



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2012/13 SESSION

19 November 2012

Eighth Sitting of the Second Meeting

(pages 419–442)

**Hon Mary J Lawrence, MBE, JP
Speaker**

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PRESENT WERE:

THE SPEAKER

Hon Mary J Lawrence, MBE, JP.
Speaker of the Legislative Assembly

MINISTERS OF THE CABINET

Hon W McKeeva Bush, OBE, JP, MLA	<i>The Premier</i> , Minister of Finance, Tourism and Development
Hon Juliana Y O'Connor-Connolly, JP, MLA	<i>The Deputy Premier</i> , Minister of District Administration, Works, Lands and Agriculture
Hon Rolston M Anglin, JP, MLA	Minister of Education, Training and Employment
Hon Michael T Adam, MBE, JP, MLA	Minister of Community Affairs, Gender and Housing
Hon J Mark P Scotland, JP, MLA	Minister of Health, Environment, Youth, Sports and Culture

OFFICIAL MEMBERS OF THE CABINET

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

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Hon Cline A Glidden, Jr, MLA	<i>Deputy Speaker</i> , Third Elected Member for West Bay
Capt A Eugene Ebanks, JP, MLA	Fourth Elected Member for West Bay
Mr Ellio A Solomon, MLA	Fourth Elected Member for George Town
Mr Dwayne S Seymour, MLA	Third Elected Member for Bodden Town

OPPOSITION MEMBERS

Hon Alden M McLaughlin, MBE, JP, MLA	<i>Leader of the Opposition</i> , Third Elected Member for George Town
Hon D Kurt Tibbetts, OBE, JP, MLA	First Elected Member for George Town
Mr Anthony S Eden, OBE, JP, MLA	Second Elected Member for Bodden Town
Mr V Arden McLean, JP, MLA	Elected Member for East End

INDEPENDENT MEMBER

Mr D Ezzard Miller, JP, MLA	Elected Member for North Side
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APOLOGIES

Mr Moses I Kirkconnell, JP, MLA	First Elected Member for Cayman Brac and Little Cayman
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OFFICIAL HANSARD REPORT
SECOND MEETING 2012/13 SESSION
MONDAY
19 NOVEMBER 2012
11.32 AM
Eighth Sitting

The Speaker: Good morning everyone.

We will have prayers this morning by the Fourth Elected Member for George Town.

PRAYERS

Mr. Ellio A. Solomon, Fourth Elected Member for George Town: 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: Please be seated. Proceedings are resumed.

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

Apologies

The Speaker: I have only one announcement. There is an apology for absence from the First Elected Member for Cayman Brac and Little Cayman.

**PRESENTATION OF PAPERS
AND OF REPORTS**

**Portfolio of Finance and Economics Financial
Statements for years ended 30 June 2009 and
2010**

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeeva Bush: I beg to lay on the Table of this honourable House the Financial Statements of Portfolio of Finance and Economics for the years ended [30 June 2009](#) and [30 June 2010](#).

The Speaker: So ordered.

Does the Honourable Minister wish to speak thereto?

[No audible reply]

**Government of the Cayman Islands Portfolio of
the Civil Service Annual Report for year ended 30
June 2010**

**Government of the Cayman Islands Portfolio of
the Civil Service Annual Financial Statements for
year ended 30 June 2011**

The Premier, Hon. W. McKeeva Bush: Honourable Deputy Governor.

The Deputy Governor, Hon. Franz Manderson: Good morning. Thank you.

Madam Speaker, I beg to lay on the Table of this honourable House the Government of the Cayman Islands Portfolio of the Civil Service Annual Report for the year ended [30 June 2010](#) and the Government of the Cayman Islands Portfolio of the Civil Service Annual Financial Statements for year ended [30 June 2011](#).

The Speaker: So ordered.

Does the Honourable Member wish to speak thereto?

The Deputy Governor, Hon. Franz Manderson: No Ma'am.

**Annual Reports of Cabinet Office Cayman Islands
Government for the 2005/6, 2006/7, 2007/8, 2008/9**

Financial Years, and for the year ended 30 June 2010

**Government of the Cayman Islands Cabinet Office
Financial Statements for the year ended 30 June 2011**

The Speaker: Honourable Premier.

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

I beg to lay on the Table of this honourable House the Annual Report of Cabinet Office Cayman Islands Government for the financial [years 2005/6](#), [2006/7](#), [2007/8](#), [2008/9](#) and years ended 30 June 2010 and the Financial Statements for the year ended 30 June 2011. Six reports, Madam Speaker.

The Speaker: So ordered.

Does the Honourable Minister wish to speak thereto?

The Premier, Hon. W. McKeeva Bush: No, Madam Speaker. Thank you.

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

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

GOVERNMENT BUSINESS

BILLS

Suspension of Standing Order 46(1) and (2)

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeeva Bush: Madam Speaker, I move for the suspension of Standing Order 46(1) and (2) to enable the Companies (Amendment) (No. 3) Bill, 2012, to be read a first time.

The Speaker: The question is that Standing Order 46(1) and (2) be suspended to enable the Companies (Amendment) (No. 3) Bill, 2012, to be read a first time.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: Standing Order 46(1) and (2) suspended.

FIRST READING

Companies (Amendment) (No. 3) Bill, 2012

The Clerk: First Reading. The Companies (Amendment) (No. 3) Bill, 2012.

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

Suspension of Standing Order 46(4)

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeeva Bush: Madam Speaker, I move for the suspension of Standing Order 46(4) to enable the Companies (Amendment) (No. 3) Bill, 2012, to be read a second time. The Bill is standing in my name, Madam Speaker.

The Speaker: The question is that Standing Order 46(4) be suspended to enable the Companies (Amendment) (No. 3) Bill, 2012, to be read a second time.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: Standing Order 46(4) suspended.

SECOND READING

Companies (Amendment) (No. 3) Bill, 2012

The Clerk: Second Reading. The Companies (Amendment) (No. 3) Bill, 2012.

The Speaker: Honourable Premier.

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

I beg to move the Second Reading of a Bill entitled the Companies (Amendment) (No. 3) Bill, 2012.

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

The Premier, Hon. W. McKeeva Bush: Madam Speaker, thank you very much.

As part of the revenue measures included in the 2012/13 Budget, this amendment increases the annual fee payable by a non-resident company, other than an exempted company, by \$100. The revenue from this measure is expected to yield roughly \$840,000 this fiscal year.

Madam Speaker, the detailed amendments that are now being proposed in the Companies (Amendment) (No. 3) Bill, 2012, are as follows:

Clause 1 provides the short title.

Clause 2 amends Part II, paragraph (a) of Schedule 5, such that the annual fee payable is 1) \$675 in the case of a non-resident company with no registered capital, or a registered capital not exceeding \$42,000; and 2) \$915 in the case of a non-resident company with registered capital exceeding \$42,000.

Madam Speaker, this concludes what I have to say on this Bill.

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

If not, Honourable Premier, would you please conclude your debate.

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

Just to thank Members for their silent support.

The Speaker: The question is that a Bill shortly entitled the Companies (Amendment) (No. 3) Bill, 2012, be given a second reading.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: The Companies (Amendment)(No. 3) Bill, 2012, given a second reading.

The Speaker: The House will now go into Committee to consider the Bill.

House in Committee at 11.45 am

[Hon. Mary J. Lawrence, Chairman]

COMMITTEE ON BILL

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

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

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

Companies (Amendment) (No. 3) Bill, 2012

The Clerk: The Companies (Amendment) (No. 3) Bill, 2012.

Clause 1 Short title

Clause 2 Amendment of Schedule 5 of the Companies Law (2012 Revision)– Fees

The Chairman: The question is that clauses 1 and 2 do stand part of the Bill.

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

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 1 and 2 passed.

The Clerk: A Bill for a Law to amend the Companies Law (2012 Revision) to increase the annual fee payable by a non-resident company other than an exempted company; and 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.

Agreed: Title passed.

The Chairman: The question is that the Bill be reported to the House.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: Bill to be reported to the House

The Chairman: The House will now resume.

House resumed at 11.47 am

The Speaker: Please be seated.

Report on Bill.

REPORT ON BILL

Companies (Amendment) (No. 3) Bill, 2012

The Clerk: The Companies (Amendment) (No. 3) Bill, 2012.

The Speaker: Honourable Premier.

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

I have to report that the Companies (Amendment) (No. 3) Bill, 2012, was examined in committee of the whole House [and passed] without amendment.

The Speaker: The Bill has been duly reported and is set down for a third reading.

Suspension of Standing Order 47

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeever Bush: Suspension of Standing Order 47 (to enable the Companies (Amendment) (No. 3) Bill, 2012, to be read a third time)

The Speaker: The question is that Standing Order 47 be suspended to enable the Companies (Amendment) (No. 3) Bill, 2012, to be read a third time.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: Standing Order 47 suspended.

THIRD READING

Companies (Amendment) (No. 3) Bill, 2012

The Clerk: The Companies (Amendment) (No. 3) Bill, 2012.

The Speaker: Honourable Premier.

The Premier, Hon. W. McKeever Bush: Madam Speaker, thank you. I beg to move that the Companies (Amendment) (No. 3) Bill, 2012, be given a third reading and passed.

The Speaker: The question is that a Bill shortly entitled the Companies (Amendment) (No. 3) Bill, 2012, be given a third reading and passed.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: Companies (Amendment) (No. 3) Bill, 2012, given a third reading and passed.

OTHER BUSINESS

PRIVATE MEMBERS' MOTIONS

Private Member's Motion No. 1/2012-13—Anti-Trust Legislation

The Speaker: Third Elected Member for Bodden Town.

Mr. Dwayne S. Seymour, Third Elected Member for Bodden Town: Thank you, Madam Speaker.

Madam Speaker, Private Member's Motion No. 1/2012-13—Anti-Trust Legislation:

BE IT THEREFORE RESOLVED THAT the Government considers Anti-Trust Legislation.

The Speaker: Thank you.

Is there a seconder for this Motion?

Hon. Cline A. Glidden, Jr., Third Elected Member for West Bay: Yes, Madam Speaker, I am pleased to be able to second this Motion.

The Speaker: [Thank you] Honourable Third Elected Member for West Bay.

The question is: BE IT THEREFORE RESOLVED THAT the Government considers Anti-Trust Legislation.

The Motion is now open for debate. Does the mover wish to speak thereto?

Mr. Dwayne S. Seymour: Yes, Madam Speaker, thank you.

Madam Speaker, even before being elected I heard the cries and pleas from some Caymanians who were concerned about what the giants were doing with their businesses. I want to thank the Third Elected Member for West Bay, the Deputy Speaker, Honourable Cline Glidden, for seconding this Motion. He too understands and will eloquently contribute as soon as I sit.

Madam Speaker, anti-trust legislation is defined as legislation designed to break up the existing monopolies and prevent the formation of new monopolies to increase competition and societal welfare. The law would be intended to promote free competition in the marketplace and, again, by outlawing monopolies.

