



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 4.00 p.m. – 6.50 p.m.

Gibraltar, Friday, 16th November 2012

The Gibraltar Parliament

The Parliament met at 4.00 p.m.

[MR SPEAKER: Hon. A J Canepa GMH, OBE *in the Chair*]

[CLERK TO THE PARLIAMENT: M L Farrell Esq RD *in attendance*]

Questions for Oral Answer

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ENTERPRISE, TRAINING AND EMPLOYMENT

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Defence Transfer Advisor Advertisement; academic qualifications

Clerk: Sitting of Parliament, Friday 16th November.
Answers to Questions continue. Question 978/2012, the Hon. D A Feetham.

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Hon. D A Feetham: Mr Speaker, can the Minister for Employment state why the vacancy of Defence Transfer Advisor was advertised externally to the GDC and why no academic qualifications were a necessary requirement for the applicants?

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Clerk: Answer, the Hon. the Minister for Enterprise, Training and Employment.

Minister for Enterprise, Training and Employment (Hon. J J Bossano): Mr Speaker, I will answer this Question together with Questions 979/2012 to 984/2012.

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**GDC employees
Vacancies; grades, terms and conditions; HR Manager
Question 984/2012 withdrawn**

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Clerk: Question 979.

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Hon. D A Feetham: Mr Speaker, can the Minister for Employment confirm that a selection board interviewed candidates and made a recommendation in relation to the vacancies advertised earlier on in the year in the GDC in respect of four information officers, one vacancy in accounts and one of coach park attendant?

Clerk: Question 980.

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Hon. D A Feetham: Will the Minister for Employment state whether the Government has made a decision on whether GDC and former GDC, Civil Service, ring-fenced staff will be able to apply for each other's vacant posts?

Clerk: Question 981.

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Hon. D A Feetham: Can the Minister for Employment state whether GDC employees working in the Housing Department will be offered the same package as civil servants have been offered for surrendering their status if the Department or parts of it transfer into an agency?

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Clerk: Question 982.

Hon. D A Feetham: Is there any intention on the part of the Government to replace GDC grades with the same grades that are currently used within the Civil Service?

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Clerk: Question 983.

Hon. D A Feetham: Can the Minister for Employment please state when the GDC is likely to appoint a Human Resources Manager for the GDC?

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Clerk: Question 984.

Hon. D A Feetham: Can the Minister for Employment explain why he refuses to recognise... In fact, Mr Speaker, I am withdrawing this particular Question, so it is only until Question 983.

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Clerk: Answer, the Hon. the Minister for Enterprise, Training and Employment.

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Minister for Enterprise, Training and Employment (Hon. J J Bossano): Mr Speaker, existing posts are normally filled by internal promotion. The practice over the last four years has been to advertise vacancies both internally and externally. Newly created positions are recruited externally when there is a specific requirement, which in this case was previous experience of dealing with MOD transfers of assets and services. To my knowledge there is no academic qualification on such MOD transfers. The recommendation of any selection board that interviews candidates is an internal matter for the GDC.

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As regards GDC staff, the situation remains as communicated to them in a meeting held at the John Mackintosh Hall on 30th January 2012. The GDC employees deployed to the Housing Department do not have Civil Service status. The grades have been the same in the GDC and the Civil Service since the GDC was reinstated on 9th December 2011.

No decision has been taken in relation to the position of a GDC HR Manager.

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Hon. D A Feetham: Mr Speaker, just dealing with Question 978 and the answer that the Hon. the Minister for Employment has given me in relation to that Question, can the Minister please confirm that, in fact, he undertook, to a meeting in the John Mackintosh Hall of GDC employees, that all advertising for vacancies within the GDC would be advertised internally and that it would not go externally to any high flyers? Can he confirm that that was an undertaking that he gave to the GDC employees?

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Hon. J J Bossano: Well, not as the hon. Member has expressed it, because as far as I am concerned, I do not know anything about high flyers or low flyers.

What I did tell them was that the policy was that all internal vacancies that are promotions... That is to say if we have a job in the GDC and the person who is there goes, and we decide that that post is

90 required, then provided the number of posts at that grade remains the same, before anybody is brought in from outside to fill such a post it will be advertised internally.

Of course, the GDC does not have and has never had an existing establishment like jobs in the Civil Service have, nor do any of the agencies or authorities created by the former administration, as has been stated by them publicly in this House. So the position is that, for example, if somebody who is occupying a position in the GDC is placed in another Department, it is not that the position has become vacant; it is just that the person takes the post to somewhere else. So there are, for example, persons who were in the Employment Service now somewhere else and the post is still filled, but somewhere else. That is not a vacant post that would be advertised, but if the person were to leave the service a decision would be taken as to whether we require that number of people at that grade, and if it was required, initially it would have to be filled internally, and I would expect it to be the case that there will be sufficiently experienced internal applicants to fill it.

Hon. D A Feetham: Mr Speaker, I think I have understood the answer, but so that I understand it, by way of clarification, is the Hon. the Minister for Employment drawing a distinction between a vacancy that arises as a consequence of an internal post, an existing post that becomes vacant, and a vacancy that is created as an additional post? Is he saying that, effectively, in relation to the former, that goes internally to the GDC, and in relation to the latter, that will be open to applicants from the outside, depending on the nature of the post? Is that what he is saying?

Hon. J J Bossano: For example, there are a number of posts that have been added to the GDC. I think the hon. Member has to remember that the GDC itself is a supplier of labour. That is to say there are people who are employed in the GDC but do not carry out a function *for* the GDC; they carry out a function either in the Tourist Office or in the Treasury or in the Education Department or the Financial Services.

So a number of posts have been created recently in the GDC, which are to do with regulatory work in relation to gaming, and the people who have been brought in have been brought in filling those posts, but not from internal recruitment in the GDC. I would expect that the people in the administrative structure – where effectively they are generic skills and you can move somebody who is an HEO from one area to another area, doing HEO work, and basically there should be no problem in the work being done – that if one of those posts became vacant, you would expect that the next level up, of EOs, throughout the GDC can apply, independent of where the HEO is. We have an example in the Tourist Office, where the person who took the job was an EO in the Employment Service, but it was a GDC HEO which was open to GDC EOs only. I would expect that it would be extremely unusual that for any of those posts we could find nobody internally, because I am told people act up all the time and they are experienced and they know the job.

Hon. D A Feetham: Mr Speaker, can the Hon. the Minister confirm that, in fact, there is a minimum entry requirement to the GDC of a couple of O-levels or GCSEs?

Hon. J J Bossano: I cannot confirm that. I do not think that, when we recruited AAs recently, we put a minimum entry requirement.

Hon. D A Feetham: Mr Speaker, my understanding – and of course I am not going to push it if he is not aware of it – is that, for Grade 1s within the GDC, the minimum entrance requirement is a couple of GCSEs or O-levels. But the question is this: if there is such a requirement – I would say there is; the hon. Member is not aware, but if there is –

Hon. J J Bossano: I am saying more than that: I am saying I do not think there is. I can certainly say with certainty that there has not been, because I know a lot of the people they have got in the GDC who have not got them, who were there already when I arrived.

Hon. D A Feetham: If there is a minimum entry requirement for Grade 1s within the GDC, does he not agree with me that it makes very little sense indeed for there to be a minimum entrance requirement for Grade 1s of a couple of O-levels, but then no minimum entry requirements, in terms of academic qualifications, for somebody for a post such as this, as Defence Transfer Advisor?

I take the point that you have made, that Defence Transfer Advisor may have... one was looking for other (**Hon. J J Bossano:** Skills.) skills, but the point that I am making is if you have a minimum entry requirement for Grade 1s, shouldn't it also apply across the board, or certainly higher than Grade 1s?

150 **Hon. J J Bossano:** I do not think it necessarily follows. It depends on the nature of the content of the job. If you had a guy who was an excellent musician but had no O-levels, then you would not say, 'Well, I am not taking him,' and therefore he cannot enter into the Culture Department without O-levels, even though you may have somebody else who does not know how to touch an instrument but has the O-levels. It depends on what you are looking for, because what you are paying for is the work that is required of the incumbent of that post.

155 In any event, I have not introduced a requirement for two O-levels or two GCSEs, and I know beyond doubt that of the 160-odd persons who were there, there were very many who did not have them. They managed to get in before without them, so clearly it has not been the case that between 1996 and 2011 there has been such a requirement; otherwise, those people should never have entered into employment. I have not introduced them, so it is not an irrational deduction that if they were not there and I have not introduced them, then they do not exist.

Hon D A Feetham: Mr Speaker, I think that there were O-level equivalents – HND or NVQs.

165 Mr Speaker, I do not know whether the hon. Gentleman was in fact here when I asked a Question about the Defence Transfer Advisor to the Chief Minister, and asked him– this was before there had been a public announcement that the individual had been chosen – whether he was aware of the talk about town that an individual had already, even before the selection process had concluded, been earmarked for that particular job and that, in fact, that talk was rife about town. His answer to me was, 'Well, I am aware of the rumour, but you have just elevated it to the House.' Is the Hon. Minister satisfied that the recruitment for the Defence Transfer Advisor was undertaken completely and utterly transparently and properly?

170 **Hon. J J Bossano:** I was not involved in selecting the person, nor appointing the board that selected them. All I can tell the hon. Member is that I imagine it is no less transparent and accountable than what has been happening in the last 15 years when similar rumours were rife every time somebody got a job in the Government.

180 **Hon. D A Feetham:** Moving on, Mr Speaker, to the Answer that the hon. Gentleman has given me to Question 979, where I asked him about whether a selection board had interviewed candidates and made a recommendation in relation to the vacancies advertised in the GDC in the Tourist Office in respect of four information officers, accounts and also the coach park, his Answer, as I understood it, was that recommendations of the board are an internal matter. With respect, does he not agree with me that there is an inconsistency in the approach that the hon. Gentleman is adopting before this House today, and the approach that the hon. Gentleman, the Minister for Tourism, adopted certainly a month ago in relation to the recruitment of other officers within the bus service company, where he had absolutely no qualms in saying, 'This was a recommendation of the board and it was all done transparently, and all I was doing was, in fact, accepting a recommendation of the board'?

How does he correlate the approach by the Hon. the Minister for Tourism, which I commend, and the attitude or the response that the hon. Gentleman has given me today?

190 **Hon. J J Bossano:** I can tell him that the fact that he commends one approach as opposed to the other will have no influence on me, except to think that mine is probably the right one if he commends the other one. But I do not see any contradiction anyway, because as far as I am concerned, if I choose to make public something that is internal to the GDC, I will do it, and if I choose not to, I do not.

195 So what I am telling him is he is not entitled to that information, and I choose not to give it to him.

200 **Hon. D A Feetham:** Can I put this to the hon. Member, Mr Speaker, that in fact what happened was this. The selection board interviewed over 200 candidates. The board made a recommendation to the Hon. the Minister for Tourism in relation to the four vacancies for information officers. The Hon. the Minister for Tourism endorsed that recommendation, sent it to you, to the Minister for Employment at the ETB, and you, as Minister for Employment, overrode that recommendation and insisted that only one information officer would be recruited from the recommendation of the board and three of them had to be Future Job Strategy trainees. That is what I am putting to the hon. Gentleman. What does he say about that?

205 **Hon. J J Bossano:** I say, Mr Speaker, that that is a hypothetical question, which under the Rules I do not have to answer.

Hon. D A Feetham: Mr Speaker, Point of Order.

210 **Hon. P R Caruana:** No, just rephrase it.

Mr Speaker: You can rephrase your question, surely.

Hon. D A Feetham: Did it or did it not happen in that way? That is the question.

215 **Hon. J J Bossano:** The question is, Mr Speaker, that he is making an assumption about something
happening, and that assumption is based on hearsay, unless he tells me that he has a mole inside the
system who has told him that story. Therefore, I do not have to tell him what goes on in the
220 recommendation of a board, and I am not telling him. If tomorrow a board recommends that I employ 20
people and I choose to employ one, it is my prerogative, as Chairman of the GDC, to do that, and he is
not entitled to question me why the 19 were not selected or why they were not appointed.

Throughout their 15 years, the policy of the previous administration was that they were here to give
answers for the things that they did and not to give explanations of every detail of the internal machinery
of the workings of the Government, and now they seem to have moved from a very clear concept of what
225 the limits were, to trying to say there is no limit.

You can ask me what is [*inaudible*] in the estimates, what is approved, what is rejected, who applies,
who does not apply, but the answer is they are not going to get any more information from me than the
one they were prepared to provide themselves.

