we continue to revise legislation over the next three years that this House is in existence, or two years, that we can get the matter correct. So I am going to call on the Attorney General to do some research on the subject and I am going to suspend the Committee proceedings on this Bill until this matter has been resolved. I think we will be coming back to the House on Thursday.

That leaves us just the Dormant Accounts (Amendment) Bill, 2010, which we have concluded. So we'll conclude the Committee proceedings for this morning, and resume again on Thursday. We will now report back to the House on the Dormant Accounts (Amendment) Bill, 2010.

The question is that the Dormant Accounts (Amendment) Bill, 2010, be reported to the House. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Dormant Accounts (Amendment) Bill, 2010 to be reported to the House.

The Chairman: The House will resume.

House resumed at 10.16 am

The Speaker: Proceedings are resumed, please be seated.

REPORT ON BILL

Dormant Accounts (Amendment) Bill, 2010

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeever Bush: Thank you, Madam Speaker.

I have to report that a Bill for a Law to amend the Dormant Accounts Law, 2010, to limit the scope of the Law; and to provide for incidental and connected purposes, was examined by a Committee of the whole House [and passed] without amendment.

The Speaker: The Bill has been duly reported and is set down for Third Reading.

THIRD READING

Dormant Accounts (Amendment) Bill, 2010

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeever Bush: Thank you, Madam Speaker.

I move that the Dormant Accounts (Amendment) Bill, 2010, be given a third reading and passed.

The Speaker: The question is that a Bill shortly entitled Dormant Accounts (Amendment) Bill, 2010, be given a third reading and passed.

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

Ayes.

The Speaker: The Ayes have it. The Dormant Accounts (Amendment) Bill, 2010, has been given a third reading and passed.

Ayes.

Agreed: Dormant Accounts (Amendment) Bill, 2010, read a third time and passed.

The Speaker: There is no further business on the Order Paper for today. It is my understanding that the House will resume on Thursday morning at 10 o'clock. Can I have a motion for the adjournment, please, Mr. Premier?

ADJOURNMENT

The Premier, Hon. W. McKeever Bush: Thank you, Madam Speaker.

We propose to adjourn the House and resume on Thursday at 10.00 am. And we will have the Evidence Bill, the Health Practitioners Bill. And the District Councils Bill has the required number of days on Friday. Members can decide whether they want to take the Bill Thursday or wait until Friday. But in any event, the House resumes on Thursday, 9 December.

The Speaker: The question is that this House do adjourn until 10 o'clock on Thursday morning.

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

Ayes.

The Speaker: The Ayes have it.

At 10.20 am the House stood adjourned until Thursday, 9 December 2010, at 10.00 am.