Madam Speaker, after doing some research looking at the US Antitrust legislation,¹ "[US antitrust legislation](#), or "competition law" focuses on three kinds of activities discouraging to competition: monopoly, mergers and acquisitions [M&A], and price fixing. Monopolies and M&As are both regulated to keep companies from becoming too large or too powerful within a single or a few industry sectors. [M&A] activity is particularly worth noting: many industries have been undergoing a phase of general consolidation in the past few

¹ From <http://www.wikinvest.com/concept/Antitrust>

years.” And, Madam Speaker, “[p]rice fixing is also carefully watched to prevent some companies from gaining an ‘unfair’ advantage; antitrust lawsuits in this category tend to target cartels (groups of nominally independent companies that try to artificially establish relatively high prices by agreement across a number of market players).”

Madam Speaker, as I looked a little further at the US antitrust laws, and also went across to check out some of the European Commission antitrust laws and some of their regulations brought in Brussels in 2011, this seems to be a major problem all over the world. We can see why the legislators of these countries took these antitrust laws so seriously to ensure that laws were put in place to protect consumers and small businesses.

The United States antitrust law is a body of laws that prohibit anti-competitive behavior (monopolization) and unfair business practices. Antitrust laws are intended to encourage competition in the marketplace. These competition laws make illegal certain practices deemed to hurt businesses or consumers or both, or generally to violate standards of ethical behavior. Government agencies known as competition regulators, along with private litigants, apply the antitrust and consumer protection laws in hopes of preventing market failure.

Madam Speaker, the term “antitrust” was originally formulated to combat corporate trusts, which were big businesses. Other countries use the term “competition law.” Many countries including most of the Western world have antitrust laws of some form. For example, the European Union has provisions under the Treaty of Rome to maintain fair competition, as does Australia under its Competition and Consumer Act 2010.

Madam Speaker, we can only look at some of the local challenges that we have here in the Cayman Islands. We can look at the fuel companies and the struggles that owners of local gas stations have had. We have companies on this Island that control every aspect of wholesale and retail. And, Madam Speaker, ²“[Consumer Protection Laws seek to regulate certain aspects of the commercial relationship between consumers and business, such as by requiring minimum standards of product quality, requiring the disclosure of certain details about a product or service with regard to cost, or implied warranty, prohibiting misleading advertising, or prescribing financial compensation for product liability. Consumer protection laws are distinct from antitrust. Some consumer protection laws are enforced by the U.S. Federal Trade Commission, which also has anti-trust responsibilities. However, many competition agencies—including the Justice Department antitrust division and the European Commission Directorate General for](http://en.wikipedia.org/wiki/United_States_antitrust_law)

competition—lack authority over consumer protection.”

Madam Speaker, the rationale is that the “[a]ntitrust laws prohibit agreements in restraint of trade, monopolization and attempted monopolization, anticompetitive mergers and tie-in schemes, and, in some circumstances, price discrimination in the sale of commodities.”

“**Monopolization and attempted monopolization are offenses that may be committed by an individual firm, even without an agreement with any other enterprise. Unreasonable exclusionary practices that serve to entrench or create monopoly power can therefore be unlawful. Allegations of predatory pricing by large companies can be the basis for a monopolization claim, but it is difficult to establish the required elements of proof. Large companies with huge cash reserves and large lines of credit can stifle competition by engaging in predatory pricing; that is, by selling their products and services at a loss for a time,**” [as we have seen] **“in order to force their smaller competitors out of business. With no competition, they are then free to consolidate control of the industry and charge whatever prices they wish. At this point, there is also little motivation for investing in further technological research, since there are no competitors left to gain an advantage over.**

Madam Speaker, that point is so important that I would love for the House to allow me to reiterate. This is very serious, and we really need to consider at this time about doing something in this country to protect our people. **“With no competition, they are then free to consolidate control of the industry and charge whatever prices they wish.”**

Madam Speaker, some may not . . . and I am surprised that something like this was not brought to the House long before this time because we see the type of monopolies and takeovers that are happening in Cayman today. I only mentioned one such monopoly in my mind (I stand to be corrected), but I just mentioned the fuel companies. But I am sure there are many. And as my colleagues get up to speak, I am sure they will be able to offer some contribution on the line of what I am speaking.

Madam Speaker, as I close and allow other Members to give a contribution, while asking the Government to consider this legislation I want us to be reminded of why this Motion was brought forward: to ensure that we break up existing monopolies, to prevent the formation of new monopolies, to increase competition and to ensure that however the law is written, it is intended to promote free competition in the marketplace by outlawing monopolies.

Madam Speaker, I thank you and ask the Government to consider this antitrust legislation. Thank you.

² From http://en.wikipedia.org/wiki/United_States_antitrust_law

The Speaker: Thank you, Third Elected Member for Bodden Town. Does any other Member wish to speak? Does any other Member wish to speak?

Third Elected Member for West Bay.

Hon. Cline A. Glidden, Jr.: Thank you, Madam Speaker.

Madam Speaker, first of all I want thank my colleague, the Third Elected Member for Bodden Town who has again in his short time here brought a very timely motion, as he always does, which will be in the best interests of the people who we are so pleased and privileged to be able to represent.

Madam Speaker, based on my colleague's comments, which I think he has done a great job of providing as a background and the thought process associated with this bringing of the Motion, I will just try to complement with a few remarks. I will start by looking at the historical position of Cayman where we end up having a situation that we have had a very strong middle class mainly because the wealth was brought from our forefathers going off the sea. There was very little industry in Cayman and so they would leave, go off and work at sea and send money home.

So everyone was pretty much at a very similar level. We can see, even when we looked at the type of taxation, the base that we had, it was based on a consumption-based tax because we really didn't have a situation with significant disparity between the wealth, between the rich and the poor. So, while we hear the discussion about charging higher taxes for those that are making more, in the Cayman of old we had a situation where there was very similar wealth distribution, hence, a very strong middle class.

But, Madam Speaker, what we see now is a greater disparity, and we are starting to get, both from the salaries, a great disparity. And when we start talking about wealth we now have Caymanians who have significant power as far as ownership. And we see people being able to own, straight from manufacturing right down to the retail operations. We have examples of that in liquor and in other items that are coming forward. The concern now has to be similar to what we have seen addressed in the rest of the more modern democracies where there is some level of protection to ensure that existing systems controlled by one individual owning the factories to the wholesalers, down to the distributors and down to the retailers, that it is not at the detriment to the smaller operations (the mom and pop operations), or even, as my colleague mentioned earlier on, in an anti-competitive way where we can end up monopolising the industry to the detriment of the consumer.

And so, Madam Speaker, based on that changing of position, as my colleague rightly said, it has been recognised that we now need to look at modernising the protection that is afforded while supporting the free enterprise system, but offering a level of protection to try to keep as fair as possible a level

playing field to allow the companies and the small entrepreneurs that might not have the same access to wealth to be still allowed to participate in our economy. We need to encourage the small Caymanian who wants to open a store. We need to celebrate those that come to our shores or that grow and have significant wealth. But what we want to be able to do is have a balance that allows the smaller operator that has to necessarily buy from its retailer competitor . . . so we have a retail store that has to buy from a wholesaler who might also be in the same business. And the concern would be that with being able to give an unfair advantage and being able to purchase from the wholesaler at a cheaper price that it would make it real hard for that existing retail business to be in place.

Madam Speaker, like I said, this is not strange. Other countries have recognised that. We see in the US we have (I guess it's pretty famous now) the Sherman Antitrust Act. In reading, "**The purpose of the ³[Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself. This focus of U.S. competition law, on protection of competition rather than competitors, is not necessarily the only possible focus or purpose of competition law.**" If we also look at an example, ". . . it has also been said that competition law in the European Union (EU) tends to protect the competitors in the marketplace, even at the expense of market efficiencies and consumers."

Madam Speaker, the concern would be that if you want to protect . . . when we talk about failure of the free market, based on the free market, there is an expectation that there is a certain level of competition in the free market which on the end works for the protection of the consumer. However, if you end up altering that competition in some way by removing it or making it real difficult for the competitors to continue to operate, then you end up with a flawed market and a failure of the market.

- More relevant to the Cayman Islands, Madam Speaker, would be the [European Union Competition Law which](#) ". . . arose out of the desire to ensure that the efforts of government could not be distorted by corporations abusing their market power. Hence under the treaties are provisions to ensure that free competition prevails, rather than cartels and monopolies sharing out markets and fixing prices. Competition law in

³ From

http://en.wikipedia.org/wiki/Sherman_Antitrust_Act#cite_note-Cseres2005-8

the European Union is largely similar and inspired by United States antitrust.

- **Cartels, or control of collusion and other anti-competitive practices that affect the E[uropean] U[nion]. This is covered under Articles 101 of the Treaty on the Functioning of the European Union (TFEU).**
- **Monopolies, or preventing the abuse of firms' dominant market positions.**
- **Mergers, control of proposed mergers, acquisitions and joint ventures involving companies that have a certain, defined amount of turnover in the European Union. [This] is governed by the Council Regulation."**

Madam Speaker, my colleague mentioned earlier when he talked collusion and cartels, and as has been suggested many times on the floor of the Legislative Assembly, we could even refer to things such as the banking system that we have as a level of collusion when we look at interest rates. And I know my colleague, the Second Elected Member for West Bay, made a very passionate speech regarding the whole interest rate issue many years ago when he was a rookie in here. And I know that caused some ripples through the industry, but the situation where we have, again, what would be seen as a lack of competition. So, we have a grouping where the banks will not only adjust interest rates together, but actually advertise those adjustments together. And in other parts of the world, that would be seen as collusion and a mentality that would not necessarily be fair operation of the marketplace working for the benefit of the consumer.

So, Madam Speaker, the fact that we have now reached a place or a time in our development we should be recognising that we should have a further look at the industries that could be affected and be detrimental to the consumers basically anticompetitive practices, collusion, and the Government is being asked to look at the potential legislation necessary to, first of all, identify and see if there is an issue, and what can be done to address that issue.

Madam Speaker, I know we have had similar motions come to the Legislative Assembly in the past. There has been a discussion, and as time has moved on we have seen more and more examples of businesses that are finding it hard to compete, basically, because the playing field is not a level playing field. Obviously, in challenging economic times, people are going to struggle with business for various reasons. But it's important that as a country we make sure that we have a system that would encourage entrepreneurs to come forward to start businesses and to work hard at making a business successful. And it's our responsibility, Madam Speaker, to ensure that every opportunity is provided for them and for them to be protected even if they don't have the same level of

capital or access to that capital as some of the other larger entities or people may have.

So, Madam Speaker, with those few remarks, I am pleased to be the seconder of what I see is a very important Motion. I join with my colleague in asking the Government for its favourable consideration.

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

Minister of Education.

Hon. Rolston M. Anglin, Minister of Education, Training and Employment: Thank you, Madam Speaker.