230 **Hon. D A Feetham:** I could not help but... One of the points that you made was that you are perfectly
entitled to override the recommendation of a board, that that is a recommendation – (*Interjection by Hon.
J J Bossano*) No, I understand that. The point that you made was, ‘I am perfectly entitled not to accept a
recommendation that a board makes.’ (**Hon. J J Bossano:** Yes.) Indeed, I would not disagree with that.
All I am asking is is that what happened in this particular case?

235 He seems to be implying that that is what happened, and I am just trying to get to the bottom of what
the facts are.

Hon. J J Bossano: Mr Speaker, I am entitled to do two things – I am entitled not to accept the
recommendation, and I am also entitled not to tell the Member whether I accepted it or I did not – and
240 that is what I am doing.

Hon. D A Feetham: Mr Speaker, does he not think that again there is an inconsistency in the
approach adopted by the Hon. the Minister for Tourism before this House on the last occasion, and the
approach that the Hon. Minister is adopting today, where the Hon. the Minister for Tourism actually
245 defended the selection of the recruitment of the managers and... well, certainly of the managers, on the
basis of, ‘Well, look, I am sorry, but it was the recommendation of the board. I am the Minister, I am
accepting the recommendation of the board, and it is not a political appointment.’ Now you today come to
this House and you say, ‘I am not giving you that information.’ So, when it suits the Government, it is
alright to say that it is the recommendation of the board, but when it does not suit the Government,
250 because of course the Government has something to hide, the hon. Member obfuscates and confuses the
situation.

Does he not believe that there is an inconsistency in the approach between yours and the Hon.
Minister?

255 **Hon. J J Bossano:** No. The only inconsistency, Mr Speaker, is in the approach of the Member when
he was in Government and the approach that he has in Opposition, but that should surprise no-one given
the dramatic shift in his approach to politics in general, public debt in particular, and a thousand other
things when he moved between 2003 and 2007. So he is the expert of inconsistency in the entire 300-year
history of Gibraltar and that may mean that he feels he is qualified to determine what is an inconsistency
260 and what is not.

What I am telling him is if I have the discretion to give him information as to what a board
recommends or not, then I am entitled to exercise that discretion in either providing it or not providing it.
If he thinks that when I do not provide it I have something to hide, he can well think what he likes; he is
not going to change what I am going to say.

265 **Hon. P R Caruana:** Mr Speaker, does the hon. Member accept that his lucid statement a few
moments ago – that he is not willing to provide any information that the previous Government were not
willing to provide him when the boot was on the other foot – finally betrays what we have been saying
from this side of the House, that the pretence of the hon. Members opposite to have transformed the
degree of transparency and openness in Government is the *farce* that we have been saying that it is,
270 because if all they are willing to do... if their measure of transparency is simply to match and not exceed
the measure of transparency which they allege afflicted the previous Government, then they, by
definition, cannot have any inclination to be more transparent.

275 **Hon. J J Bossano:** Mr Speaker, in this particular case that analysis is flawed, (**Hon. P R Caruana:** Oh, I see.) and I will tell him why: because in the 16 years that I was there I never attacked him for being untransparent when he said, ‘This is an internal matter and I am not prepared to share it.’ I never attacked him once in 16 years, so I am not being inconsistent at all. There might have been attacks in other areas of inconsistency, but certainly I can tell the hon. Member my judgement in whether I should say or not say something, or do or not do something will not be determined by wanting to be more transparent than him.

280 **Hon. P R Caruana:** Mr Speaker, everybody in Gibraltar knows that there is a government within a Government, and that the Government is led by the Hon. the Chief Minister and that the government within the Government is led by him, which he has just demonstrated by saying, ‘I am not subject to the Government’s transparency policies because I, Joe Bossano, in the 16 years that you, Peter Caruana, were Chief Minister, I never accused you of not giving me information.’

285 Mr Speaker, the question is not what I did to him or what he chooses to do now. The question is that he is a Minister of a Government that pretends and asserts to have hugely elevated the instinct and willingness and transparency, and all I am saying to him is whether he thinks that he is complying with that policy by saying, ‘I am not willing to give you any information that you were not willing to give me,’ because that is the *same* degree of transparency, for good or for bad, and ergo, by definition, does not equal and cannot equal a greater degree of transparency, which is the policy of his Government.

290 I would have thought, Mr Speaker, the hole into which he has dug himself is self-evident, but no doubt he will try and bluster his way out of it.

295 **Hon. J J Bossano:** I do not need to bluster. It is self-evident that it is not a hole. (*Interjection by Hon. P R Caruana*) It is only evident to him because he would like it to be so, and therefore the hon. Members opposite spend their lives inventing things and then questioning why their inventions do not conform to reality, and this is one example.

300 Of course, the policy of the party in the Election campaign was to improve on the level of transparency or to reduce the lack of transparency in the performance of the previous administration, but if in 16 years I never considered what he was doing to me untransparent, then clearly in this particular area that was not one of the areas that we had identified. There are so many other areas that there is no reason to stick to this one. There are *many many* more areas where the transparency has been transformed overnight, and in all those areas we are all doing the same thing.

305 In this area, where I accepted the legitimacy of the argument from the hon. Member, I only asked him then to be consistent and accept the same legitimacy to me, and they should be consistent with their previous position and accept that we should be accorded on this side with the same discretion that we accepted from them, because I do not remember... I certainly did not do it, and I do not remember other people saying, ‘Well, you should be telling us what goes on inside the Government,’ whenever that Government was paraded by the hon. Member. The hon. Members were transformed shortly after the Opposition... not at the beginning, because they could not get over the shock of not being in Government, but once they had realised they were in Opposition, they were transformed –

Hon. P R Caruana: Not years, that’s for sure.

315 **Hon. J J Bossano:** Well, I do not think it took me years to be transformed. If the hon. Member accuses me of the fact that... of not being transformable –

Mr Speaker: Can we try to make matters relevant, please, to the questions?

320 **Hon. J J Bossano:** Yes. Well the relevance to the question, Mr Speaker, is that I believe they ought to be consistent with the level of information that they thought was reasonable, and therefore not seek more. But in any way, if they seek it they will not get it.

325 **Hon. P R Caruana:** On a wholly different dimension now, going back to the original answer, Mr Speaker, I think I correctly understood the hon. Member to say that he was free, if 12 people were recommended, to choose to accept only one, and I think that is the proposition to which my hon. and learned Friend, Mr Feetham, agreed. But was this a case of not having had 12 recommended and having chosen to accept one, or any other number less than 12, but rather of having employed people *different* to the people who were recommended; in other words, employing people who were *not* recommended by the board?

330 **Hon. J J Bossano:** No, Mr Speaker. Only three jobs were filled and therefore only three people were employed, so it is not a question of employing them differently or employing different people.

335 **Hon. D A Feetham:** Yes, that in fact is –

Hon. P R Caruana: Not the people recommended by the board.

340 **Hon. D A Feetham:** Exactly. Isn't it the case that the board recommends four for the information officer vacancies, another one for accounts and another one for the coach park, and you in fact –

Mr Speaker: No – and the Minister.

345 **Hon. D A Feetham:** – and the Minister only accepts the recommendation in relation to one information officer and the other two, because what he does is he says, 'No, the other three information officer vacancies, we are not going to fill them because I am going to have three Future Job Strategy trainees working there'? That is what has happened, and in fact all the answers that he has given us during the course of this afternoon, anybody listening to this debate will have come to the conclusion that that is precisely what actually happened.

350 **Mr Speaker:** Anybody listening to this *question and answer session*.

Hon. D A Feetham: Question and answer session.

355 **Mr Speaker:** If you say that it is a debate, I will step in!

Hon. D A Feetham: So he might as well just simply confirm that that is the position.

360 **Hon. J J Bossano:** Mr Speaker, the position was that three jobs were filled. The GDC is free to fill one job, two jobs, three jobs, or however many jobs it wants, and it has to give no explanation to the hon. Member as to how many more we would have filled had we taken a different decision. It is as simple as that.

365 The fact that there are existing trainees deployed there, like they are deployed in many other parts of the Government... are people who were there before the vacancies existed and people who can be moved tomorrow to another area of employment, and people who eventually will finish up in the private sector, not in the public sector, (**Hon. P R Caruana:** I understand.) so his analysis is incorrect.

370 **Hon. P R Caruana:** Wait a minute. So what the hon. Member is saying, in fact, is that the two or three jobs that were being covered – let's put it that way – by trainees, were not filled at all. They ceased to exist as posts because the trainees could move on, and if they move on either the jobs are not filled, or they would then be filled permanently by a recruit.

375 **Hon. J J Bossano:** No, Mr Speaker, they do not cease to exist as posts, because as the hon. Member ought to know, since he is the one who created the system, there are no posts in the GDC or in the agencies or – (*Interjection by Hon. P R Caruana*) Yes, posts. There is no structure of posts in the way that there is in the establishment of the Civil Service, and that indeed was one of the arguments that *he* used to persuade *me* of the greater flexibility of what was being done with this idea of employing people outside the Civil Service.

380 Therefore, whereas the Civil Service structure is cast in tablets of stone, and every time there is... We are now filling posts in the Civil Service that have been empty for 10 years. The fact that somebody leaves a job empty for 10 years, one would think normally would be an indication that perhaps there is not a need for it. He knows as well as I do that in the Civil Service a post stays there for however long it is. In the GDC and in all the agencies and all the authorities, this is not the case because there is not an agreed complement of posts. So tomorrow you can have five information officers and the day after you can choose to have one or to have 10, and at the moment we have chosen to have three.

385 **Hon. P R Caruana:** Yes, Mr Speaker, I understand that and I understand that the Government has got management discretion to decide whether to fill posts or not fill posts, but doesn't he understand that we are premising our questions on the fact that the Government made the governmental executive decisions to *advertise* these posts, and therefore the Government had *made* the decision that it wanted to fill four information officer posts?

390 The Government did not say, 'I advertise for the job of information officer – I will decide later how many I want, or one'; the Government said, 'I want four information officers.' Somebody in the Government, presumably the Minister for Tourism, made the decision that the Government needed and wanted four more information officers and *advertised* for four more information officers. So the board then considers applicants for four posts, it makes a number of recommendations, and the hon. Member

only puts one of those people into those four posts, and the other three it fills with trainees who had not been recommended by the board, and all we are saying is...

400 Look, he may want to defend it as being perfectly okay – that would be a different debate – all we are saying is that four advertised posts have been filled, as to one from amongst the people recommended by the board for that post, and as to three by trainees who had neither applied for the posts nor been recommended for them. That must be an incontrovertible statement of fact.

405 That the hon. Member may wish to say, ‘Well, so what? I reserve the right to assist trainees into real jobs in their... and covering for real...’ That is a policy decision which he is perfectly free to take, but at least let’s agree on the basic facts of what has happened.

410 **Hon. J J Bossano:** No, we cannot agree on the basis facts. He is wrong and it is not a fact, but for me to agree on the basic facts I would have to tell him what I do not want to tell him, because he is not entitled to have that information, which is to say to him exactly what was recommended, and that is what he is trying to get me to say and he is not going to succeed in that, Mr Speaker.

Secondly, these are generic posts. You may title it ‘information officer’, but if it is a grade 1, it is a grade 1 that tomorrow I can switch with a grade 1 anywhere else in the GDC, so it is not the case that you can go in and say, ‘I am an information officer and you cannot move me from here.’

415 **Hon. P R Caruana:** They have a separate job description.

420 **Hon. J J Bossano:** No. People are graded in grades. There is a question about the grading structure and either they are in a grading structure or they are not in a grading structure, and are people in grading structures interchangeable or are they not. So, either the hon. Member is saying somebody can be a grade 1 or an AA, working as an information officer, which is true; or he is saying no, an information officer is a job that requires specialist skills, which is not transferable, like the MOD land transfer. Well, he is wrong, they are not the same thing.

425 **Hon. D A Feetham:** Just finally on this part and I will move on, does the Hon. the Minister for Employment have anything to say to those three individuals who were selected by the board and that he has effectively vetoed from employment as information officers?

430 **Hon. J J Bossano:** No, I do not have anything to say, because I do not accept any of the statements that the hon. Member makes here, for which he is making himself responsible on the basis of hearsay and on things that they have told him in the street.

But I can tell him one thing: if those three were unemployed, they would have a far better chance of getting another job now than they had before 9th December. That, I can tell him.

435 **Mr Speaker:** Is the hon. Member asking now supplementaries on –

Hon. D A Feetham: On a different point.

Mr Speaker: On others?

440 **Hon. D A Feetham:** Yes.

Mr Speaker: Please do.

445 **Hon. D A Feetham:** Mr Speaker, I apologise, but of course he has answered –

Mr Speaker: No, carry on.

450 **Hon. D A Feetham:** Mr Speaker, the Hon. the Minister for Employment appeared to say that the Government has taken the decision not to have a situation where GDC employees will be able to compete for Civil Service posts that become vacant that are occupied by former GDC employees. Can he confirm that is a Government decision as a whole? Can he confirm that?

455 **Hon. J J Bossano:** Mr Speaker, I do not know what he means by ‘a Government decision as a whole’. If any Minister takes any decision, then effectively the Government supports the decision of the Minister. I do not know if it was any different when he was there.

Hon. D A Feetham: Yes [*inaudible*].

460 **Hon. J J Bossano:** Then let me explain the situation. When the hon. Members decided to discontinue
the existence of the GDC, they sent a list to the Public Service Commission of all the people who were in
the GDC, and the Public Service Commission was asked to uphold the Civil Service status without the
normal requirements of the academic qualifications, vetting, or anything else – just a list, rubber stamp it
– and the Public Service Commission rubber stamped it. (*Interjection by Hon. P R Caruana*) I am
assured –

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Hon. D A Feetham: They made a recommendation to Government.

470 **Hon. J J Bossano:** I am assured they rubber stamped it because they did not say... It was not that the
GDC said to the Government, 'Would you do this?'; it was the Government saying to the GDC, 'We want
you to do this.' I have it from high authority and it is not anybody in the GDC.

When we came in, we found that there were a large number of GDC employees who had refused to
sign the letter accepting the transfer, even though in fact they were told, according to them – I do not
know whether it is true; the Members opposite may know better than me, but they were told by Unite –
that either they signed or they were without a job, that's what they claim. I do not know if it is true or not.
I do not make a habit of saying it is true because it is in the street. I am telling him that is what I was told
before the Election, and what I was told after the Election by people who came to see me with letters.

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When they came to see me before the Election what I said to them was, 'Look, I believe that if they
sack you that will be an unfair dismissal in breach of the TUPE rules, but there is a problem because if the
GDC is discontinued and you say, 'I do not want to go to the Civil Service,' your employer has ceased to
exist.'

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Immediately after the Election, the same people who had not wanted to move came to see me and I
said, 'Well, look, I think to be fair to everybody, on the premise that the people who signed and accepted
transfer might have done it because it was a no-choice position – that is to say the GDC is going to be
closed down – either you are a civil servant with better conditions, or you have not got a job because you
have not got an existing employer.'

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If that is the story that I was told before, as a Member of the Opposition, and the story that I was told
afterwards, as the Minister responsible for the GDC... I said I think it is only fair that not only those who
did not want to move should be able to stay in the GDC, because now the position is that there are two
options: there are those who said they did not want to move, who are staying; and there are those who
said they wanted to move but they might have wanted to move in the scenario where there was no
alternative.

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Therefore, I explained everything to them and I convened a meeting in Mackintosh Hall, which lasted
three and a half hours, to give them the opportunity of discussing this. I told them, 'Look, you are free to
continue with what was offered to you before and we will respect you. What you had was ring-fenced
Civil Service jobs and you can stay there – all of you can stay there, if you all want – or all of you can
stay in the GDC if you all want, or some of you can go one way and some of you can go the other. Those
who go into the ring-fence will have the monopoly of the ring-fenced jobs, and those who stay in the
GDC will have the monopoly of the GDC jobs.'

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That is the offer that I made to them and it was an offer that was accepted by the majority. There were
some people who said they needed more time, and I said, 'Look, you have had several months on
something that before you were given 24 hours, and I think you know we have been reasonable with you.'

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They then went to the union, where in fact I think they had a letter signed by the Hon. the Leader of
the Opposition, in which he said that the legal position was that they were civil servants on 1st October,
whether they liked it or they did not and whether they had accepted or they had not. So, on the basis that
that was the legal view given to the union and which the union put to me, I said, 'Well, in that case, you
are all in the Civil Service, ring-fenced, according to this legal opinion of the Leader of the Opposition,
accepted by Unite. So now any of you that want to come out of the ring-fence and come back into the
GDC can do that, but once you come out you cannot go back.'

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That is where we are today and that is where we were when the decision was made, and the decision
was made on the basis that people were given the opportunity to keep everything that they were given by
the previous administration, or to have an alternative, but it was a decision that they had to make one way
or the other once, and we could not have people changing their minds because, obviously, in a situation
where different people have different retirement ages and so forth, you could have people doing numbers
and saying, we are [*inaudible*] now, the chances of promotion are greater on this side, so now we will go
to the other one,' and then, if the odds change, then 'I want to go back to the other one.' Therefore we
thought once the decision is made then that is the decision that you make. I actually said to them, 'Look,
in my view, you have got better prospects for the future in the GDC because the ring-fenced jobs are
finite.' The ring-fence can only shrink and eventually disappear because eventually all those jobs will go
back to the normal non-ringfenced Civil Service.

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525 **Hon. D A Feetham:** Yes, Mr Speaker, in fact, in fairness to the hon. Gentleman, you had explained this in the past, but of course the hon. Gentleman will recall – again in exchanges that I had with the Chief Minister and, I think, with yourself – that the GDC, through their union, were seeking meetings with the Government in order to discuss precisely this system of cross-fertilisation between the GDC and the Civil Service, and what I am trying to get at is whether the Government has actually now made a decision in the light of the representations that were made to the Government.

530 I take it, therefore, that in fact the Government is not for changing its position and its decision on what the Hon. the Minister has explained this afternoon to me – that the position will stay the same; having heard those representations, the position will stay the same and no cross-applications will be allowed, despite those representations. Or is the matter still open for discussion with the Government?

535 **Hon. J J Bossano:** No, as far as I am concerned, it is not open. I have made that clear. It is not open, and indeed I think, in my view, if it were open it would be in breach of the whole concept of the ring-fence, because the ring-fence would never shrink, it would constantly be replenished from the GDC side because the GDC is not ring-fenced. So, if there are new people coming into the GDC, and from the GDC they can go into the ring-fence, then the ring-fencing would be meaningless, in my estimation. But it is not an issue, as far as I am concerned, that has been re-addressed since the lines were drawn in my original meeting, when frankly, to be honest with the hon. Member, I think he should understand that, as far as I am concerned, we had no obligation to do any of this. We were perfectly entitled as a Government on 9th December to say, ‘Well look, that is what was negotiated by your union with the previous administration on 1st October: you were all made civil servants and you were all made ring-fenced and therefore you stay like that.’

540 It was because people made representations to us that they did not wish to be in the Civil Service that we gave them the option to get out. Now, clearly, if anybody of the people that came to me and said, ‘I now want to go in’, I would say, ‘Well, look, you were in and what you cannot do is be coming out when you think you are better off out and then wanting to be in, when you think you are better off going in’! Otherwise, no public administration can operate on the basis of people changing their minds.

545 I think the only justification that there was for giving them the option was that the previous administration had decided – as they had a right to do – that they did not want to keep the GDC. Therefore, they could not give people the option of staying in something that was bound to disappear. If we decided tomorrow, for example, that we did not want to have a Culture Agency, then clearly, you could not say to people, ‘Who wants to go into the Civil Service and who wants to be in the Culture Agency?’ because there will be no Culture Agency to be in.

550 That was the position on 1st October. That was the position on 8th December. People between 555 October and December made representations and I agreed that when we came up, we would give them an opportunity – because I did not think it was a good idea anyway to have people in a situation... People unhappy about being in an organisation are likely to be less useful. After all, at the end of the day, they are really working in the same places doing the same work, whether you call them ring-fenced or civil servant and they are on the same pay and on the same conditions.

560 **Hon. D A Feetham:** That is what they say, yes.

Hon. J J Bossano: They are.

565 **Hon D A Feetham:** Thank you very much for that. I will not push the point. It is loud and clear from the Hon. the Minister that the Government is not going to change its policy in relation to it.

Just in relation to the next question about the Housing Department transferring, if it converts into an Agency. I did not quite catch the answer, but the supplementary is effectively this –

570 **Mr Speaker:** The answer was that the GDC employees deployed to the Housing Department do not have Civil Service status.

Hon. D A Feetham: Yes, exactly. Thank you very much, Mr Speaker.

575 They do not have Civil Service status, absolutely not, of course; but will they be offered the same terms and conditions if there is a transfer? Of course, there are GDC employees that are working in this particular Department. Will they be offered the same package effectively, if the Department actually converts into an Agency or is it the intention of the Government to just simply offer that package to civil servants and not the GDC?

580 **Hon. J J Bossano:** Well, the reason why the answer is that they do not have GDC status is because the package that was offered to people in the part of the Housing Department that was responsible for the maintenance, the Government chose to split the two and then they said, ‘Half of you are going to go into

the Housing Maintenance Agency, which is not part of the Civil Service and because you give up Civil Service status, I will pay you 12%.'

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To my knowledge, no GDC employee in any other Department has ever been told, 'If you give up Civil Service status, we will give you 12%', because they do not have the status to give up. The people who are in the GDC in the Housing Department are deployed there and tomorrow I can take them out of there and put them in the ETB or anywhere else in the Government where people are deployed.

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This is a situation which I think it would be desirable to correct over the passage of time, so that eventually all the people who are GDC are all in one area and we do not have the kind of mixture we have got together which complicates... like sometimes, in some places there is a majority of GDC with a minority of civil servants and in other places, a majority of civil servants, with a minority of GDC. Now, at the very least, they are all graded the same and paid the same, so that is one area of friction that has been removed. It is still, I think, an untidy situation but it is not something that can be corrected overnight.

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In this area, there are a couple of GDC clerical officers in the Housing Department, but they are not civil servants; they are GDC employees and therefore they are removable from there and deployable anywhere else because their employer is the GDC, not the Housing Department.

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There is a great deal of discontent and resentment in areas of the Housing Department at the division that was made, because clearly, if people are sitting at one desk as opposed to another and they do not know that that desk is going to get 12% and this one is not, then when it happens, they say, 'Well if I had known that, I would have gone for being at that desk where the 12% was going to be.' That is the source of the problem.

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I do not know exactly how or when the possible re-merger – because that is what we are really looking at... It is not a question of a third Agency; it is a question of bringing the two bits back together and then, inevitably, you have to offer to those who did not get it before what you offered to the first group of people.

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But it is in that scenario that there is a problem affecting those who are not civil servants, because the element of the package that says, 'If you give up your Civil Service status, we will pay you so much', obviously requires that you should have the status in the first place to give up.

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Hon. D A Feetham: Mr Speaker, yes, in fact if we had been returned to Government, of course, this would not have been a problem, in relation... I am just talking about GDC Civil Service because they would have all been civil servants and being civil servants, they would have been able to take advantage of any package the Government offered civil servants. But in fact the hon. Gentleman is right: he has alluded to friction, but there is, of course, a friction between the GDC employees that chose not to move to the Civil Service and those that moved to the Civil Service, effectively within one organisation. Now does he not accept that there is that friction and that, effectively, you are dealing with a situation where – and I realise that in fact the way that it panned out, usually those that chose to remain in the Civil Service of the GDC were in blocks, effectively. So for example, Human Resources went to the Human Resources Department, etc.

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Does he not accept that there is this friction and that it is unfair, in circumstances where you do have GDC employees working within the Department and really all that distinguishes them is a policy decision that the Government took of reinstating the GDC, but that they are not offered the same terms as their brothers and sisters within the Civil Service – former GDC employees – when the time comes of transferring to the Agency?

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Hon. J J Bossano: No, Mr Speaker, if the people in the GDC had been previously in the Civil Service, they would have not have been able to give up their status, because it would have meant moving outside the ring fence.

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The people in the ring fence are frozen where they are. They cannot move in and they cannot move out. As far as I am concerned, that is what they accepted because the hon. Member must understand the number of anomalies that they created, when they were in office, with this negotiation. First of all, they promised everybody that they would integrate them unconditionally into the Civil Service and then the civil servants rebelled. Then because the civil servants rebelled, the Government changed their conditions and in order to seek the support of the clerical union and their members, they made this concession by saying, 'Well look, okay, all the people from before will not be able to move outside the jobs that they have got at the moment and therefore, this is not the only anomaly we have got.'

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There are many areas with these Agencies, where the hon. Member must understand that – I do not know whether he had anything to do with any of this, but I would have thought anybody with a background of negotiations and working conditions and so on would know that the moment you start tampering with conditions and you give people more money than others, you are creating problems for the future and there is a lot of that. You have paid people to leave the Civil Service a premium in one area, and you have paid another group of people a premium to come into the Civil Service in another

645 area. Well, unless you try and introduce some order into this chaos, you finish up with a leap-frogging exercise for which there is no end, because every time you try to correct one anomaly, you create another anomaly. It is not an easy problem to solve, I can assure the hon. Member. If it was easy it would have been done.