This Motion and the mover and seconder ought to be commended for bringing it, because there are many in our community who will quickly say that we need to do something, but it seems as though whenever legislators seek to do something, we get the criticisms that go along with it. This is not the first time this matter has been debated in this House, however, I believe it to be timely, given the fact that our markets in Cayman continue to go through waves of consolidation.

Madam Speaker, generally speaking, in larger countries where there is enhanced capacity for different numbers of players to exist at the production, wholesale, distribution and retail end of most industries, market forces can keep business and businesses in check. In other words, if I am a retailer who sells product X and there are already a number of distributors of that particular product available, usually I would find that when I go to try and acquire that product to sell in my retail establishment I can have a choice and make decisions around price, customer service, and anything else that would make sense and be relevant to me.

Even with that, we see in the global economy, large countries where you would think that the market forces would govern anticompetitive behaviour. In those countries even they have to go down that road because of oligopolies developing and collusive practices emanating as the market unfolds. We are used to concentrating on monopolies in Cayman because we have a few examples of those. However, where there are a relatively small number of players in the market who can "control" the market, you can still wind up in a monopolistic type situation. That is, the end result winds up looking very much like a monopoly.

Madam Speaker, in a small economy . . . and we need to continue to remember just how small our economy is. Fifty-five thousand people is extremely small. And so, given the fact that we have an extremely small economy to serve, there are many areas that market forces may not be as competitive as one would like. So businesses naturally react by not necessarily having any formal collusive practices, be-

cause I think we need to ensure that we clearly understand that. Collusion doesn't necessarily mean that you have to be in the back of a dark, smoky room making business decisions one company to the other saying, *I am going to sell my product at X*. Collusive practices can become very informal. They become informal because one doesn't have to travel very far in Cayman to find out what the competition is doing, and if you have a scenario where everyone clearly understands that the consumer can't drive to a nearby town, the consumer can't do something relatively convenient to be able to get access to better quality, better price, better customer service, whatever it is that may be important to the consumer . . . but let's concentrate on price for right now.

When companies know that to be the case it doesn't take a rocket scientist to understand then that you don't get into price war. So, if everyone understands that if *I don't get into a price war, just naturally, each one of us will more than likely get our "fair share."* People then know where to pitch their prices. So you don't need formal collusion for this to happen in the market. And I think all of us who are Members of this House can think of a number of products for which demand is relatively inelastic, that is, that even as the price goes up, the public needs the commodity so much that they still consume it.

Let's use a classic and very simple example: gasoline in your car. You need to get around. Transportation is necessary. So, even as the price goes up, yes, people may become a little more cautious about ensuring if they go on the road for one trip they will do three and four things. But you still have to make those trips. You still have to go and conduct business. You still have to drop your children to school. You still have to get to work. So, in our market where we do have these products that are priced inelastic, we then wind up in scenarios where players in the market know that the demand will be there. People will need their product.

When you have a situation where an entity can control the supply, distribution and retail, you know you wind up in a scenario where, all things being equal, someone more than likely is not going to be at the most advantageous position. And the 'someone,' in a lot of these instances, winds up being the consumer.

Madam Speaker, in regard to how our economy needs to develop going forward, given our size, Government needs to, as far as possible, try to ensure that you don't get more and more scenarios coming up where an entity or a group of related entities wind up being able to control the wholesale/distributorship and retail end of a number of products in our economy. The Motion is one that seeks to try to ensure that these practices are either discouraged or don't happen in the very first instance. And there is the whole question as to how Government ought to go about trying to achieve this end.

In larger more sophisticated countries you get commissions that are ultimately the arbiter and wind up enforcing the regulatory and legal framework that develops around this, and there would be a real concern, I believe, for all of us in this House at a time when we know budgets are tight, that we seek to ensure that Government expenditure and the charge on Government expenditure doesn't continue to rise. I do believe that there are ways that this can happen where Government doesn't necessarily have to incur huge amounts of bureaucracy and the attendant costs. I can hear those now who may want to poke holes at the Motion going down the road to say that in these times we can't afford a regime to be able to oversee this. However, I believe that there are real opportunities for us to have the type of impact that we want to have by being smart about what we want to do.

I think, firstly, we do need to state clearly in our legislative framework (and right now my mind is turned to the Trade and Business Licensing Law) to ensure that we strengthen the provisions to clearly state that such behaviour is not acceptable, that is, make it illegal in the country. We ought to amend our licensing processes so that it is quite clear to the Department of Commerce and Investment, which oversees the Trade and Business Licensing Board, that it is very, very clear that in their licensing regime licences ought not to be granted where an anticompetitive environment may be created in the marketplace. And, Madam Speaker, to my mind, those two things in and of themselves will not necessarily cause there to be any net increase in the cost of administration of the law, because you can have a model whereby when an entity is seeking to have a licence that in their application they have to declare and sign off. The granting of that licence would not cause distortions and the anti-competitive environment that we are seeking to not have exist here.

If we go that route and down the line we see that there is a necessity to enhance the infrastructure, we will have to cross that bridge when we get there, but if we have a robust education campaign, make the necessary changes to the legislation, and put the onus on registrants, applicants, to declare whether or not such an outcome would exist, I believe we would go a long way, I would submit, the whole way, to ensuring that the spirit of this Motion is carried out and executed in our economy.

I think we, as legislators, do need to pay attention to these things because ultimately persons, whether they are small business owners, consumers, need to have that framework that clearly outlines what the accepted business model (if I should use that term relatively loosely) ought to be and is our intention for our Islands. I am not going to get into any name and shame or any specifics here, Madam Speaker, because I don't believe that that is necessarily going to be helpful to advance the cause, but I will say this: All

of us, I believe, can look in our economy and see areas that we should be concerned about the way in which the market has been able to develop and how the consumer ultimately loses when there is no real competition.

Madam Speaker, my colleague, the Third Elected Member for West Bay, mentioned my ongoing work in my first and second term here in this Assembly as it related to interest rates that are charged by banks and lending institutions here. Those were some really tough discussions. I can remember as a young legislator getting calls from people I respected who were concerned because of the fact that I was being labeled as a person who was trying to “attack” the banking establishment and that what I was seeking to have happen. Whilst they agreed with the spirit and the intent, [they] were not quite sure that if that was a battle which should be taken on.

I didn't go as far then, nor do I today, trying to say that we should have had a central bank. There were those at the time who advocated for us going that far. I didn't see us needing to go that far. And I think history has proven me right on that point. What we had in those days, which was a short time ago, but feels like a lifetime ago, I must say, was a scenario where all of what we call the high street banks, the class A retail banks, used to advertise in the local press what their interest rates were, what the prime rate was and basically they used to do it as a joint release. So all of them would have their names listed and say that the new interest prime rate would be X, effective on a certain date. I think it is fair to say that the market has changed considerably since 2001 and 2002.

I believe that today we have much more competition in that sector. I think we have seen over the years a shrinking of the spread above prime that mortgages and other lending transactions attract. I think also, Madam Speaker, you see a much smarter consumer as well. I believe that is something that has helped; people are more apt to shop around. People are more apt to go into bank X, see what the deal is and what they qualify for, but go down the street to someone else and see what their deal would be. Those are the things that strengthen economies and strengthen markets when the consumer ensures that they do as much shopping around as possible.

I think that this Motion is one that has a very important public policy undertone. It is that we recognise that as our economy continues to develop that the Members of the Assembly want to ensure that insofar as possible you don't have single players controlling distributorships, therefore controlling price, and also being involved at the retail end. Because at that point they then can dictate quite heavily who actually survives in the retail business and can wind up in a scenario where other businesses ultimately may have to go to them to get bought out or go out of business

simply because they are able to make their profit, let's say, more on the wholesale side versus the retail side.

So, Madam Speaker, just to use a very simple example, if you have a particular product and by the time you import it and pay freight, duty, and get it to a store where the customer can actually go and purchase it, plus a reasonable profit, let's just say add all that up and it comes to \$20 per unit, and included in that \$20 per unit is a wholesaling price that includes import duties that brings it up to, let's say, \$15 a unit. If you have a company that controls that wholesale and actually owns the retail and, therefore, can “control the market” what they are then able to do is use their wholesale price and backload the profit at that level, be able to sell at the same \$20 at the retail where the customer is walking in the door, make a loss on the retail, but more than compensate for it by making a disproportionate profit on their wholesale so that when they look at themselves as an entity, net, they have made the level of profit that they desire when you add the two together. Well, for a player in the market who only has the store, who is only a retailer, when that price is set and is given to them, and they then have to try and make a profit at the retail level, they would now have to charge, let's say, \$22.50 to make a reasonable profit, because instead of the \$15 the wholesaler might then go to them and say, *No, I am going to sell this product to you now for \$17.50.*

So they can sell it on at \$17.50 at the wholesale end because they own the wholesale establishment, they own the retail establishment. Net, they get the profit out of it they want, but no one else can compete at that point because for that other entity to compete . . . let's say in this example you had to add \$5 onto your price to make it “worth your while,” when they add their \$5 on, they now come out of the scenario where they have to sell for \$22.50, whilst you can have the same product on your shelf for \$20. Where are people going to shop? In a place this small, it won't take long for people to figure out *I'm going to go to the shop down the road that has it for \$20.*

So, Madam Speaker, whilst that's a simplistic example, hopefully that's one that really allows people to understand what can happen without anyone seeing “behind the scene” as to what's going on in our economy and in our markets. So this is a hugely important Motion. I believe that we can make a first cut at bringing home the real spirit and intent which is ultimately to protect consumers, first and foremost. But to also protect other players in the market who do not control from birth to the eventual sale of the product and be able to protect them as well. They obviously need to have that protection as well, because the one thing that we want, I believe at least as legislators . . . and certainly my support for the Motion comes for this: the one thing I think we all want is as many people who are able, to be good business people putting the

effort in and organising themselves to create a good healthy business. We want as many people doing that as possible, and to not have circumstances in the market that cause them to be driven out through no fault of their own.

So not that they were bad business people or not able to run their business, but simply because you have a single player in the market controlling the wholesale distribution but also participating at the retail end and being able to look holistically and back-load their profit at one particular level of their operation at the detriment to other market players and ultimately the consumer.

We know, Madam Speaker, let's use that example that I painted a little earlier. The fact of the matter is that when you have scenarios like that where you can drive others out of the business and you then wind up being the single or very dominant player at the retail end, then the consumer is ultimately in your hands. At that point, that product that at \$20 under normal market conditions, a wholesaler making money by selling at \$15, a retailer making money selling at \$20, the consumer acquiring the product, but if all of a sudden that entity that controls the entire life of that product on the Island can push others out of the market, then when they are out of the market, is \$20 going to remain the price for long?

I think history has proven, not just in this economy but in many others, that when there are very, very few, or no others in the marketplace, then all of a sudden, I don't think it takes too much for us in this House to understand that that price may not stay at \$20 for too long. All of a sudden that \$20 become \$21.50 because then they are able to set prices all through and with limited choice and very little competition, then basically the consumer will have to take it or leave it.