650 **Hon. D A Feetham:** Mr Speaker I accept some of it; I do not accept the way that he characterises what we did.

Hon. J J Bossano: Well, I would not expect you to.

655 **Hon. D A Feetham:** Indeed, I would like to remind the hon. Gentleman that in fact the union took the unprecedented step of writing to the hon. Gentleman and also to the Chief Minister and the Deputy Chief Minister, actually accusing the Government of having forced these individuals under duress to transfer out of the Civil Service into the GDC. So in fact, I could make exactly the same point that the hon. Member has made, but in reverse: (**Hon. J J Bossano:** Yes.) that the problem has been created by this Government, not by the previous Government.

660 But moving on to the answer that he has given to the question about the grades, in answer to some of the previous questions – it was not in answer to the original question, but in some of the supplementaries – he mentioned the AA grades. Yesterday, we had a conversation or an exchange about the AA grades and the hon. Gentleman today has said that, effectively – by my understanding and correct if I am wrong
665 – that the grades for the Civil Service and also for the GDC –

Hon. J J Bossano: Are the same.

670 **Hon. D A Feetham:** – are the same. Are the AA grades something that the Government has now introduced, this year? Of course, my understanding of the position – and in fact, I have gone back, having heard the Chief Minister yesterday – is that we abolished the AA grades in the late 1990s or certainly the now Leader of the Opposition, then Chief Minister did. Is that something that has been introduced now, this year?

675 **Hon. J J Bossano:** No, Mr Speaker, there are still people in grades, because... Well, the hon. Member, in his questions, put that there are 40 AA vacancies. Well, how can he say that there are 40 AA vacancies, but there are no AA grades?

680 **Hon. D A Feetham:** Well, can he give way? I will tell him.

In fact, I had drafted two questions. I had drafted the question, ‘Has the Government decided to create an AA grade?’ and then I thought, ‘Well actually, I know that they have created an AA grade, because here is the advert.’

685 But simply because there is an advert advertising 40 AA vacancies does not mean that the Government has not decided to create those AA vacancies this year. There were not any AA vacancies prior to... well, certainly when we were in Government. What there was was AO at Civil Service level and then below that – or quite a different job, actually, and perhaps it is even improper saying ‘below that’ – you had Personal Assistants and also Secretaries.

Now, unless what the Government has done here is that it has decided that all those –

690 **Mr Speaker:** Why don’t you ask: what is it that the Government...?

Hon. D A Feetham: Yes, what is it that the Government has done? Has it decided to bung... to effectively rename all those people? What has it done because I do not recognise this AA grade from the time that I was a Government Minister.

695 **Hon. J J Bossano:** First, I would like to deal with the point the hon. Member made about whether one can say, and the union wrote to me saying, that we had forced them to do something and that that was in fact a parallel to the criticism that I have made of the fact that they forced the employees into accepting Civil Service status on 1st October. The difference is that, before, people were given the choice and given
700 a general meeting; on 1st October, they were informed that from the 1st October, they were no longer in the GDC which was no longer going to exist and there was no alternative.

705 Now, the same union that accepted being told, ‘Whether you like it or you do not’ and saying so to me in writing... The position is that the Public Service Commission made everybody a civil servant on 1st October and therefore, whether they had agreed to it by returning the letter signed or not, they are civil servants. Right? That same union says when three months later, I give people the choice of remaining like that or having something else if they wanted, then that is forcing them.

710 So giving them an option is forcing them and forcing them is okay. If we had told them, 'You cannot move, you are stuck', the union would have accepted that, according to the hon. Member opposite. Well, it is a very strange way – but then, the union became a very strange animal, just before 9th December. (Hon. D A Feetham: Ooh!) Yes, a very strange animal. I think it is now recovering some of its former consistencies! (*Interjections and laughter*)

A Member: [*Inaudible*] Exactly!

715 **Hon. J J Bossano:** As regards his latest point, can I remind him, Mr Speaker, that his question is in one area, dealing with the grades in the Civil Service and the GDC being the same. Well, perhaps he can ask himself – because I cannot ask him a question! – if indeed he supports and believes that the grades should be the same as they are – and I have told him they are – then the Grade 1 is an AA in the Civil Service. If the Grade 1 is an AO, then the Grade 2 must be an EO, the Grade 3 and so on and beyond
720 Grade 5, there is nothing except Senior Officer, and then we have got people up the Rock who will be Senior Officers on £70,000.

Hon. D A Feetham: With respect, Mr Speaker, he has not answered the question.

725 **Hon. J J Bossano:** I have.

Hon. D A Feetham: Has the AA grade been introduced by the Government this year?

730 **Hon. J J Bossano:** No. Mr Speaker, I have just informed him that in the letters sent to people on 1st October, informing them that they were now civil servants and not GDC employees, there were people who were told they were AAs on 1st October 2011. That is what I am telling him.

735 **Mr Speaker:** But I think the hon. questioner is referring to the adverts that came out for 40 vacancies at AA, advertised by the Gibraltar Government. Do I understand the position correctly? Nothing to do with 1st October.

740 **Hon. D A Feetham:** Nothing to do with 1st October. In fairness to the hon. Gentleman, I understand that the answer that he has given. I do not accept it, but I understand it. What he is saying is that, effectively, *we* re-introduced somehow the AA grade. Now, I take issue with that, but let me ask him this: is the re-introduction of the AA grade an attempt to dumb down entrance requirements into the Civil Service?

745 **Hon. J J Bossano:** Well, Mr Speaker, he uses 'dump down' methodology in his speeches in this House, in his questions in this House. It is not 'dumping down'. Is he saying then that since time immemorial civil servants were 'dumped down' because they were allowed to enter the Civil Service at the grade of Clerical Assistant?

Several Members: *Dumbing down!* (*Laughter and interjections*)

750 **Hon. J J Bossano:** The entry grade of AA in my view is a very competitive rate at which to recruit, given that for one vacancy we have 603 applicants, which includes bank managers from the private sector. So if the hon. Member is saying we are going to have to reduce the qualifications or reduce the... We have got people with masters degrees applying to be AAs, *dumped down!* (*Laughter and applause*)

755 **Mr Speaker:** Does the Hon. Mr Feetham have any supplementary on the question of the GDC HR Manager? Then, next question.

760 **Future Job Strategy trainees
Termination of training since 1st February**

Clerk: Question 985, the Hon. D A Feetham.

765 **Hon. D A Feetham:** Mr Speaker, can the Minister for Employment state how many Future Job Strategy trainees placed with the private sector since 1st February this year have had their training terminated by those businesses?

770 **Clerk:** Answer, the Hon. the Minister for Enterprise, Training and Employment.

Minister for Enterprise, Training and Employment (Hon. J J Bossano): Yes, Mr Speaker: 86.

Hon. D A Feetham: Mr Speaker, can he inform the House as to what happens to those 86 when there is a termination?

775 In other words, what I am trying to extract from the hon. Gentleman is information as to whether they are placed in any Government Department or alternatively whether their contracts are held effectively on freeze until they are placed in another private company on placement?

780 **Hon. J J Bossano:** Of the 86 that had their training terminated, it was terminated because it was completed and they then entered full-time employment on higher wages, in the businesses where they were being trained. So 51 of them were... That is to say, they ceased to be trainees on the Friday and they became full-time employees of the employer on the Monday: 51.

785 Of the 35 remaining, they were removed from the training, because the employer was not willing to guarantee employment, because there was no such requirement when they were taken on before 1st February. They have now been provided with a new employer who has signed an agreement and who will give them employment at the end of the training.

790 **Hon. D A Feetham:** Well, Mr Speaker, I am surprised by that, because I have had a gentleman who has come to see me this week. He did not mind my telling you the name across the floor of the House, but I think it is inappropriate and I will tell the hon. Gentleman in the lobby of the House. After three months, his contract was terminated by the company and now he has effectively been told, 'Well look, we cannot do anything for you until there is another private company that is willing to take you on.'

795 I am asking the hon. Gentleman – there is certainly one that I know of – how many of these cases are there that the hon. Gentleman knows about?

Hon. J J Bossano: Well, Mr Speaker, the cases that I have quoted are the cases of the termination of the training. (**Hon. D A Feetham:** Yes.) Yes, and the cases of the termination of the training are where the training is either discontinued because there is no guaranteed job or there is a situation where the training has been completed for the period that was agreed with the placement provider.

800 The people are employed by ETCL; they are not employed by the business. The business agreed to take them on before, without any commitment and therefore, when the six months were up, they were just told 'Goodbye and send me another one.' That is no longer the case and therefore people who breach the agreement have to repay the money. That so far has not happened, because so far the ones that have reached the agreed period have been taken on.

805 There were 35 which we could not persuade to take on a commitment which they had not entered into originally and there was no way that we could force them to do it, and frankly, practically all of them argued that it is not so much that they did not want to be helpful; it was that they had really taken on somebody they did not need, because at the time, in 2011, they thought they were being 'good businesses' in helping to take on young people to get some work experience, but they did not have a slot to put them into, so they told us, 'Look, it is not that we are being difficult, because we did not sign an agreement; it is that had we been asked previously to take somebody on for a job, we would not have been able to take them on on this basis, because there is no job for them to go to.' They have been doing sort of chores in the office or in the shop or whatever, but they are extra to what the requirements of the business are, and that is where the 35 come in.

815 That does not mean that there have not been other people whose employment has been terminated for reasons that are... that they did not turn up for work or that they just disappeared and did not give any explanation or that they went off to study to the UK. We do not think they fall into the category of termination of training, because it is really like any employer: if there is a misconduct reason, then there is a dismissal.

820 I will certainly look. There are 500 people in the system: that does not mean that I have got an accurate explanation of each one of the 500, much as I try to keep my eye on the ball. But certainly, I am happy to investigate the case that the hon. Member has or any other that may come his way.

825 **Hon. D A Feetham:** Yes, well, I am grateful for that answer.

Perhaps if I may, Mr Speaker, ask the Hon. the Minister for Employment, what is the policy of the Government in respect of a situation whereby a company terminates the placement? They are not terminating the employment because these individuals continue to be employed by ETCL. (**Hon. J J Bossano:** Yes.) It is the termination of the placement. Is it the Government's policy that, where that happens, the Government will assume responsibility for these individuals and either continue to pay them, ETCL, or alternatively continue to pay them with a placement somewhere in the public sector?

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835 Obviously, there are only two choices. Well, in fact there are three choices: either ETCL terminates the contract, because there is no longer a placement; ETCL continues to pay, but there is no placement or no training anywhere; or ETCL continues to pay and the Government undertakes to actually place them within a Government Department. I just wonder, as a matter of principle and policy, what the Government's position in relation to this is.

840 **Hon. J J Bossano:** I have actually given him that information before, Mr Speaker, because I told him that most of the people that were distributed throughout the public sector were distributed precisely because the business where they had been placed would not commit itself to taking them, and since we were already paying them, rather than pay them to be not very useful in a business that did not want them, it was better to put them in a Department where at least we would be getting some return for the money we were paying them, until we obtained a place for them in the private sector – and I am using practically the identical words that I used in the last meeting of the House to give that explanation.

845 **Hon. D A Feetham:** Yes, well, I am grateful and I will in fact provide the Hon. the Minister for Employment the details of this particular individual, because this particular individual was told that he will have to wait without pay until he is placed. I do not chastise or criticise the hon. Member or the Government in relation to this, because it may well be that there is somebody at the ETB that is giving out the wrong information.

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**Employment Training Company Limited
Contracts with companies having trainees**

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Clerk: Question 986, the Hon. D A Feetham.

860 **Hon. D A Feetham:** Can the Minister for Employment confirm that those companies who had not signed contracts with ETCL, despite having trainees placed with them, have now signed such contracts?

Clerk: Answer, the Hon. the Minister for Enterprise, Training and Employment.

Minister for Enterprise, Training and Employment (Hon. J J Bossano): Yes, Mr Speaker.

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**Future Job Strategy trainees
Employers with Government contracts**

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Clerk: Question 987, the Hon. D A Feetham.

875 **Hon. D A Feetham:** Further to Question 848/2012, is the Government now in a position to identify the employers who have signed contracts with Employment Training Company Limited in respect of the Future Job Strategy trainees and have the benefit of a contract with the Government, any Public Authority or Government-owned company for the provision of goods and/or services with a value in excess of £2,000?

Clerk: Answer, the Hon. the Minister for Enterprise, Training and Employment.