We have to understand that whilst with some products people in this economy are going to be able to find other alternatives, because the one piece of this that can keep the local market in check is, of course, consumers and small businesses access to imports. So, in the scenario I just drew up if the retailer in that example did not have to acquire the product for \$17.50 from that dominant or single wholesaler who also has a retail operation, if they could get that product from somewhere else, import it and get it imported at the \$15, they could then still remain in the market selling at \$20. But we know that there are a number of products in this country for which there is exclusive distributorships; in other words, others in the economy aren't able, legally at least, to acquire the product because of those exclusive arrangements. And also, we know that there are many products that it is simply not convenient and/or cost effective to be able to try and go overseas to get it, import it and re-sell it.

So there is a real necessity, I believe, and a continuing necessity for the model that's developed in

Cayman where many companies become specialised at the import end and become wholesalers/distributors of certain products. So, Madam Speaker, I think that on balance, when we look at our economy and we look at where we are, the spirit of this Motion is one that all Members of the House should support. I think it is something that we can do in a cost effective way. I think that we can use reverse regulation by changing our legal infrastructure ensuring that on the application end, people are having to declare what other types of operations they may have and that the Board then would be under a legal obligation to not grant licences that would then run contrary to the very legislation that would underpin their operations.

I think that would be a smart first step for us. I don't believe that would be one that would cause us to have to build up any huge bureaucracy. Certainly, Madam Speaker, I think it is fair to say that there are a number of other examples we can look at where Cayman has gone that route with that type of model approach to regulation and has been quite successful.

I think that would be a smart first step because I think in the back of a lot of people's minds . . . I had the question asked of me, certainly when this Motion became public, *How are you going to do it? Has Government thought through how we would go about implementing and what sort of regulatory environment would we create to ensure that we will not have to build up a huge bureaucracy to just oversee the spirit?* I think, Madam Speaker, that can be done.

So, I certainly support the Motion. Again, I congratulate the Third Elected Member for Bodden Town and the Third Elected Member for West Bay for bringing this Motion to the House. I believe it is very timely and I think it is something that we ought to support. In particular when the economy contracts and where more and more businesses fall on hard times you get more business owners wanting to sell. So, the more consolidation and contraction that you have in the number of players in our markets, the more ripe they are for distortions, and for uncompetitive environments to be created, which ultimately do not benefit small businesses and do not benefit the consumers that we all have been elected to ensure that we protect and enhance their interests.

Thank you.

The Speaker: Thank you Minister for Education. Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause]
Honourable Premier.

The Premier, Hon. W. McKeeva Bush: Madam Speaker, in our kind of industry, competition is counted as good. The free market is what has been encouraged in all aspects of our industry, from the large conglomerates to finance industry. Only in some areas it seems that some did better off than others. For instance, law firms do real estate but real estate can't

do law. In fact, nobody else can do law besides lawyers. You can't form your own law firm; you have to be a lawyer to do that.

Remember the days, Madam Speaker, when that was changed? It was changed from law agents. The late Annie Huldah Bodden, the late Mr. Warren Conolly, Mr. Anton, they were law agents, Mr. Alan McLaughlin, they were all law agents. Then they all got together and changed the law, and they all became lawyers.

[Inaudible interjection]

The Premier, Hon. W. McKeeva Bush: Well, same thing; six of one, half dozen of the other.

Nobody else could then get to form law firms.

So, it grew from strength to strength. As I said, it seems that some businesses, others are more taken care of than others. What I am concerned about here is our small operators in these Islands, the mom and pop operators, stores and so on, are put at a disadvantage in many instances. I've seen it here in George Town. I saw one lady who had a fantastic business going right here in central George Town getting into the duty free market. She was run out, had to sell, simple as that. That lady was Mrs. Melba Nixon. Everybody should remember she had a good business going.

So, many times in our free market small operators are put at a disadvantage. So we will look at the situation. If there is an issue that Government can correct, we certainly will. The trouble is that in our Island you move to correct a matter and the impact counteracts against us. So we have to be more than careful how we embrace these various changes that exist in Europe, that exist in America, and other countries. But we don't have to go far to see what exists here. We know. And we know there are situations, as has been outlined, that we can or should be concerned about. So, we would attempt to find ways and means of dealing with it without killing the goose that laid the golden egg.

That's all I have to say on this. Government will do what the Motion asks, and consider it.

The Speaker: I believe this is a good time to take the lunch break, it's—

The Premier, Hon. W. McKeeva Bush: Before you do that, Madam Speaker, if I may, on a procedure matter.

The Speaker: Yes.

The Premier, Hon. W. McKeeva Bush: Thank you.

Madam Speaker, to come before us, it's not on today's order paper, but it should be for Wednesday, is the Constitutional matter of adding Members to this House and the Boundary Report. I think I know

where most Members want to be, but I would ask all Members let's get together in the committee room to finalise discussions. I would say that we could do that right now, Madam Speaker. I don't see it taking any longer than 10 minutes. We had asked for some documents to come, and Mr. Connor, the Cabinet Secretary, is bringing them down. Some Members had asked me for that. So, I want to have one last discussion before I move this Motion. And I say this, Madam Speaker, what we are about to do is an important matter for this country. I know how some Members feel about additional Members, but my concern is not so much additional Members, if that's what we have to do. My concern, Madam Speaker, is the fact that we have an 18 Member House which gives us . . . it's an even number and it gives us a lot of opportunity to have deadlock in this country.

Madam Speaker, we can see what deadlock does to an economy when so many people are fighting against projects. All of us suffer.

So, I would ask Members to come to the committee room so we can go through this one last time.

The Speaker: I was going to adjourn until 2.30. Will that give you all enough time? Or would you prefer it to be 3.00 if you're going to meet?

The Premier, Hon. W. McKeeva Bush: Yes, Madam Speaker, if you say come three o'clock we will come three-thirty. Two-thirty.

The Speaker: Two-thirty?

The House is suspended until 2.30 pm

Proceedings suspended at 1.00 pm

Proceedings resumed at 3.00 pm

The Speaker: Proceedings are resumed. Please be seated.

Does any other Member wish to speak?

When we suspended we were debating Private Member's Motion No. 1/2012-13.

Does any other Member wish to speak?

Elected Member for North Side.

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

Madam Speaker, I am not going to oppose the Motion to create antitrust legislation. It just happens that I prefer the route of a fair trade commission. I need to remind the Government that on 25 February 2010 they accepted a ⁴[motion](#) to investigate and consider the establishment of a fair trade commission with the proper supporting legislation, and I am not aware

⁴ Private Members' Motion No. 3/2009-10 (2009/10 *Official Hansard Report*, page 395)

that anything has been done about it. I believe that that is more suitable to achieve some of the, or most of the stuff that the mover of the Motion seems to think that antitrust legislation will do.

My concern about antitrust legislation is that it often punished successful people who work hard and build their business to a success level to where other people want to break it up. I just happen to believe that a fair trade commission is a much more equitable way of doing it, particularly if it is linked to a certificate of need for creation of new businesses which may already approach the level of over subscription in the community and, therefore, reduce the competitiveness because everybody is simply trying to survive.

I listened very closely to the mover and second-order. I will agree that there are increased instances of people with deep pockets seeming to take over and buy out businesses, and they are in a position to lose money until Caymanians are wiped out and have to close their businesses because they have the capital to do that, and they can look forward to greater returns and greater profits as soon as the competition is removed.

There was a report in the press some months ago where the Dart conglomerate, after having bought up several of the liquor establishments had begun to sell the liquor in their retail outlets for the same price that they were selling it to the competitors wholesale. I think one young Caymanian had to go to the expense of purchasing a distributor's licence at some \$75,000 to put himself in a position to be able to continue to compete. And those are the kinds of things that we need to guard against.

I am still more in favour of seeing a fair trade commission established as opposed to antitrust legislation, but I will not vote against the Motion as it stands. Thank you, Madam Speaker.

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

Fourth Elected Member for George Town.

Mr. Ellio A. Solomon: Madam Speaker, I rise to make a contribution to Private Member's Motion No. 1/2012-13, Antitrust Legislation.

Madam Speaker, I believe a significant amount of information has already been given on this topic, but I believe it is very important for me, first and foremost, to express my appreciation to the Third Elected Member for Bodden Town and the Third Elected Member for West Bay in terms of bringing and seconding the Motion.

I also take with good note the comments raised by the Member for North Side when he talks about his motion that he brought about a fair trade commission. I believe that is perhaps only an indication that there is perhaps more than one way that you

could go about trying to accomplish what I believe the Member for Bodden Town is trying to accomplish in this particular respect.

But I want to air that the circumstances are right now, and many persons in this country are perhaps all too aware of it, that we do have circumstances where some of those companies find themselves perhaps, not necessarily anyone sets out with some ill agenda, but simply as the process of time goes on and because of this particular business environment that we have here in the Cayman Islands, certain things are allowed to actually take place. And insofar as that taking place, that can also result in a situation or an environment where it is not necessarily conducive to good business practices in terms of what is best for the ultimate consumers in the country.

So we have, as perhaps has been indicated, companies that would engage in what we call vertical amalgamations where you may have a situation where someone is wholesaling and, in turn, they are also purchasing in terms of the retail as well. So they will tend to be, the argument goes, doing things in that vertical direction. And, Madam Speaker, if it doesn't dawn on us almost from a commonsense perspective, I believe it should dawn on us from a business angle that there is a challenge in that. There is a challenge when someone can control the wholesale side of things as well as the retail. I believe the Minister of Education quite articulated the issue of how those two entities can cross subsidise and achieve benefits that create an environment where others find it very difficult, if not impossible, to compete.

So, Madam Speaker, those sorts of situations, some action has to be taken to make sure that you are constantly fostering a competitive environment. And where antitrust legislation is normally a term coming out of the United States from the original Sherman Act, I believe that I definitely support it from a position that we should be doing in this country whatever we can to encourage competition.

I recall many years ago individuals wanting to sell certain products. So, in terms of trying to sell those products, they called the United States, contacted a particular company, they were then told, *Don't call us here, we're not the head office for Latin America or the Caribbean, call Barbados*. So those particular businesses or individuals contacted Barbados and said they would like to be able to sell their product, only to find out that, again, in that particular circumstance, that product already had a sort of sole distributorship by a company here.

Now, Madam Speaker, clearly there has to be some balance because you could make the argument for or against. But one argument against that, Madam Speaker, is does that not create a situation where you could have someone also selling the same product, therefore introducing competition into the market, and therefore ultimately ending up, perhaps in great efficiency and effectiveness of service, as well as in addi-

tion to that perhaps lowering the cost which is a good thing normally for the consumer.

One of the challenges we continue to hear, and I have mentioned it throughout the course of some of my debates, and it's even an issue that we have with respect to some of our financial institutions. I think the Member would also have talked about these oligopolies, or these [oligopoly] markets, Madam Speaker, where you can have one or two companies, or three or four companies, a small number of companies, that whether directly or indirectly there is a tremendous degree of collusion and price fixing that actually takes place. There are many Caymanians right now in this country who would say it doesn't make any difference where they go to buy insurance, it's all the same. They are going to get the same price; nothing is going to be different.