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885 **Minister for Enterprise, Training and Employment (Hon. J J Bossano):** Mr Speaker, I am informed by the relevant bodies that the following companies have contracts with the Government in excess of £2,000: El Ouahabi Butchers; Saccone & Speed; Globe Travel; Caterpac Gibraltar; EWMS; Euroship Supplies; MiniMarkets; Bonmilk Ltd; Restsso; Gibmaroc; Fastafod Ltd; Gibtelecom; Gibraltar Chronicle; ITMS; Rock Cool; Ambrosio Eder; Upsmeier; Thomas & Betts; Gib Oil; Versetec; Austco; Schneider; Mifsud Electrofreeze; Braithewaite; British Gas; Emblem Strategy; Europort; Medsys Ltd; Monteverde; GOHNS; Animal Welfare Centre; Environmental Agency; Land Property Services; Detective & Security; Greenarc; Wildlife; Aquagib; Master Service; Gibraltar Vet Clinic; Amco; LC Groundworks; In Line Framing; Leed Transport; Wastage Products Ltd; ABC Services Co. Ltd; Gibsun Club; Icon; A to Z Supplies; TTS Group; Charnwood; Midtown Books; MCS; Newton Systems; Pageant Media; Portman Ltd; ESSL; Group 5; 501 Construction; W&N Work Company Ltd; Clive Chichon Services; SFA Interior Refurbishment; SA Construction; Koala Construction; Proseal.

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Of these companies, the following five have raised no objection to being identified as training providers: Acehoba Ltd; Hammonds Music Copyright (Gibraltar) Services Ltd; SFA Total Refurbishment; A&K General Builders.

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A further three are willing for the information to be given to the hon. Member opposite, as long as he treats it in confidence, as stated in the answer to Written Question 226/2012.

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Hon. D A Feetham: So, the number of companies that enjoy those contracts and have subsidised labour via the Future Job Strategy by my reckoning is eight, not 10, as the hon. Member indicated on the last occasion.

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Hon. J J Bossano: No, there are five that have said they have raised no objection (**Hon. D A Feetham:** Yes.) and there are three that say, 'You can have the information if you treat it in confidence' – and that is what the hon. Gentleman has got in the Written Answer.

Mr Speaker: Are there another two?

Hon. J J Bossano: There are another two that have said that they will not agree with this.

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Hon. D A Feetham: Have they not agreed or is it that they have not responded?

Hon. J J Bossano: I cannot be 100% sure, but they have not written in saying yes, because then I would have it here. (*Interjections*)

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I think, perhaps, the hon. Member will realise that what he calls subsidised labour is not in fact a factor in the position of being a Government contractor. That is to say, I want to make it crystal clear that all these companies that have contracts have got contracts which they had before they had what we call subsidised labour. (*Interjections*) Well, only the ones that are coming into existence since. Presumably, the fact, Mr Speaker, that the policy has been introduced, which I hope they will see as a welcome development and support, that there are unemployed people made redundant who are being helped by the Government to set up their own little business is a good thing and is a way of dealing with the unemployment situation, which I think myself is a very good thing, because it gives people an opportunity to have a future and those people have entered into the list of contractors since we have been in and were not there before because they did not exist before. I think there are three or four of them, out of several hundred. (*Interjection by Hon. D A Feetham*)

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Gibraltar Savings Bank Regulatory oversight

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Clerk: Question 988, the Hon. D A Feetham.

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Hon. D A Feetham: Mr Speaker, will the Minister with responsibility for the Gibraltar Savings Bank please state whether in considering the proposed extension of activities of that institution, it has taken into account the relevant EU Directives and does the Government consider that those Directives impose an obligation in respect of independent regulatory oversight or licensing?

Clerk: Answer, the Hon. the Minister for Enterprise, Training and Employment.

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Minister for Enterprise, Training and Employment (Hon. J J Bossano): Mr Speaker, the EU Directives are not relevant to the activities of the Gibraltar Savings Bank.

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Hon. D A Feetham: Well, Mr Speaker, they are not relevant to the Gibraltar Savings Bank at the present moment, but is the hon. Member saying that when the Gibraltar Savings Bank actually extends its activities, for example becomes a credit institution for the purposes of the Capital Requirements Directive, that still it is not covered by the Directive? Is that the Government's understanding of the position?

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Hon. J J Bossano: The position is that it will not be a credit institution as defined in EU law and therefore the Directives will not apply and that, in any event, given the level of the liquidity of the bank, it is well in excess of all the requirements and all the ratios of the Basel II, Basel III and all of them.

Clerk: And with that, we come to the end of Answers to Oral Questions.

Questions for Written Answer

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Clerk: Answers to Written Questions, the Hon. the Chief Minister.

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Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to table the Answers to Written Questions Number W180/2012 to W238/2012 inclusive.

SUSPENSION OF STANDING ORDERS

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Standing Order 7(1) suspended to proceed with Government Statement

Clerk: Suspension of Standing Orders, the Hon. the Chief Minister.

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Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government statement.

Mr Speaker: Those in favour. (**Members:** Aye.) Those against. Carried.

975

GOVERNMENT STATEMENT

980

Sum paid to former CEO of Gibraltar Health Authority Statement by the Minister for Health and the Environment

Clerk: The Hon. the Minister for Health and the Environment.

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Minister for Health and the Environment (Hon. Dr J E Cortes): Mr Speaker, following discussion consequent to the reply given by me to Question 877/2012, the Chief Minister undertook to consider making a statement in relation to the sum paid to Dr David McCutcheon, former Chief Executive of the Gibraltar Health Authority, at the time of his resignation in September.

The matter having been considered, I am now able to make the following statement.

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Dr McCutcheon was originally engaged on 19th October 2004 on a three-year contract that was signed on 6th August 2004. This contract included a number of specific performance indicators with time limits setting a number of targets that had to be fulfilled during the term – that is by 18th October 2007.

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A second three-year contract was signed on 18th July 2007 to run from 19th October 2007 to 18th October 2010. The performance indicators were largely the same as in the 2004 contract, except that most of the time limits for the target were removed, except one that set the limit at April 2006, even though the contract ran from 2007 – clearly a typographical error. Aspects such as the elimination of waiting lists and the introduction of electronic patient records remained as targets.

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A further contract was entered into on 9th November 2010, with retrospective effect from 19th October 2010, this time for five years, due to expire on 18th October 2015. Once again, performance indicators remained, including the typographical reference to April 2006, and those requiring the elimination of waiting lists, now with the added condition of being, and I quote, ‘subject to the resources provided’, and introducing the electronic health record.

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At the time of Dr McCutcheon’s resignation, effective from 11th September 2012, his salary, inclusive of tax-free gratuity and on-call allowance, was approximately £204,000 per annum. Given that the contract had approximately three years and one month to run, he would have been paid around £629,000 to end of term.

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The contract signed by the last Government provided for the following payments to be made on termination before term: six months’ notice – approximately £79,240; six months’ pay – approximately £79,240; 50% of the remaining pay due to the end of the contract to October 2015 – £204,704; Repatriation Allowance on arrival from Canada to Gibraltar – £8,000; Repatriation Allowance on termination of contract – £8,000; Outplacement Allowance – £8,000; full gratuity payable to end of term October 2015 – £124,728 which makes a total which would have been payable of £511,912. This would have been in addition to adjustments of outstanding pay reviews, gratuity payments for time already worked and other outstanding allowances.

1015 The payment made to Dr McCutcheon, excluding these adjustments, was £243,498.34, which is about a quarter of a million pounds less than it could have cost and £380,000 less than would have been paid to him, had he stayed to the end of the contract term.

1020 **Mr Speaker:** That being a statement, I will allow Members of the Opposition to ask any questions that they may wish, for clarification.

1025 **Hon. P R Caruana:** Is the Minister able to say anything as to the reason why the contractual relationship was terminated? In other words, I think the essence of his statement is that it was cheaper to terminate than to pay him through to the end; but of course that ignores the fact that if he had stayed to the end, you would have had the benefit of his services.

So is the hon. Member able to say why it became necessary to be discussing severance pay in the first place?

1030 **Hon. Dr J E Cortes:** Mr Speaker, Dr McCutcheon made a statement at the time of his resignation and I feel that I do not want to add to that. I think that is all I have to say, at this point.

Hon. P R Caruana: Well, Mr Speaker, that is a very awkward answer for the Opposition to be able to accept.

1035 If what the hon. Member is saying is that Mr McCutcheon *resigned*, then he is not entitled to anything and it begs the question why they paid him half a million pounds of taxpayers' money! Presumably, it was an agreed termination on terms, because if the man simply resigned, which is implicit in his last answer to which I will not hold him unless he repeats it... If he resigned and what Mr McCutcheon said is true, then he is not entitled to compensation because his contract has not been terminated; *he* has terminated it.

1040 **Hon. Dr J E Cortes:** Mr Speaker, it was a resignation. I think I have to add that, clearly with a resignation, there would have needed to be a time of notice, which I do not think would have served the organisation and, therefore, these terms were agreed.

1045 **Hon. P R Caruana:** Mr Speaker, whilst the Opposition is therefore grateful for the hon. Member coming back to the House with the information that they agreed to consider coming back to the House with, I have to tell him that much as he makes it sound like a saving, assuming that it was a genuine resignation and not the sort of resignation that you are left with no option but to do – which is, in effect, a constructive dismissal – unless that is the case if it is a genuine resignation, then much as the hon. Member makes this sound as money saved, it is actually properly to be assessed as money unnecessarily paid.

1055 **Hon. Dr J E Cortes:** Mr Speaker, I think I should reply by saying that Dr McCutcheon was recruited at the time in order to implement a Clinical Governance Review that cost the Government at the time over £2,080,000 to prepare. His contract was renewed on two occasions, despite the review and the related indicators not having been implemented or fulfilled. I think that is a relevant point to bear in mind.

1060 **Hon. P R Caruana:** I will read... I will listen between the lines to the hon. Member's Statement. I am grateful anyway for the Statement.

**BILLS
FIRST AND SECOND READINGS**

1065 **Income Tax (Amendment) (No. 2) Bill 2012
First Reading approved**

1070 **Clerk:** Bills – First and Second Readings.
A Bill for an Act to amend the Income Tax Act 2010, the Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker I have the honour to move that a Bill for an Act to amend the Income Tax Act 2010 be read a first time.

1075 **Mr Speaker:** I now put the question which is that a Bill for an Act to amend the Income Tax Act 2010 be read a first time. Those in favour. (**Members:** Aye.) Those against. Carried.

Clerk: The Income Tax (Amendment) (No. 2) Act 2012.

1080

Income Tax (Amendment) (No. 2) Bill 2012
Second Reading approved

1085 **Chief Minister (Hon. F R Picardo):** I have the honour to move that the Bill be now read a second time.

Mr Speaker, this Bill amends the Income Tax Act 2010, to extend the current deadlines relating to payment on account of future liabilities by self-employed individuals and companies.

1090 Clause 2(2) extends the deadline from 31st December to 31st January for payment on account of future liabilities by self-employed individuals.

Clause 2(3) extends the deadline from 31st August to 30th September for payment on account of future liabilities by companies.

Clause 2(4) amends Schedule 9 of the Income Tax Act 2010 to reflect the extension of the deadlines mentioned above.

1095 The current deadlines in respect of self-employed individuals and companies are being extended in order to relieve administrative pressures on the Income Tax Department during particularly demanding periods. As a result of these changes, receipt of payment on account of future liabilities will not conflict with receipt of Employers' Annual PAYE returns and individual's tax returns.

I commend this Bill to the House.

1100

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

1105 **Hon. P R Caruana:** Mr Speaker, now that I have become a self-employed taxpayer and therefore a beneficiary of the provisions of the Bill, the Opposition is delighted to support it. (*Laughter*)

Mr Speaker: I now put the Question which is that a Bill for an Act to amend the Income Tax Act 2010 be read a second time. Those in favour; (**Members:** Aye.) Those against. Carried.

1110 **Clerk:** The Income Tax (Amendment) (No. 2) Act 2012.

Income Tax (Amendment) (No. 2) Bill 2012
Committee Stage and Third Reading to be taken at this sitting

1115

Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

1120 **Mr Speaker:** Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

Court of Appeal (Amendment) Bill 2012
First Reading approved

1125

Clerk: A Bill for an Act to amend the Court of Appeal Act, the Hon. the Minister for Education, Financial Services, Gaming, Telecommunications and Justice.

1130 **Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Court of Appeal Act be read a first time.

1135 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Court of Appeal Act be read a first time. Those in favour. (**Members:** Aye.) Those against. Carried.

Clerk: The Court of Appeal (Amendment) Act 2012.

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Court of Appeal (Amendment) Bill 2012
Second Reading approved

1145

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker this Bill provides for the ability for the Court of Appeal to sit with two judges where there is a certification to that effect by the President or the Chief Justice. It follows a proposal made by the President of the Courts, transmitted to me by the Chief Justice.

The Bill introduces a new section 3A to the Court of Appeal Act. By the new section 3A(1), the Court may sit with two judges.

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By the new section 3A(2), section 61(4)(a) of the Constitution is stated not to apply to an appeal which is certified under subsection 3A(1).

The section of the Constitution which is referred to which is 61(4)(a) states as follows, Mr Speaker:

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‘(4) Save as may be otherwise prescribed by any other law, for the purposes of any determination of the Court of Appeal –
(a) an uneven number of judges shall sit, which, in the case of any final determination by the court other than the summary dismissal of an appeal, shall be not less than three...’

1160

So by that provision there shall be an *uneven* number of judges and that number shall be not less than three. But section 61(4) provides ‘Save as may be otherwise prescribed by any other law.’ This is the law – the one we are introducing today – which prescribes now that the court may sit with less than three judges and where it sits with two, it will sit with an *even* number of judges.

I should say, Mr Speaker, that the intention is not that the court as a matter of normality should sit with two judges; indeed, on the contrary, the norm should continue and will continue as at present, with a Court of Appeal sitting with three judges. But I am advised that there may be exceptional circumstances where this new provision may be used.

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An example which has been given to me is a case where Sir Murray Stuart-Smith was still the President of the Court and he was taken ill whilst the court was in session in Gibraltar and taken to hospital in the early hours of the morning. Yet at 10 o’clock in the morning he had to sit in court, because this provision did not allow... or rather there was no provision which allowed the court to sit with less than three judges.

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So I have to say and I have to stress that it would be very exceptional and only clearly in cases... and I do not want to say cases which are of less importance to others, because clearly for appellants all cases will be important, but clearly where cases which could be considered of not significant jurisprudential importance, where there are not significant points of law to be determined, it is right that in those cases and it is right that it should be the norm that the court should continue to sit with three judges.

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What the amendment simply provides is a safety net, in appropriate and exceptional cases for an appeal to be able to proceed with less than three judges, in this particular case, with two judges. The Government considers and I am advised the judiciary considers that that is in the interests of the administration of justice in Gibraltar, and it is also in the interest of appellants in particular cases who would want their cases to be heard.

1180

I commend the Bill to the House.

Hon. D A Feetham: Well, before he does so, can he give way so that perhaps he can then answer just a query –

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Hon. G H Licudi: You can ask a supplementary (**Hon. D A Feetham:** Yes.) that I can answer subsequently.

Hon. D A Feetham: No, I know, but then obviously, I have no right of reply if that happens!

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The hon. Gentleman appears to be suggesting that, effectively, this would operate in a situation – correct me if I am wrong – where, for example, you have exceptional circumstances, that there are three judges to start off with, one is taken ill and the other two can continue. That is what appeared to be indicated by the hon. Gentleman.

But of course, section 3A(1) is wider, because it says:

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‘...the Chief Justice may certify that a particular appeal may be heard, or continue to be heard...’

So it is both and I just ask the hon. Gentleman, what kind of situation would a Court of Appeal...?

1200 **Mr Speaker:** Where the judge is taken ill the day before.

Hon. D A Feetham: Yes, the judge may be... well exactly, yes.

A Member: The provision goes further.

1205 **Hon. D A Feetham:** But the provision goes further.

Hon. P R Caruana: [*Inaudible*] the Chief Justice that certifies –

1210 **Hon. D A Feetham:** And of course, what happens in circumstances where those two judges do not actually agree on the verdict? Of course, if this were in a criminal case, juries do not agree, then the defendant is acquitted. In a civil appeal, you can have a two-to-one majority and then the appeal is allowed, but if you have a one-and-one, what happens in that kind of situation?

1215 **Hon. G H Licudi:** Mr Speaker, what I mentioned earlier about a particular judge being taken ill was an example, and what I said was this was an example which was given to me as the kind of case that might be appropriate. It is not the only case where it might be appropriate, but certainly where a judge is taken ill in the middle of a sitting that might be an appropriate case in which this might be used.

1220 What it is not possible to do... and that is given as an example and I have made a statement in this Parliament that this is intended by the Government to be used in very rare and exceptional circumstances and not where the case is one of clear jurisprudential importance. What is not possible to do is simply set out in the legislation all the examples where this can be used. The provision provides for a certification to be made by the President or the Chief Justice, and I have no doubt and I am confident that that discretion given to the President and the Chief Justice will only be used in appropriate cases, rather than run-of-the-mill cases.

1225 But I hope the hon. Member agrees... and I did consider when I got a draft of the Bill, whether it was possible to say ‘in the following circumstances a certification may be made’. It was simply not possible and I had in mind, in fact, a debate that we had, which is relevant to the other Bill that we have before Parliament today, the amendment to section 12A of the Supreme Court Act, where I asked the hon. Member in terms of the priority of cases to be listed, and the hon. Member actually says, ‘One cannot legislate for every single eventuality, it is simply impossible’. I agree with that particular statement and that is why, following consideration, whether it is possible at all to set out any criteria. I certainly felt that it was best to leave it as it is, leave it in the hands of the President or the Chief Justice.

1230 The other point that the hon. Member makes is the question of the majority and that is actually provided for in, well the relevant point is made in section 61(4)(b) of the Constitution, which provides that:

‘any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit to determine that matter.’

1240 That is simply, in our view, a permissive situation. It does not always require a majority. In other words, you can have unanimity – which is not a majority because you do not have a dissenting view – but it is permissive, in that where you have got more than... What it does is envisage the situation where more than one judge sits and therefore it envisages the possibility that you may have two judges.

1245 Clearly, two judges cannot come to a majority verdict and therefore the only possible decision that could be made, where there are two judges, is a unanimous decision, otherwise there is no decision of the Court of Appeal. Therefore, in practice, this does not give rise to a problem. Where there is an uneven number of judges, we have a permissive situation under the Constitution, where a majority decision can be given; but where you have an even number of judges and it is possible to have an even number of judges with more than three – not under the present position, but clearly where it says where more than one judge sits – but clearly you either have a majority or you have unanimity to have a valid decision, otherwise there is no decision at all.

1255 **Hon. P R Caruana:** Mr Speaker, I fear we have distorted the debate. The hon. Member is still on his speech on the Second Reading and I was not going to rise to speak when it comes, so I wonder if Mr Speaker would let me just contribute to this point, at this stage.

I think we are still in the stage of giving way, aren't we? So I do not know where we are now in the proceedings. I can wait until later.

1260 **Mr Speaker:** Well, if you will allow me, does any hon. Member wish to speak on the general principles and merits of the Bill? That gives them –

Hon. P R Caruana: Alright, obliged, Mr Speaker.

1265 Well, Mr Speaker, I would ask the hon. Member whether he happens to know – we are all lawyers, I suppose we all should know, those of us who are lawyers – whether... I have a feeling that in the UK the Court of Appeal also sometimes sits with two judges, I do not know. But in terms that, I think it is... I do not know what basis or what the strength of feeling was amongst the judiciary that this was a good idea, but I am frankly pleased that the hon. Member has emphasised that it is exceptional and that if it ceased to be used exceptionally, it perhaps ought to be reviewed.

1270 I think that there are serious constitutional issues – which perhaps do not arise in the UK, because they do not have a constitution – about this business of the section that he has just read out – I did not pick up the number –

Hon. G H Licudi: Section 61(4)(a).

1275 **Hon. P R Caruana:** Section 61(4)(a) – in other words, there is no determination, unless it is by a majority. Well, if there are two judges –

Hon. G H Licudi: Or unanimous.

1280 **Hon. P R Caruana:** Well no, he must not confuse the question of majority with unanimity. There is no resolution of the court, unless it is by a majority. When two judges sit, the majority can only be two, which happens to be unanimity because there are only two; but it would require the two of them to agree.

1285 If the two of them do not agree, there is *ipso facto* no possibility of constitutional adjudication. It raises all sorts of questions about what happens next. Is this an appeal right that is lost? Does the case get reheard? What happens to the costs of that appeal? Can it be awarded to one side or to the other, given that neither has won and neither has lost?

1290 It seems to me that there is a whole series of permutation of consequences. This is why I asked whether he knew off-hand whether there was any sort of precedent for this in the United Kingdom. I can think of a number of practical considerations arising from the fact... Of course, what would actually happen in practice, I fear, is that because the court will want to avoid the problems that I am now highlighting, there will be pressure on the dissenter not to dissent. In other words, the judges will sit in the room and one will try and persuade the other and one will yield in circumstances, where if there was a majority, if there were three judges sitting, he would not allow himself to be persuaded and would simply deliver a dissenting judgement. Both judges will now know that a dissenting judgement is not a possibility because it will gridlock the court, with all the consequences that I have just described.

1295 I do not doubt that there are circumstances in which this is a good idea – for example, the one suggested by Mr Speaker – if there could be a very expensively convened court full of barristers from all over the world, witnesses – the hon. Member knows the sort of trial that I might be thinking of – a judge falls ill, there is not another judge available, and you have to collapse that appeal hearing. In those circumstances, it is good that it is able to continue, but it is good that it is able to continue with a number of undesirable potential consequences, which means that that ‘goodness’ – if I can just call it that quite inappropriately – should be resorted to as exceptionally as the hon. Member has indicated in his address he hopes and expects will be the case.

1305 **Mr Speaker:** Does any other hon. Member wish to speak on the general principle? I will then...

Hon G H Licudi: Mr Speaker, can I, as the mover of the Bill, respond to the hon. Member?

Mr Speaker: Yes, you have a right to reply.

1310 **Hon. P R Caruana:** The reason why, if you will give way to me –

Hon. G H Licudi: I will.

1315 **Hon. P R Caruana:** – there is one aspect which I would ask him to express a view, if he feels he can on his feet – if not, we will just have to leave it for another day – and that is what would happen in a case where the judges are unable to come to an agreement, despite their best effort, and one votes yes and one votes no?

1320 Litigants have to know whether... The appellant then has to know that his appeal rights remain intact and that the matter will be re-listed for hearing. He cannot be defeated without adjudication, because there would not have been adjudication.

Could the hon. Member at least express the parliamentary view – if he shares it, if it is indeed his view – that in those circumstances the legislature expects that the appeal right would remain intact and the matter would have to be re-listed for re-hearing?

1325 **Hon. G H Licudi:** On that last point, Mr Speaker, I can express a personal view as to what might be desirable, but I do not know whether that view coincides with the Rules or any particular provision which might say – (*Interjection by Hon. P R Caruana*)

1330 But if I may be permitted to deal with the points that the hon. Member has made and hopefully, within that answer, the concerns that the hon. Member has had: I do not know what the position is in the UK, whether they sit with two judges and I can confirm, the hon. Member has just repeated, that certainly from the Government’s point of view, and I as mover of this Bill in this Parliament consider that this is something that should be used only in those exceptional circumstances that we have mentioned.

1335 The main point that the hon. Member makes, the issue – which is a valid point to consider – what happens if the two do not agree? That is something that clearly I have given some thought to and have considered.

1340 In practice, what I would expect to happen – this is a view that I am setting out as the view of the Government’s side – and what I would firmly expect because of discussions that I have held, if there is a possibility of the two remaining judges, who are going to either sit or continue sitting in an appeal, if there is a possibility of the two judges not agreeing, the appeal would simply not be heard or the appeal would not continue until it can be re-constituted or constituted again with the three judges.

1345 The hon. Member knows from his practice that judges receive papers in advance and receive skeleton arguments in advance. Whilst I would expect, and certainly I would expect as a lawyer, that everyone is given a fair crack of the whip and you go and you present your case in court and the judges hear you and you can persuade the judges one way or the other. The judges will clearly have papers and if this sort of situation arises, in those exceptional cases, where there is a possibility of two judges continuing or having to sit on any particular matter and if a possibility, even a remote possibility exists – well, not a ‘remote’; a *possibility* exists – of the two judges not agreeing, there is no question, I would expect, of any pressure being put on any judge. Who is the dissenter, if there are only two? Who puts pressure on the other? There is no possibility of that happening in practice, because what we would expect is that the hearing simply would not proceed and would be adjourned or would be re-listed – in other words, it would not start at all, if it has not started. It would be re-listed until the three judges can constitute the full court.

1350 I am not sure whether that answers fully the hon. Member’s question.

1355 **Hon. P R Caruana:** Would the hon. Member give way?

Hon. G H Licudi: I will.

1360 **Hon. P R Caruana:** The important thing is that, under the Constitution, there will not have been an adjudication.