Many of them would perhaps make the same argument even in terms of our financial institutions. *Really*, they perhaps would argue, *what difference does it make?* There are many Caymanians who are also going to say, *Some of those contracts that I have to sign with those institutions I don't believe to be fair, but what options do I have? I have no option but to sign this particular contract.* That's why, amongst other things in one of my discussions, I talked about things like an unfair contract because you cannot have a situation where an employer can necessarily be dictating the terms to the employee when the employee really wants the job. What choice does the employee have? Notably argue any difference if we are talking about where individuals have two or three companies that are, whether directly or indirectly, fixing prices—same products, same services, same prices. At the end of the day the consumer really has no real options. For one reason or another, there is a situation where competition has not been allowed to really foster to be able to create a new environment.

So there are all of these challenges, Madam Speaker, that produce themselves in the sort of environment that we have. So, in a very short way my contribution is first and foremost to support the Members with their drive in terms of the antitrust legislation. I believe that whatever we can do, reasonably so, Madam Speaker, because, again, I will stress that there is a place for everything as well. Even if we look at some of the monopoly situations that we have in the country, there is an argument that can be made that even many years ago in terms of at least the creation of one of those monopolies it was a necessary evil in order to try to make sure that a service could be provided. And because the country was so young, the population was so small, the business advantages were not necessarily all there, that there would have been, arguably, very difficult circumstances to be able to create the sort of competitive environment that perhaps you could now produce a little bit better, now that the population has grown. And I am pretty sure

that as that population continues to grow, that means that we should also be fostering greater competition.

So, I support the Motion, Madam Speaker, particularly from the standpoint that anything we can do in terms of taking reasonable measures to try to encourage fair contracts between businesses and individuals, fair business practices that will ultimately benefit the consumer, to avoid individuals, regardless of whether it is a small entity, because that also has to be drawn as well, Madam Speaker. It doesn't necessarily mean it has to be super large companies. But fair business practices that whether it is a small business or a large business, it is going to be an environment that fosters competition so that ultimately the person, the moms and dads, the individuals out there who are going to go to a business to utilise those products and services, truly have options in terms of the products that they are going to buy, and truly have options in terms of price, and not necessarily having it where one or two individuals, groups or companies, are dictating arguably both products, services and the price.

With that, Madam Speaker, I hope and trust that when the committee is formed it will be looked at in a very circumspect view, very responsibly so, but at the same time we can do what we can to foster that sort of competition.

One of the things I mentioned during one of my debates as well, Madam Speaker, is even if you look at the Trade and Business licence, it surely has to be a situation where even in terms of trying to create a more pro-growth environment the Government can look at it and entertain ways of being able to put those pricing structures in terms of how those persons are given those businesses. Do it in such a way that fosters good growth in the economy.

There are some companies that recognise right now that if they get to a position of 14 accountants, they are afraid to move perhaps to the 15th or 20th person because it puts them in a completely different price bracket. Those things also create challenges for business and they are things that should be looked at.

In closing, Madam Speaker, I again commend the Third Elected Member for Bodden Town and the Third Elected Member for West Bay, insofar as bringing this Motion asking for this particular piece of legislation antitrust. And I hope that when we sit and when the committee is formed that it will be able to take a circumspect and very responsible view, Madam Speaker, in terms of saying what can we do in this country to be able to foster true competition and when we actually do that, knowingly so, that it will bring about better products, better services and better prices for the consumers, the people that we were elected to represent.

Thank you very much for the opportunity to make this contribution.

The Speaker: Thank you, Fourth Elected Member for George Town.

Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause]

Honourable Minister of Health.

Hon. J. Mark P. Scotland: Madam Speaker, I rise very briefly to offer a contribution to the debate on this Motion. I rise mainly because I want to commend my colleagues, the Third Elected Member for Bodden Town and the Third Elected Member for West Bay, for bringing this Motion.

Madam Speaker, even in his contribution he wondered why this legislation has not been tabled prior to this. And, Madam Speaker, that tells me that the Third Elected Member for Bodden Town is very much in tune with issues in the community, issues with small businesses. And not only is he quite in tune with those issues, Madam Speaker, he is offering solutions. And the Third Elected Member for West Bay mentioned that, in just his short term here already, several motions, including this one he has brought to this honourable House, but none that I would think is as important as this one. I am certainly looking forward to the work that would come out of this Motion in order to create that legislation.

Madam Speaker, we know, as the economy has grown over the years, there have been complaints and issues identified with businesses, particularly small businesses and their opportunities to compete for market share. And we heard about the practices that could occur. Some of those, giving the benefit of the doubt, are sometimes not necessarily unfair practices, but just the fact that the size of organisations makes it much more difficult, through economies of scale and otherwise, for small businesses to have their market share. So, legislation like this obviously makes it that it levels the playing field, so to speak, and everyone knows on what basis they are competing.

Madam Speaker, we know we have unfair practices like price fixing. We want to look in this legislation at how we could create anti-competitive measures. Madam Speaker, one of the big things in here would be the fact that we are looking at increasing consumer protection. And consumer protection is an issue, obviously, as I said earlier, in this community, in business in particular, that is needed now.

I know my colleague has another motion that looks at that as well. So there are many areas in the business community where we need that protection for consumers; not only, as I said, for the small businesses themselves, but so that consumers have that protection.

Madam Speaker, this type of legislation looks at things like minimum standards of quality of products, so that when consumers go in to buy a product

they know exactly what they are getting. The businesses have to disclose certain information about products so that the consumers will know exactly what they are getting. This legislation could do things like prohibit misleading advertising. We know that is a problem that exists here. And also, another issue would be looking at compensation that could be paid in terms of product liability. So a lot of those things that we know . . . you know, years ago when business was different here, people could trust the business owners a lot more. Nowadays it's not that case. These practices do not only refer to the small businesses or large ones, this happens across business in general.

So, again, antitrust legislation looks at addressing certain unfair practices, but also at protecting consumers and protecting small businesses.

Madam Speaker, with those very, very brief comments, I want to lend my support to this Motion again and commend the movers for bringing this very, very important issue to the fore. Thank you.

The Speaker: Thank you, Minister for Health.

Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause]

If not, I will call on the mover of the Motion to make his response.

Mr. Dwayne S. Seymour: Madam Speaker, thank you very much.

Firstly, I would like to thank all Members who stood up and leant support for this Motion. This antitrust legislation is very important legislation for the consumers in this country. I was privileged with some information at one of these fuel company's gas stations (as we refer to them). And we have a situation where the fuel company actually provides the fuel, owns the building, and plus gets a percentage of products in the store.

Madam Speaker, many owners have complained for many years. And I think it's the right time now to stand up and make a difference and send a message that we mean business and that we are listening to the constituents of this country. The people of this country can be proud that the Members of this House are listening, and we are eager to take their wishes forward.

Madam Speaker, I would like to thank the Third Elected Member of West Bay for seconding this Motion, who also got up and spoke. This antitrust legislation, whether it be in the liquor business, whether it be in the fuel or petrol business, oil business, whether it be in the good commodity of land, or the duty free business, I think that what we have seen today, as we heard from many Members, including the Premier himself speaking about the duty free problem that we had in terms of a small duty free owner who was forced out of business practically, these are the things

that we are trying to protect with this Motion. It gives us a level of protection for Caymanians and to try to save the middle class or shore it up and give them confidence again.

The concept of having retail, wholesale/distributor and controlling the price is very, very concerning in this country. And if we don't seize the opportunity now to do something about this, we are all going to be victims of big business.

Madam Speaker, Edmond Burke said that evil prevails when good men stand aside and do nothing. We have to act at this time, and I think it is the right time. We heard the Minister for Education and the Second Elected Member for West Bay who got up and made reference to the public in terms of whether it be fuel, even as the price of fuel goes up, they still have to purchase, they still want to purchase, they still consume, they still need to. And we have an opportunity to stop the large giants from dictating who survives in business.

Madam Speaker, as I wrap [up], in the US the antitrust laws comprise what the Supreme Court calls a "[charter of freedom](#)" designed to protect free enterprise in America. ⁵"**One view of the statutory purpose, urged for example by Justice Douglas, was that the goal was not only to protect consumers, but at least as importantly to prohibit the use of power to control the marketplace.**"

What they recognised was the problem they had which was bigness. It is a lesson that should be [burned] into [our] memory [by] Brandeis. "**The Curse of Bigness shows how size can become a menace—both industrial and social. It can be an industrial menace because it creates gross inequalities against existing or putative competitors. It can be a social menace . . . In final analysis, size in steel is the measure of the power of a handful of men over our economy . . . The philosophy of the Sherman Act is that it should not exist . . . Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men . . . That is the philosophy and the command of the Sherman Act. It is founded on a theory of hostility to the concentration in private hands of power so great that only a government of the people should have it.**" [[Dissenting opinion of Justice Douglas in United States v. Columbia Steel Co.](#)]

"Although 'trust' had a technical legal meaning, the word was commonly used to denote big business, especially a large, growing manufacturing conglomerate of the sort that suddenly emerged in great numbers in the" 1800s in the US.

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http://en.wikipedia.org/wiki/United_States_antitrust_law#cite_note-columbia-17

I thank the Fourth Elected Member for George Town for bringing his comments, and supporting this Motion. I also thank the Member for North Side for agreeing that it is necessary. I also thank the Minister of Health, the First Elected Member for Bodden Town, for his comments in terms of being in tune with the community.

Madam Speaker, in wrapping this up, I think enough has been said and I really thank all the Members for their support on this. I hope the whole House votes in the affirmative. Our main goal for this antitrust is to have the consumer and small business win, and to ensure that the business gangsters don't make unconscionable profits in such a short time—as Pirates Week has just concluded.

Madam Speaker, I thank you very much. I thank all Members of the House and hope that I get support on this Motion No. 1 of 2012/13, Antitrust Legislation. Thank you and God Bless.

The Speaker: The question is: BE IT THEREFORE RESOLVED THAT the Government considers Anti-Trust Legislation.

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

Ayes.

The Speaker: The Ayes have it.

Agreed: Private Member's Motion No. 1/2012-13 passed.

Private Member's Motion No. 5/2012-13—Pension Deductions Re Public Service Pensions Law

The Speaker: Fourth Elected Member for George Town.

Mr. Ellio A. Solomon: I rise to offer up my contribution on Private Member's Motion No. 5/2012-13 standing in my name.

The Speaker: You have to move the Motion.

Mr. Ellio A. Solomon: Madam Speaker, wishing to move the Motion, Private Member's Motion No. 5/2012-13 standing in my name.

Madam Speaker, the Motion being moved reads as follows:

BE IT RESOLVED THAT the Government considers amending the Public Service Pensions Law so as to enable employees falling thereunder that are Caymanian the ability to withdraw up to CI\$35,000 from their Pensions to be used as a deposit to either purchase a piece of land, purchase or construct a residential dwelling, or pay off an existing mortgage.