Hon. G H Licudi: There would be a hearing.

1365 **Hon. P R Caruana:** No, no no. The hon. Member is saying that he hopes that, in practice, judges will look at the papers in advance, see that there is high-end prospect that they will not be able to agree and therefore agree that it is not a case suitable for hearing between two. But that is a pretty hit-and-miss and a pretty *ad hoc* sort of arrangement.

1370 The fact of the matter is, Mr Speaker, we do not need to legislate against the possibilities of things that might only happen exceptionally. In other words, the possibility of having this possibility or rather having this possibility of a two-judge court may be so useful in the cases where it really is useful that it outweighs the cases in which it creates problems and therefore on balance, it is a good idea and it should be available, which does not mean that you do not legislate for the consequences of the minority of cases in which the worst feared happens.

1375 The important point is – and I am not expressing a view; I am simply relying on the provisions of the Constitution that the hon. Member read out, which said, if I correctly heard him reading – he will confirm it to me or not – that under the Constitution, unless a majority of the court, which there would not be in a two-man court which disagreed... there is no adjudication, because an adjudication requires a majority. I think that is the essence of what he read from the Constitution. So therefore, constitutionally, the case will not have been disposed of. In other words, the appeal necessarily and constitutionally remains extant, because it is an un-adjudicated appeal.

1380 In those circumstances, I *assume* – but I am not sure that this is an area that we should be leaving to assumptions – assume that because constitutionally it is an un-adjudicated appeal, the appellants’ constitutional right to appeal – because the right to appeal is itself a constitutional right – remains un-

1385 used. And as it remains un-used, he must have the right to go before a differently constituted court and re-
 1390 argue his appeal. That could usefully have been said in the Bill, just as a matter of clarification, *and* the
 Bill could usefully, however remote or however exceptional or however unusual, however infrequently
 we think this is going to happen, the Bill might also have usefully provided for what happens to the costs
 entitlement which are said to follow the event. Well, there has not been an event, therefore there is
 nothing to follow and therefore what? Each party bears their own costs of that hearing? Do the whole
 costs of the failed hearing get carried forward, so that they get paid by whoever loses the next hearing? Is
 the loser then exposed to a double-whammy of two sets of costs?

1395 These are some of the issues and this is why I started off by asking whether he knew whether this
 happened in England, because if there are two-man courts of appeal or two-judge courts of appeal in
 England, all of these questions *must have* been addressed. There *must* be an answer to them. There must
 be jurisprudence on the question, *save* the fact that here it is part of our written Constitution which is
 primary law and cannot be the subject of court practice or of court rules or things of that sort. None of
 that can override the consequences of the constitutional provision that there is not an adjudication under
 the terms of the Constitution – which is the only thing that would complicate the matter beyond that,
 which might have received clarity in the UK, in the case of a two-man or two-judge hearings in the UK.

1400 **Mr Speaker:** May I make one thing clear. The hon. Member, the Hon. Minister, strictly speaking,
 you have been exercising your right to reply. (**Hon. G H Licudi:** Yes.) Just before the end, you gave way
 to the Hon. the Leader of the Opposition, but this question, when we are on the general principles of the
 Bill, the question of prolonging artificially the right to reply is not proper, in my view. I think there ought
 1405 to be a limit to the extent to which you ought to be doing that. More so, since this Bill is down to go into
 Committee and if it does, there and then, all hon. Members can debate each particular clause in detail.

I am being liberal because the extent to which the Hon. Minister satisfies the Opposition could
 determine whether they wish to allow the Bill to go into Committee today or not. Therefore, what I am
 going to suggest and ask the Hon. Minister, in the light of all that I have said, is: does he prefer that the
 Bill should not go into Committee, give consideration to the matters that have been raised by Members of
 1410 the Opposition, and then bring the Bill at a later stage?

Hon. G H Licudi: No, Mr Speaker, that is not our preference. Our preference is that this matter
 should go to Committee and should be fully determined.

1415 In respect of the first point of prolonging the debate, my understanding is this is actually a debate on
 the Second Reading, on the general principles of the Bill.

Mr Speaker: Which allows you to make an introductory speech, which allows each and every other
 Member to make a speech, and which allows you halfway through, or near the end, of your exercising
 your right to reply, it allows you to give way to a Member of the Opposition in this case. (**Hon. G H
 1420 Licudi:** Yes.)

What is does not allow you is, once you have finished and sat down, in my view, is to say, ‘I am
 giving way to an hon. Member.’ That is not proper procedure. I am prepared to be liberal and allow it
 once or twice, but not indefinitely.

1425 **Hon. G H Licudi:** I understand the point that Mr Speaker makes.

Mr Speaker: Okay.

1430 **Hon. G H Licudi:** It is not an issue really for us, because if I finish my speech, my contribution and
 then the hon. Member wants to get up and ask that I give way, before I sit down, and I accommodate that
 –

Hon. P R Caruana: Which is a condition of parliamentary rules –

1435 **Hon. G H Licudi:** – which is traditional that –

Hon. P R Caruana: – that before the hon. Member sits down... Mr Speaker, whilst I am grateful for
 whatever degree of liberality that you bring to the Chair, I think when constructive debate is taking place,
 this is not a question of Rules or Standing Orders. Hon. Members – and this is the case in Westminster,
 1440 too – give way to each other as often as they please. There is not a rule about not giving way and not –

Mr Speaker: No. But I was making the point because I thought there might be a possibility, since the
 Hon. Minister seemed to have some doubts about what the procedure in the United Kingdom was, that he

1445 might wish to have time in order to find out, and therefore I suggested that perhaps Committee Stage should not be taken today.

Hon. G H Licudi: Well, I note the point that Mr Speaker makes, but that is not something that we want to take away and consider, particularly because the hon. Member has quite rightly...

1450 Let me just say as an aside, in respect of whether we could do this at Committee, this is more about the general principles which relate to the Bill and possible problems which the hon. Members suggest might arise and, certainly, from the Government's side, we consider these matters are properly debated at Second Reading, rather than at Committee Stage.

1455 But, having said that, the point that the hon. Member makes in relation to the UK, the Hon. the Leader of the Opposition has alighted to the fact that we have a written Constitution and we have specific provisions here in relation to the Constitution of the Court of Appeal and the determination of decisions by the Court of Appeal. Let me deal with the point that the hon. Member makes in terms of the consequences.

1460 The hon. Member uses the term 'adjudication': that there is no adjudication, therefore the matter can simply be re-listed and adjudicated – not *re*-adjudicated, because there would not be an adjudication. The Constitution uses the words 'determined' – 'any determination of the Court of Appeal'. It is more or less the same thing, but if there is not a majority decision or a unanimous decision, one way or the other, when there are two judges, I agree with the hon. Member that, constitutionally, the appeal would not have been determined and therefore still falls to be determined by a court constituted in accordance with the rules. So I agree with the point that the hon. Member makes.

1465 As regards legislating in respect of costs, we do not believe that that would be the appropriate way. Parliament does not normally legislate in respect of costs. Costs are generally left to the discretion of the judges and we are confident that the judges will do whatever is right in the particular circumstances and will take into account the necessary considerations in determining what, if any, cost liability should arise. On that basis, it is our position that this Bill should proceed.

1470 **Hon. D A Feetham:** May I, Mr Speaker?

1475 Mr Speaker, I have actually appeared... Just listening to the hon. Gentleman and also listening to the Leader of the Opposition. I do remember that I have actually appeared in a Court of Appeal in England and Wales in a two-man Court of Appeal. I have.

But, I *think* that a two-person Court of Appeal panel is limited in England –

Hon. P R Caruana: To interlocutory matters.

1480 **Hon. D A Feetham:** To interlocutory matters.

Hon. P R Caruana: Exactly, that is my recollection.

Hon. D A Feetham: That is my recollection of the position –

1485 **Hon. P R Caruana:** And to leave.

Hon. D A Feetham: And indeed, also to leave.

1490 Now, what I *cannot* remember and what I do not know is what the situation is in terms of determination of an appeal, if effectively both of them do not agree.

My *own* view, for what it is worth, is actually that probably the appeal fails.

Hon. P R Caruana: Yes, that is my –

1495 **Hon. D A Feetham:** That is my view. But of course, yes, if the appeal... If you do not satisfy a majority of a Court of Appeal and it is one and one, the appeal fails. Therein lies the problem that exists with this Bill: that here we have two silks and a number of other lawyers and nobody really has the answer to all these, quite frankly, rather pertinent questions. Therefore, certainly for my part, I think that perhaps the hon. the Minister ought to adjourn the Committee Stage to sometime in the future and perhaps just bring those answers to Parliament, because those answers must be available.

1500 **Hon. P R Caruana:** Could the hon. Member, before he rises, so he can answer me, with Mr Speaker's indulgence, if the position were as the hon. Member has just described to me, can he –
(*Interjections*)

1505 If we could be absolutely clear that the position was as the hon. Member just explained to me, when he last spoke to what I had said, namely that we were absolutely certain that the appellants' rights had not been disposed of and this was just a question of coming back again to another court, and we were absolutely clear of that question and the Government was not willing to legislate on the question of costs, I would settle, I would accept that. The Court of Appeal would make proper rules as to costs, I imagine, for those circumstances and that would be fine.

1510 The difficulty is the risk that there is a judgment of a lower court – of the Supreme Court usually – who has found in favour of one party or another and the appellant is saying, 'Court of Appeal, overturn that judgment'.

1515 If the Court of Appeal is gridlocked, it fails to make a determination. The effect of that failure to make a determination is that it has declined to overrule the lower court for any number of reasons, either because it did not like the arguments or because it did not have a sufficient majority. Now, that is the risk, so in considering – although he will not want to take advice from me across the floor – whether it is better to adjourn or not to adjourn, really the question that he has got to ask himself is whether he is certain that the position is as he explained to me, because otherwise we are in the realms of both injustice and potential unconstitutionality.

1520 In other words, it may well be that the court in England takes the view... I am speaking from ignorance of what the position is in the UK. It may well be that the court takes the view that, if a two-man court is split one/one, there has been a determination: the determination is the court has declined to reverse the lower ruling. That could amount to an...

1525 Now, the hon. Member is shaking his head. I am delighted that he is shaking his head and I am not arguing against it. That is what I want the outcome to be too. The question is not whether I agree with him or not; the question is whether we are clear if, on this Friday at five past six, that is in fact the case – what we both think is the case.

1530 **Hon. G H Licudi:** Well, Mr Speaker, what I can give is the Government's view and our position, as Minister for Justice. What I cannot say is if this matter was ever referred to the court and determined by the court that the court would necessarily rule in a particular way. (*Interjection by Hon. P R Caruana*) Neither the hon. Member nor myself will ever be able to say how laws which are –

1535 **Hon. P R Caruana:** But Mr Speaker, that is an answer that *does* cause us difficulty, because the Government must not legislate without understanding the purport of the legislation. What the hon. Member is saying is, 'I am bringing this legislation to the House: I think it means this, and that is what I intend it to mean', but it is up to the courts to decide whether it actually means what the legislature intends it to mean, and otherwise it is basically the Court of Appeal legislating, not the Parliament.

1540 **Hon. G H Licudi:** No, Mr Speaker, that is not the position.

The position is that the Government's intention is quite clearly what I set out when I presented the general merits of the Bill.

1545 The example that the hon. Member says about a lack of determination under the Constitution because there is not a majority, that amounts to a lack of determination and therefore that amounts to declining to overrule the decision *and therefore* a decision not to overrule: well, we do not believe that is a plausible interpretation of this and therefore we are not willing to leave this up in the air, simply on the basis of a hypothetical argument that could present – (*Interjection by Hon. P R Caruana*) Well –

1550 **Hon. P R Caruana:** Neither of us know what the position is. They are both [*inaudible*].

Hon. G H Licudi: What I am saying is it is a hypothetical argument with which we do not agree. We do not agree that argument holds water.

1555 **Hon. P R Caruana:** It is an interpretation.

Hon. G H Licudi: It is an interpretation, as there could be many interpretations of many provisions.

1560 What I can say is this, Mr Speaker: we believe that this Bill ought to proceed in its current form because it is appropriate that, in those exceptional circumstances that I referred to earlier, we *should* have the ability for the Court of Appeal to sit or continue to sit with two judges, because that we consider is in the interests of the administration of justice, as I said earlier, and also in the interests of the appellants, who would want to have their cases determined.

1565 But what I cannot rule out is if the hon. Member is suggesting that this creates a hypothetical problem, that we might have to deal with an issue, by bringing a Bill to amend further the provisions of the Court of Appeal. But that there is a necessity for these provisions is absolutely certain, from our point of view, and therefore we propose to proceed.