The Speaker: Is there a seconder for this Motion?
Third Elected Member for Bodden Town.

Mr. Dwayne S. Seymour: Thank you, Madam Speaker. I beg to second this Motion.

The Speaker: The question is: BE IT RESOLVED THAT the Government considers amending the Public Service Pensions Law so as to enable employees falling thereunder that are Caymanian the ability to withdraw up to C\$35,000 from their Pensions to be used as a deposit to either purchase a piece of land, purchase or construct a residential dwelling, or pay off an existing mortgage.

The Motion is open for debate. Does the mover wish to speak thereto?

Mr. Ellio A. Solomon: Yes, Madam Speaker, thanks.

The Speaker: Fourth Elected Member for George Town.

Mr. Ellio A. Solomon: Madam Speaker, this is my second motion as it relates to pension. The first one would have been brought in September of 2010. And that ⁶[Private Member's Motion](#) brought in 2010 asked that the private sector persons who have pension accounts, Caymanians, be able to withdraw up to \$35,000 from their pensions, again, the purpose being either to buy a piece of land, build a house, buy a house or pay off their mortgage.

Madam Speaker, I made a commitment then, as I do today again, that I believe what is good for the goose is good for the gander. We have been successful as a Government in terms of piloting that from a motion and actually bringing it into ⁷[legislation](#), and we have already seen some tremendous benefits. And contrary, perhaps, to some, the world has not ended, but nevertheless, significant families have benefitted.

The issue of pensions to some would probably seem very straightforward. But to those who look very carefully at it, it is one that has and offers tremendous challenge. Just in February last year, this country lost a wonderful woman, Madam Speaker. That woman lay in a hospital for weeks. She died with her daughter by her side. She was 64 years of age and had not quite reached retirement yet. The reality is, Madam Speaker, that she was trying to get \$14,000 from her pension so that she could use it to help fight the cancer that she had. And the reality is that there was roadblock after roadblock for the individual to be able to withdraw \$14,000 from her own

pension to be able to save her own life. That's a pension situation, Madam Speaker, and I am sure I am just speaking about one that exists in this country.

I recall when I was on the talk show a gentleman called in who had, sadly, lost his wife who was one of the breadwinners in the family. He lost his wife, and when she lost her life he was left to fend and to deal with all the bills that, before, two persons were dealing with. Despite that, he found that individual, one case out of many I am sure, where he could not go, even though he was down as the beneficiary, he could not get the cash from the pension to be able to help him pay off bills and keep the home that he and his wife had worked so hard for. He called the talk show and he said that they were saying that her pension would be put into his account and he would have it when he retired. But, Madam Speaker, he was losing a house; he was losing property then that he and his wife had worked hard for.

One or two cases out of many of what the circumstances are on the ground insofar as this country and pension is concerned. Again, the debate will be is whether many people actually realise loses or otherwise. But we know from reports that the pensions in this country have arguably lost or failed to gain, however one wants to view it, well over \$200-something million. There are persons who went to their pensions and found that if they had \$60,000 in their pension, some of them found \$40,000, \$30,000, \$20,000 remaining in their pension. But the reality is that they still have to retire. Those were the sorts of losses that person were sustaining insofar as their pensions are concerned.

So, amongst other things, Madam Speaker, I wanted to take a step in the right direction to be able to stem some of those losses, deal with some of the hemorrhaging we had in those pension funds, as well as provide Caymanians with a real opportunity to be able to take some of those funds while they are still alive, Madam Speaker, and utilise them to purchase a piece of land, buy a house, build a house or to make that final payment on their mortgage.

That debate was presented in this honourable House, voted for, passed and approximately one or two years later we were able to present legislation allowing every member in the private sector that has a pension to be able to withdraw that pension for the purposes of buying a piece of land, building a house, buying a house or making that final payment on their mortgage. And tremendous amounts of families have benefitted from it significantly.

Some months ago I asked for the latest report, and there was somewhere in the region (at the time, and I stress that this was months ago) of 143 applications had been received, and 137 had been approved, 6 were rejected. Out of the 137 that were approved, 17 of those were used for the construction of dwelling units, 36 of those were used in order to

⁶ Private Member's Motion No. 3/2010-11—Pension Deductions (2010/11 *Official Hansard Report*, page 429)

⁷ National Pensions (Amendment) Bill, 2011 (2011/12 *Official Hansard Report*, pages 540-556)

pay off existing mortgages, and 78 were used to purchase a dwelling unit and 6 to purchase land.

So we know that in less than a year, approximately seven months into the whole amendment in the private sector that at least 137 Caymanian families benefitted from being able to withdraw from their pensions. And I stress, Madam Speaker, it wasn't just for anyone. It wasn't for someone who simply had permanent residence or was trying to apply for permanent residency, or someone who had just come to the country and was employed. It was for Caymanians. And 137 Caymanian families, so far, have benefitted as a result of that private sector pension amendment.

So, first and foremost, for those who thought it would mean the end of pensions, if you can now look and see that there are over 30-something thousand persons working in the private sector and we see that within seven or eight months we had 137 families that benefitted, we saw that there was no run on the banks, Madam Speaker. The pensions are not destroyed. The pensions are being utilised, not for something extravagant, some simple consumable item, like a car or a vacation, but being used to purchase something tangible that has real value that the person needs in their retirement.

Let's cover that point on the pensions because it is very easy for us, when we talk about pensions, to take the position that pensions . . . or walk away with just a feeling saying that I need my pension for when I retire. The Mercer Report would have indicated, written March 26, 2007, that for the average person in this country to be able to retire, and the retirement being able to look and say what does the person need when they retire to give them about as much as possible an equal standard of life that they had prior to retirement, they needed approximately \$35,000 per annum. And in that there are certain assumptions that the person has to be able to find an apartment, whether it is being rented or purchased. They have to be able to get access to that apartment when they retire. They have to be able to purchase their water, electricity, food, transportation and deal with medical care. Yet, the Mercer Report (March 26, 2007) indicated that you need approximately \$35,000 per annum.

So, Madam Speaker, if we dice pensions up and ask ourselves what is the purpose of a pension, it is simply not to be able to say I have some money in the bank. The purpose of the pension is so that the money can actually allow you to attain the things that you need in order to live a decent standard of life when you retire. So, if we dice pension up, it can arguably be diced up into three pieces. One is, you need to make sure that you have shelter, as Maslow would say, water, food and shelter. You need to make sure you have the shelter. You have to make sure you have all of the supplementary costs, which is electricity, water, and the maintenance, repair and upkeep of

that premises, and finally, you have to be able to deal with the issue of your medical care.

If we looked at the pension as one huge pie we could dice it up into three pieces, 33 per cent each, and we can all argue where that final 1 per cent goes, but we can dice it up into three pieces. And one-third of that pension is to deal with the issue of shelter. The other third of that pension is for you to be able to purchase water, food, electricity, maintenance, upkeep of the shelter and that final chunk, that final 33 per cent, is to ensure that if you were to get sick you have some funds for medical care as well.

So, Madam Speaker, let us then simply move away from the issue of funds for a second. If someone were to come to anyone in this country and say to them that when they reach 60 or 65 that they have reached retirement age, I, they, will provide you with a shelter and that they will provide you with water and food and pay your electric bill, pay for your maintenance, pay for your upkeep of the house that you have, and, in addition to that, would cover all of your medical expenses, I believe, Madam Speaker, we should all be able to agree that your retirement is covered. It can only be if you have travel expenses or other things outside of the necessities that you would have any need. So then we are able to see that the funds that you are saving translate to something fundamental that you need. It is not simply then about having money in an account; it is about having money in an account that allows you to purchase the certain items that you need—water, food, shelter and medical care.

So, Madam Speaker, as we sit here today and we talk about retirement, we would not be saying to someone, *Don't worry about your health. Don't care how many burgers you eat, how many cigarettes you smoke, how much alcohol you drink. Don't worry about that. Concern yourself when you turn 60 or 65. That's why you're saving your pension.* You would not tell them that, Madam Speaker. We recognise today as a government and as a people that what we encourage our people to do today in respect of their health is extremely important and will determine whether or not they reach that proverbial finish line of 60 or 65 in a position where they can live a bit of a longer life, an enjoyable longer life.

Therefore, we would say to our people, eat healthy. Drink the right things. Eat the right things. Get exercise. Get lots of sunlight. Get lots of rest and remain healthy so that when you reach that proverbial finish line in terms of your retirement, 60, 65, whatever that magic moment is, that you can be there healthy and not have to be expending that 33 per cent of your funds having to deal with the issue of medical care. That is what we would advise every member of the general populace. That is the advice we would give to the people of this country.

So in the same way, Madam Speaker, if we recognise that we would deal with the issue of health

today rather than trying to wait until we get to 60 or 65, why would we take a different position when it comes to our shelter? Surely we can understand, not necessarily trying to put away water or food until you retire. Those are consumable items, Madam Speaker, that have an expiration date attached. They have a certain life that doesn't last very long. But on the issue of shelter, you know that when you construct that house you are talking at least 30, 40, 50 years of good life of that particular premise, that that is a particular commodity, that is an item that you can give to your people up front so that when they get to the age of 60 or 65 they are not fending and fighting and trying to figure out how they are going to acquire that particular item, they have already acquired it. And they have acquired it while they can still enjoy it as well, while, arguably, they are young.

In terms of that Private Member's Motion for the private sector, it was to allow young, middle, or the elderly persons who have funds in their pension account to be able to withdraw up to \$35,000 to purchase land, build a house, buy a house or make that final payment on their mortgage. And as I just stated, numerous families have already benefitted as a result of that.

So, the Government also took further securities wanting to make sure they could pass the finish line with those funds. We said that if you take out \$35,000 . . . and perhaps let me explain again where we get the magic [\$]35[,000]. Typically, Madam Speaker, we expected that the person would need a 10 per cent deposit in terms of purchasing or building a house, or buying a piece of land. So we asked ourselves what the range is that Caymanians are actually purchasing or constructing a house at today. We found that that was somewhere between \$175,000 to around \$400,000. So you can see that a \$35,000 deposit, acting as 10 per cent, would give you at least a \$350,000 . . . that the individual could withdraw from their pension in order to purchase or build a house (all things being perfect).

In addition to that, it also meant that individuals who were on the title to a property could also use it to pay off their mortgage. Madam Speaker, so many cases I've had. I had an elderly lady, not too old; I wouldn't want her to think for a second I am disparaging her. She looked very young, but an older lady with her son. She wanted to own her own home. She had about \$50,000 left to pay on that mortgage. Why would anyone deny the individual the opportunity to remove that stress from themselves, and say to them, *No! You have to keep labouring regardless of how tough the economy is? You cannot do it.* That amendment to the Pensions Law allowed that woman to be able to work with her son, of which she quite rightly says . . . she says, *If I pass tomorrow, this is my only child. I am going to leave this house for this child.*

So because of that amendment to the Pensions Law, a Caymanian woman was able to put her

son on the title of that property so that there were now two owners, each able to withdraw as much as \$35,000, which wasn't the full requirement in this case, but they were able to withdraw enough to pay off the \$50,000-plus that she owed on that mortgage. So you have a woman and a son that wanted to help his mother and a mother who desperately needed help, both of them, as good Caymanian family as we always talk about, a Caymanian family worked together and aided one another in the short, medium and in the long term as a result of that amendment to the Pension Law.

An almost flip scenario was a father and a daughter who were trying to do the exact same thing. So we see that rather than persons going out right now and having to lose their house because they can't make that final payment on a mortgage, or a person can't purchase the land, a person can't build or buy a house, individuals, as a result of that amendment to the Pension Law, have been able to help themselves and help their family member.

So, Madam Speaker, that is precisely I am asking that we are able to do for the civil service. Madam Speaker, I know that there are challenges now. There are challenges even in terms of the timeframe with respect to getting this particular Motion here (thank goodness) on the Order Paper. It is here, it has arrived! And in the course of this, Madam Speaker, one of the first groups I met with was the Cayman Islands Civil Service Association. My discussion with them was to ensure that I could have an opportunity to meet with them as a body and with the entire body of the civil service if necessary so that I could ascertain how many persons within the civil service were interested in having the same thing made available to civil servants as is available to the private sector.

In my first discussions with the Civil Service Association, the chairperson took the position that he would take a democratic approach. He wanted to make sure that the body of the civil service could decide whether they wanted to be able to have that option made available to them or not. I believe that his position was the correct position.

I have to say, Madam Speaker, that since that discussion I have heard all sorts of things of which I am going to make it abundantly clear today I have understood that even . . . you ever get one of those little notes that says "While you were out" . . . and there's a little message they stick on your desk, "While you were out someone called." Well, Madam Speaker, while I was out the message on my desk is, "while you were out," I understand that certain representation coming from this body of the Civil Service Association met with the Government, met with Cabinet, and was supposedly trying to suggest and to broker that whatever happens they didn't necessarily want to have the pensions touched.

Madam Speaker, I want to make it clear in the good spirit of transparency that as I said to the Civil Service Association then, of which I can tell you the majority of the first off set of it were in favour of it, and willing to go down a good democratic process. It's for the people to decide whether they want to be able to have the same thing as the private sector, is for the large body of civil servants in this country, and not necessarily one or two persons who can take it upon themselves in an opaque, non-transparent manner and attempt to broker a deal with anyone. First and foremost they did not broker any deal with me, Madam Speaker. I made a commitment in September 2010 to push in terms of this private sector amendment and to do the exact same thing and give the same option to the civil service in this country. When I checked last, they have flesh and blood in their veins in the civil service. They work hard in the civil service just like people do in the private sector and their rights and opportunities should not be less in the public sector and more in the private sector. No, Madam Speaker, what is good for the goose is good for the gander; equality; equal opportunity for all of those individuals.

So I was denied at that point in time the opportunity to be able to meet with a large body of civil servants to be able to have a discussion and lay out what was happening in the private sector in terms of the amendment and to simply solicit the feedback from the public sector as to whether they wanted the same thing or not. Why, Madam Speaker, would anyone deny me that opportunity? Why would they deny the civil service the opportunity to be able to offer up their comments as to whether they want to be able to have the same thing that the private sector has? That is beyond me. And then I have to get the "while you were out" note that people are trying to broker agreement.

But, Madam Speaker, here I am. I am here with his Private Member's Motion asking for the exact same thing insofar as the civil service. In furtherance, I know that there are arguments to be made now, and those who may seek to get in their politically charged bully pulpit, Madam Speaker, and talk about the situation of past service liability. And they are going to say to you, Madam Speaker, *Oh, well, the Civil Service Pension is underfunded somewhere in the region of \$165 million to \$200-plus million*. That's what they are going to say. As a result of that, that perhaps should be one of the reasons why the civil servants should be denied access to their pensions.

I made a note and I spoke to Mr. Jefferson, the Financial Secretary, and I don't have the exact notation here, Madam Speaker, but I am pretty sure that no one here or in the wider public needs to be bored with the aridity of me giving some specific numbers, but [\$]600-plus million (somewhere in that region) amount of money in the Government's Civil Service Pension. Well over half a billion dollars sits in the pension.

And understand that even in the private sector when you get 137 persons who are withdrawing from it, not all of those persons are drawing \$35,000. Some of them may be drawing \$5,000, \$10,000, \$15,000, all sorts of variation in numbers, Madam Speaker, depending on their specific circumstances. And if that is what it is in the private sector, I dare say, Madam Speaker, it will be the same thing in the public sector. I don't believe . . . I understand the circumstances that are in this country with respect to finances. I understand it very, very well. But at the same time, Madam Speaker, since the halls of this parliament opened, or since all of the defined benefit contributions that existed in the civil service, I have many of them in here who tell me how long they have been here, Madam Speaker. Well, I am not here to make apologies for them or anybody else now or in the future. If there are monies to be paid to the pensions, then pay. But I don't believe that every civil servant then should be flogged and not be allowed to withdraw a \$5,000, or \$10,000, \$15,000, \$20,000 or up to \$35,000 from their pension to be able to do the same thing and have the same opportunities as those in the private sector. I do not believe there is any mathematical, social, religious or other reason to justify denying them doing that.

Obviously, I will listen to what statements and what *razones* will be made so we can address them in the wrapping up. But I wait, Madam Speaker, to hear what is going to be said.

This Motion is asking the Government to consider allowing the civil service to have the same equal rights and opportunities now that have been provided to the private sector. They work hard, just like every other citizen in this country, and they deserve the same equal opportunities same as anyone else.

So, Madam Speaker, we understand what the pension is about. It's not just about putting cash in the bank, but it's about delivering certain products and services that we need. We need a house. If we are able to attain that house now, that means that as you look at the Cayman Islands in terms of real estate, whether it be a piece of land or a house, chances are you are going to get, in the worst case scenario, a nice plateau, a nice flat line in terms of the value. In other words, it hasn't necessarily gone down, nor has it gone up. But in the majority of circumstances in this country, you will continue to see an appreciation in the value of land and appreciation in the value of that house that you have constructed.

Just the other day (or some months ago) someone told me they purchased a piece of land for \$500-and something thousand. And when the gentleman bought it years ago he bought it for \$35,000. Well, you tell me, Madam Speaker, how many persons in this country have put \$35,000 in their pension and can come 10 or 15 years later and say they have half a million dollars? Tell me which one, Madam Speaker. I was reading just the other night, even right now, overall, in terms of the world concerned with

pension funds, there is approximately \$33 trillion in pension funds. And a significant portion of that is now being invested in land, real estate, and in particular, farmland.

Why? Amongst other reasons, because they recognise that everything now is fluctuating in the economy. People are losing money. And they are trying to find those commodities that are retaining value. And land is one of those. Those particular assets, as the quip goes, they say "God isn't making any more real estate."

So that scarcity, Madam Speaker, and the demand that is constantly on land . . . at the minimum we find normally keeps at a plateau if not a constant appreciation.

So, Madam Speaker, there is almost US\$1 billion sitting in those pension funds for the civil service. Have anyone stand and argue with the numbers, Madam Speaker, almost US\$1 billion in there. And no one is going to argue that perhaps there shouldn't be some more inside there. Well, Madam Speaker, if someone needed to make payments years ago then make it. I know what happened over a couple of years ago. I know we lost over \$200 million. But I don't hear any crying about that one.

So, Madam Speaker, I am now, with that opening, going to allow any Member who seeks to make a contribution to do so. But I am kindly asking that my Government and the Opposition, that is inclusive of the two independent Members, one from East End and one from North Side, that they will give careful and due consideration to this particular Motion. And that they will recognise that this first and foremost is a position of principle and a position of what is right, Madam Speaker, to be able to provide for Caymanians the same, equal opportunity as for those now in the private sector.

With that, Madam Speaker, I will take my seat and listen carefully to any other contribution by any Member of the House. Thank you.

The Speaker: Thank you, Fourth Elected Member for George Town.

Does any other Member wish to speak?
Honourable Premier.

The Premier, Hon. W. McKeever Bush: Madam Speaker, the Government knows that the Fourth Elected Member for George Town has brought this Motion to the House with the very best of intentions, principally to assist Caymanian public servants to acquire a piece of land, purchase or construct a residence or pay off an existing mortgage.

The Motion suggests that the public servant be able to withdraw a maximum of \$35,000 from their public service pension. Now, Madam Speaker, over the years, all of the time I've been there, since the crash of 2008, we get a lot of people requesting, *Can we do this? Can we borrow? Can we get or withdraw*

some of our pensions? And that is the private sector and the public sector. I know that the Member has done a lot of work on the matter.

Earlier in this calendar year the Cabinet received the presentation from the Public Service Pension Funds actuary. One of the questions posed to the actuary was whether extending such a withdrawal scheme as proposed by the Private Member's Motion now before the House could be sustained by the Public Service Pension Funds. They put forward the view in response to that query, probably best described as being skeptical of such a scheme.

But we want to give the Member the benefit of the doubt, and we want to give those public servants the benefit of the doubt, and the Government's position is that whilst it can consider the Private Member's Motion before us now, it does require extensive scrutiny and review. I am also aware that the civil service has concerns about the Motion. As I said, I have had from both sides; those that are in support and those that are against. But I can tell you that there have been more coming to me that are for than those who are against. As I said, how we can tell here what is right and wrong in this matter is from an actuarial viewpoint.

So we will get further details and give it further detailed scrutiny and review the matter. That's where Government stands. I am confident that the mover and the seconder of the Motion will fully appreciate the Government's position, and they expected no less.

Madam Speaker, the Member piloting this Motion has done a lot of work. I know that as a backbencher a lot of people have pounded on his door to get support, to push him to do this. We are at a time when people do need help. We do not have unemployment insurance in the country. We do not have unemployment benefits. And it is a time when people are in need, and that's when they need help. But for all that, we have to bear in mind the precarious situation of the pension fund.

Now, all sorts of things can be said about the government pension fund. I don't want to hear so much from the private sector on it because they lost millions of dollars of our money. And I don't hear anybody standing up quarreling or carrying on about it. They lost it, and they are supposed to be the best managers in the world, the private sector. We haven't done that in government. The problem that we have in government is that we haven't been able to fund it as much as we would have wanted to over the years. It's only started to get funded since the mid-1990s. So, Madam Speaker, we have come a long way from no pension benefit to where we were in 1993/94 whenever it was we started to pay in the proper pension.

So, Madam Speaker, as I said, I trust that the Members who are piloting the Motion understand that we will get the actuary to look at it to tell us what the best way is to do this.

Thank you, Madam Speaker.

The Speaker: Thank you, Mr. Premier.

Does any other Member wish to speak?
[pause]

Third Elected Member for Bodden Town.

Mr. Dwayne S. Seymour: Thank you, Madam Speaker.

First, I want to commend the Fourth Elected Member for George Town, friend and schoolmate, and colleague. The concept of what the Fourth Elected Member for George Town is trying to achieve here is the right one, I believe. And if at all possible, I would like us to consider what he has presented here. As seconder of the Motion, I definitely agree with equal opportunity for all.

Madam Speaker, I seconded the ⁸[motion](#) in 2010, the private sector pension deduction motion which was quite successful and has had its effects already on the economy and the community. The reason I support this Motion is only [because of] what I have experienced in the past, before coming to this honourable House, in terms of purchasing a home. I remember all of the opportunities that alluded me for so long. I had many troubles trying to qualify for a home, only being \$5,000 short, \$8,000 short of being able to achieve my dream. And I appreciate very much, and this has a real place in my heart in terms of persons owning a home.

Madam Speaker, many civil servants have seen me since hearing about the private sector motion being brought in 2010, making comments such as it wasn't fair that they weren't given the same opportunity to deduct from their pension fund.

There are particular civil servants that call me on a bi-weekly basis—many of them—in terms of trying to find out when this Motion was coming to the House. I kept telling them that it is on the Order Paper and it takes some time to come forward. And I can assure you that the Fourth Elected Member for George Town is quite happy that it's on the Order Paper today and that he can discuss this and hear comments from other Members of the House.

Madam Speaker, the same comments that I heard are the same comments that the Fourth Elected Member for George Town heard. He approached me to second the Motion as we discussed it further. And I know there will be challenges with this, and there will be many things to be worked out. But I do pray that the committee that is selected will give this a fair chance, hearing all the principles concerned, even if it is only considered for a small stated window, or a short time. I ask that if this passes in this honourable House that stock be taken of the needs of civil servants and try to do an assessment of the amount of

funds needed and that it will be based, moving forward, on trying to get this kind of data ensuring that it doesn't overburden the fund that is there now.

Madam Speaker, I beg for now that [Members of] this honourable House support this concept of the public service pension in regard to pension deductions. Again, I commend the Fourth Elected Member for George Town, and again, his confidence in me for seconding this Motion. I thank all others who will bring comments and ensure that all are given equal opportunity.

Thank you, Madam Speaker, for those short comments.

The Speaker: Thank you Third Elected Member for Bodden Town.

Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause]

If not, I call on the mover of the Motion to bring his reply.

Mr. Ellio A. Solomon: Madam Speaker, I would perhaps in closing, obviously, like to extend my sincere thanks as well to my colleague, the Third Elected Member for Bodden Town.

Madam Speaker, for the benefit of those who may not know, you cannot do anything in this honourable House unless you have somebody prepared to second that motion. On numerous occasions I am thankful that I have a colleague like the Third Elected Member for Bodden Town who has been prepared to put his signature on the line and to stand to his feet and be recognised and doing what is, definitely in my opinion, the right thing insofar as standing up for the Caymanian people of this country.

So, Madam Speaker, with that I would also say naturally we have only had the contribution from the Premier and from the Third Elected Member for Bodden Town. I would hope that perhaps that's a good sign. But I am sure we will know when we take it to the vote, Madam Speaker.

I just want to clarify this issue about the past service pension liability, Madam Speaker. There is the issue about the funds and how much is actually owed to the pension. But I believe it is important to understand that within the Government there are those who are on the defined contribution system, and there are those who are on the defined benefits. The defined contribution is the same sort of system that exists right now in the private sector, where a percentage of your salary and also contributed in part by the employer, goes into your pension fund and you simply receive those funds when the time comes for your retirement.

And recognising that the Cayman Islands Government does have a bit of a unique challenge compared to the private sector, because other than the defined contribution there is the defined benefits,

⁸ Private Member's Motion No. 3/2010-11—Pension Deductions (2010/11 *Official Hansard Report*, page 429)

and the defined benefits says that you have a specific formula that says, *Mr. So-and-So has worked for the Government for X amount of years, this is how much he makes, we anticipate that he will be retiring at 60 or 65.* And then the Premier who would have also commented in terms of the actuarial, would be sitting, and amongst other things, trying to figure out how long Mr. So-and-So is actually going to live and how long you are going to have to make that contribution.

But, Madam Speaker, I wish to stress that point because, for example, as myself, who would have joined Government on May 11, 1987, there is a formula somewhere . . . somewhere the actuary, amongst others, has my name there. And somewhere he or she is saying that in 17 years Ellio is going to retire. And in 17 years when he retires we anticipate that he will live 10, 15, or 20 years. Madam Speaker, other than that being a lot of guess work, you can see the challenges that he or she faces.

So they go ahead and the put together something rigid and say 17 years to retire, we think that everyone who retires is going to live approximately 20 years and then they come up with this big block of a figure. And that block of a figure today may say \$165 million, or it may say \$200 million. And all of a sudden they do an average tomorrow and the Economic and Statistics Office prints some new statistics and says that the lifespan in Cayman has risen and they add more numbers on it, and it goes from \$200 [million] to \$225 [million] or \$240 [million].

If they find out that people have been smoking and not living healthy then he reduces the number, supposedly. And he can't possibly calculate for how many persons die of cancer (like the woman I spoke about earlier), and he cannot calculate for the man who loses his wife (like I spoke about earlier), and they can't calculate for the individual who is going to be hit by a truck tomorrow. They can't calculate for it.

So they come with some very hard and rigid formulas and then they give a little plus or minus here or there, perhaps to try to compensate for all of these eventualities. But it is a science, at least, Madam Speaker.

But just as I have arguably 17 to 20 years to go before I retire, there are other Caymanians in the civil service right now with the same 17 or 20 years to go before they retire. And, Madam Speaker, I say that they need assistance, not in 17 years, not in 20 years, they need some assistance today. Today is when they need assistance in terms of finally being able to pay off that mortgage for many of those same Caymanians who are going to retire very soon. And one or two of them sat on the Civil Service Association Board too, well wanting it, Madam Speaker, because they know they would be able to pay off that mortgage and finally call that home their own.

When we talk about actuarial, Madam Speaker, we need to put it into the proper context. It is somebody crunching numbers. And that is not to be

dismissive, Madam Speaker. But it is someone crunching numbers and anticipating a lot of things. And as the Premier would have rightly mentioned, Madam Speaker, all of the actuaries in the world and all the best investors in the world are out there sitting in the private sector and Caymanians in the process were losing money!

I can tell you, Madam Speaker, if all of those actuaries and persons doing their math could give us the \$200 million that the taxpayers of this country lost on their pensions, I wouldn't have to bring this motion! I wouldn't have to bring it. I could give it away to everyone who needs it and still have surplus; still have some left over. But the reason we cannot do that is because they were wrong! Their investments were wrong. And things that they anticipated did not work out the way they anticipated. There are errors on all of our parts, Madam Speaker. So bear that in mind, for those who seek to crucify myself or the Government.

No one is going to get it perfect. But what we know, Madam Speaker, I have had nothing less . . . and I am not throwing numbers out to throw numbers out. I had nothing less than over 100 persons call me from the civil service (because, again, I was denied the opportunity to be able to meet with the civil service). The Civil Service Association should call a meeting so we can simply expound to the civil service and say, *Here is what we want to do. Let us know what your opinion is.* Why would you deny anyone that opportunity? Why would you deny the 3,000-plus core civil servants the opportunity to hear that and to be able to express their opinion?

So, Madam Speaker, we have to get all of the "while you were out" notes and we have to get the solicitations from persons on the phone and those who drive by your house and those who meet you out in public. But, Madam Speaker, I have received it nevertheless. And I can say to you that if you can have over 100 persons that go out of their way to make sure that their opinion is expressed, that they would like to be able to get access to it, Madam Speaker, I dare say it is the tip of the iceberg and people need the assistance. Our civil servants, the Caymanians, need the assistance.

So, with that, Madam Speaker, I thank you very much for the opportunity to make this contribution, for those who have allowed me to be here today to represent them in one way shape or form. I wish to extend that we can put this committee together that is going to, in a very circumspect and responsible way, review what the situation is with the Civil Service Association or with the civil service insofar as the pension. Look at it in terms of the defined contribution and the defined benefits and do not be pushed, do not be coerced by anyone, but make the calculations yourself. Do what you believe is right for the civil service.

I hope and I pray that that final decision of that committee will be as mine, and that is that they should have the same equal rights and opportunities as those

of our Caymanians in the private sector. I ask them for that. But either way, Madam Speaker, I wish to say to all of those civil servants today who continue to work hard, particularly all of those who have taken the time out to make representation; that I and my colleagues have done as I have committed an undertaking to do, Madam Speaker. And that is to bring this Motion here before this honourable House and ask Members to vote for it.

It is disappointing to see that the chairs on the other side are practically empty, except for the Second Elected Member for Bodden Town, but unsurprisingly so, Madam Speaker.

With that, I thank you very much for the opportunity to make this contribution, and kindly ask that this particular Motion be put to vote so that the Caymanian civil servants can have an opportunity to know who are those individuals, the Representatives, who are willing to give them a chance for the same equal rights and opportunities as those in the private sector. With that, I thank you very much. God bless the Cayman Islands and the Caymanian people.

The Speaker: Thank you Fourth Elected Member for George Town.

The question is: BE IT RESOLVED THAT the Government considers amending the Public Service Pensions Law so as to enable employees falling thereunder that are Caymanian the ability to withdraw up to C\$35,000 from their Pensions to be used as a deposit to either purchase a piece of land, purchase or construct a residential dwelling, or pay off an existing mortgage.

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

Ayes.

The Speaker: The Ayes have it.

Mr. Ellio A. Solomon: Madam Speaker, I would like to call for a division please.

The Speaker: Madam Clerk.

The Clerk:

Division No. 7

Ayes: 9

Hon. W. McKeever Bush:
Hon. Juliana Y. O'Connor-Connolly
Hon. Michael T. Adam
Hon. J. Mark P. Scotland
Hon. Cline A. Glidden, Jr.
Capt. A. Eugene Ebanks
Mr. Ellio A. Solomon
Mr. Dwayne S. Seymour
Mr. Anthony S. Eden

Noes: 0

Absent: 6

Hon. Rolston M. Anglin
Hon. Alden M. McLaughlin, Jr.
Hon. D. Kurt Tibbetts
Mr. Moses I. Kirkconnell
Mr. V. Arden McLean
Mr. D. Ezzard Miller

The Speaker: The result of the division is 9 Ayes, 6 absent.

Agreed: Private Member's Motion No. 5/2012-13 passed.

The Speaker: We have now reached the hour of 4.30. Can I have a motion please for adjournment?

ADJOURNMENT

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

We move the adjournment of this honourable House until 10.00 am on Wednesday.

The Speaker: The question is that this honourable House do adjourn until 10.00 am Wednesday.

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

Ayes.

The Speaker: The Ayes have it.

At 4.30 pm the House stood adjourned until 10.00 am, Wednesday, 21 November 2012.