The hon. Member talks of 'potential unconstitutionality': we do not believe there is any potential unconstitutionality. The provisions of the Constitution are very clear: they allow for a law to prescribe a position whereby less than three judges appear and determine a particular case. That must be for a reason. If the Constitution allows the possibility of less than three judges, it must allow the possibility of two.

1570

Hon. P R Caruana: There is usually one.

Hon. G H Licudi: But it could be one. It could be one, but Mr Speaker, the other provision that I referred to, which is also part of section 61(4) of the Constitution...

1575

So section 61(4)(a) deals with the possibility of less than three judges, if it is prescribed by law and 61(4)(b) deals with the possibility of the court sitting where there is more than one judge. So on the one hand we have (a) with the possibility of less than three, and on the other hand we have (b) with the possibility of more than one. So this clearly envisages the possibility that there should be a determination by two judges.

1580

And for all the reasons that I have set out, and I hope I am not asked to give way any more, I commend the Bill to the House.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Court of Appeal Act be read a second time.

1585

Those in favour. (**Government Members:** Aye.) Those against.

Hon. P R Caruana: The Opposition is abstaining, Mr Speaker, on the grounds that we do not think the House *knows* what it is doing. We do not understand it.

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Mr Speaker: Carried by Government majority.

Clerk: The Court of Appeal (Amendment) Act 2012.

1595

**Court of Appeal (Amendment) Bill 2012
Committee Stage and Third Reading to be taken at this sitting**

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

1600

Mr Speaker: Do Members of the Opposition agree that Committee Stage be taken today?

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Members: Aye!

Hon. P R Caruana: No. Well, look, Mr Speaker – (*Laughter*)

Mr Speaker: Is the position clearly understood by Members? If *all* hon. Members agree. If the Members... If *one* Member does not agree that the Committee Stage be taken today, it has to be deferred.

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Hon. P R Caruana: I think that is correct.

Chief Minister (Hon. F R Picardo): Until after midnight, Mr Speaker.

1615

Mr Speaker: To another day.

Hon. P R Caruana: Yes.

1620

Mr Speaker: To another day. It is to determine whether the Second Reading of a Bill and Committee Stage can be taken the same day.

Hon. P R Caruana: Yes. Mr Speaker, I am going to resist the temptation to change what I was going to stand up to change, simply in reaction to the Chief Minister's quip, which could only have meant that he is willing to convert this non-giving of consent into a sort of meaningless parliamentary technique by saying, 'Look, it is ten past four. If you do not consent, I am only going to make you come here at one o'clock in the morning or tomorrow, Saturday' – which is what, by the way, I think the GSLP did last

1625

time when they were in Government, the previous ones, one Government, one Opposition said –
(*Interjections*)

1630 If that were the case, I think that would be a great pity. (*Interjection by Hon. S E Linares*) Sorry, if the Hon. Mr Linares wants to speak, I am very happy to give way to him.

1635 **Hon. S E Linares:** Mr Speaker, he kept us here until two o'clock in the morning once, and Mr Corby had to buy some takeaways! (*Laughter and interjections*)

Mr Speaker: Just a moment! Just a moment!
It is not infrequent for this House, over the years, to have been meeting at two in the morning and at three and at four in the morning, because I have been here –

1640 **Hon. P R Caruana:** Yes, Mr Speaker –

Mr Speaker: – but that is not the point. The point is also whether the Chairman, to what extent the Chairman of the Committee will be willing, after dining at the MRC tonight, to come at 12.30 –
(*Laughter and interjections*)

1645 **Hon. P R Caruana:** Mr Speaker, and when you have been in this House for longer, you will recognise interventions like that by the Hon. Minister Linares as typical of the fact that he rarely grasps fine points when they are being made. (*Interjections*) Mr Speaker, if the Hon. Mr Linares does not understand the difference – (*Interjections*) If the Hon. Mr Linares does not understand the difference between a question and answer or a legislative session of Parliament simply sitting late into the night – as happens frequently in parliaments around the parliamentary world – if he does not understand the difference between that and what I am, half tongue-in-cheek, berating the Chief Minister for, if he does not understand the difference between that, then I feel entirely vindicated for what I have said about him!

1650 I am sure the Chief Minister was not meaning to threaten the House that if the Opposition did not give its consent, we would be back at midnight. However – you were threatening? I said 'of course not'.

1655 **Hon. Chief Minister:** I would have thought, Mr Speaker, that the House would not feel threatened by an invitation to work hard, even –

1660 **Mr Speaker:** May I tell hon. Members what the spirit in this House has always been, regarding a Bill that the Government considers to be taken to Committee Stage and Third Reading. If it is an urgent Bill, the Government is perfectly entitled to ask that the Committee Stage be taken that day. If it is not an urgent Bill, then Committee Stage can be taken another day.

1665 It is for the Government to decide whether they want to give further thought to the matter or not, and take advantage of the fact that if the Opposition or any Member votes against Committee Stage being taken today, it has to be done another day.

If we come back at midnight or just after midnight, I do not know whether we will have enough time to consider whether the points made by the Opposition are worth bearing in mind or not.

1670 **Hon. P R Caruana:** Alright, Mr Speaker, I am very grateful for that, because I think that is the spirit that I was trying to...

1675 In any case, having heard the Hon. Minister for Justice and having a degree of confidence or at least respect for his views, even when I do not agree with them, I do not think that this is a matter in which his mind is going to be changed on the substance by having two or three more days to reflect on it – *although* I think that the question is not reflecting to change his mind. I would hope that, for me, the principal advantage of an adjournment – it could be an hour now – would be so that we could support the Bill. In other words, so that we could have confidence in being able to support the Bill because we could go out and find out what the position is and why the concerns that we have expressed are not warranted. That would be the virtue for us of an adjournment: not to change the Government's mind on the Bill, because we would support the Bill, if our concerns could be [*inaudible*].

1680 We have said, Mr Speaker, what our position is. I think that this Bill cannot be so urgent that it needs to be taken through its three stages today. I think that the prudent thing would be, on a Bill where we are interfering with issues affecting the administration of justice, that the House should clearly understand not only what it is doing, but the consequences of what it is doing.

1685 But look, we have expressed our views and if the Government wants to proceed with the Committee Stage today, we are not going to withhold our consent to that, simply to make a further statement. Our view has been stated: coming back again on Monday or after midnight or tomorrow at three o'clock is neither here nor there.

1690 So we will, at least I do not think any Member of the Opposition has dissented from the Committee Stage being taken today – and Third Reading.

Mr Speaker: Committee Stage and Third Reading of this Bill will be taken later today.

1695

**Supreme Court (Amendment) Bill 2012
First Reading approved**

1700 **Clerk:** A Bill for an Act to amend the Supreme Court Act, the Hon. the Minister for Education, Financial Services, Gaming, Telecommunications and Justice.

1705 **Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I have the honour to move that a Bill for an Act to Amend the Supreme Court Act be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Supreme Court Act be read a first time. Those in favour. (**Members:** Aye.) Those against. Carried.

1710 **Clerk:** The Supreme Court (Amendment) Act 2012.

**Supreme Court (Amendment) Bill 2012
Second Reading approved**

1715

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that the Bill be now read a second time.

1720 Mr Speaker, this Bill amends section 12A of the Supreme Court Act. Section 12A, as the hon. Members opposite will know, was introduced by the Supreme Court (Amendment) Act 2010, which was debated in this Parliament on 18th February 2010.

1725 Section 12A, which is the section we are amending, deals or dealt with the jurisdiction of the Family Judge. It provided for family proceedings to be referred to a judge who was to be known as the Family Judge. It provided for other matters to be allocated to the Family Judge by the Chief Justice in certain specific circumstances and it introduced a statutory duty to the Family Judge to give priority to family proceedings over and above any other work which may be allocated to him by the Chief Justice.

The Bill which is currently before Parliament, as I have already indicated during question/answer session last month, follows discussions that I have had with the Chief Justice.

1730 What the Bill does is remove the restrictions on the Chief Justice to allocate work to the Family Judge, so that the Family Judge may be allocated any matter by the Chief Justice and as a consequence of that, the Bill removes the duty in relation to the priority of the work, so that in an appropriate case, it is the Chief Justice who decides what priority should be given to any particular matter. In other words, it gives the Chief Justice the power to manage the work of other judges without the constraints of a statutory duty which applies only to one judge in one particular area.

1735 That is not to say, Mr Speaker, and I want to stress this from the Government's side, that family matters will not or should not be given any less importance. There will still be provisions in section 12A of the Supreme Court Act which deal with the jurisdiction of a Family Judge. There will still be a Family Judge to whom family proceedings will be designated. However, the Bill gives the Chief Justice the appropriate level of flexibility in allocating matters to any other judge.

1740 I commend the Bill to the House.

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

1745 **Hon. D A Feetham:** Mr Speaker, yes.

The Opposition unfortunately will be voting against this Bill. Before I elaborate on the reasons for that, may I remind this House... or place those arguments into their proper context.

1750 Mr Speaker, prior to the 2007 General Election, there was significant concern within this community in relation to the justice system as it applied to family law. Indeed, the issue became an electoral issue and Members may in fact recall that Richard Martinez did a sterling job, during the 2007 Election, actually highlighting some of the flaws in the system, which included the way that fathers were treated by the

system; the delays that were being experienced in family cases; the fact for example that a number of different judges were dealing with family cases and therefore there was a lack of consistency in dealing with those cases, because a case may come before one judge who takes one attitude, may then be adjourned and go before a different judge who may take a different attitude.

1755 We took a decision as a Government that when one looks at family law and decisions in family cases, and how these disputes are resolved, there is very much a human story in these cases, because behind every divorce, behind every battle or custody battle in relation to children, there are fathers, there are mothers and there are of course, children. We took a decision that we would appoint a third judge, recruit a third judge who would specialise in just dealing with family law.

1760 That was a decision that we took unprompted. In other words, it was not a decision that was prompted by the judiciary, ‘We need a third judge, a family judge’ or ‘We need a third judge’ and the Government of the day took the decision to ‘Yes, we will recruit the third judge, but it will be a Family Judge’ – no. We took a decision off our own back, off our own initiative to recruit a third judge but specialising in family law. Indeed, the position was advertised by the JSC and Mr Justice Butler was recruited on that very basis.

1765 We accepted that, in a jurisdiction as small as Gibraltar, what you could not have was a situation where a Family Judge was just simply doing family law and perhaps just simply spending 60% of their time doing family law and twiddling their thumbs for the other 40%. Clearly, in my discussions with the judiciary at the time, it was accepted that whilst the Family Judge was going to be prioritising family law, that judge could deal with other cases if the position was that the judge had spare capacity. That is why we introduced section 12A of the Supreme Court Act on 29th April 2010, which was, in our respectful view, a very carefully crafted provision, which attempted to place on a statutory footing that position as we had effectively discussed with the judiciary at the time.

1775 And what subsections (3) and (4) of section 12A say is this:

‘(3) Notwithstanding the other provisions of this section, the Family Judge may be allocated any matter, other than family proceedings, by the Chief Justice, in the following cases—’

1780 So they *can* be allocated in the following cases –

‘(a) where he has spare capacity; or
(b) during the vacation, illness or absence of another judge of the Supreme Court.’

1785 And then subsection (4):

‘The Family Judge shall have a duty to prioritise the work of family proceedings.’

1790 So the architecture that we would introduce, which was a cornerstone of our policy on our reforms of the entire spectrum of family laws, was effectively Family Judge: prioritise family work; if he has spare capacity, the Chief Justice can allocate him work or indeed where it is required that that person effectively muck in with the other judges, because of illness or absence of another judge of the Supreme Court.

1795 What the Government of the day obviously wanted to avoid was a situation where we recruited a Family Judge – which was very much needed at the time and, indeed, from what the hon. Gentleman has said in his own speech, I do not think that he dissents from that, even now – very much needed, but what we did not want was a situation where we recruit a Family Judge, everybody is agreed we are recruiting a Family Judge for that purpose, he is placed in post and then the Chief Justice effectively says, ‘Well no, you are doing this, that and the other’, and by a process, over a period of time, that Family Judge becomes a generalist judge – no specialisation in family or not really prioritising family work, but dealing with everything else. That of course then drives a coach and horses through the clear intention of what it was that we were recruiting this particular judge to do.

1800 And Mr Speaker, we still have those concerns, that effectively what the hon. Gentleman is actually doing by making these amendments and reversing the position that we introduced in section 12A, is effectively potentially turning that Family Judge into a generalist judge. Sooner or later, the Government will then have the same problems that we were facing prior to 2007, in terms of inconsistency of decisions, in terms of delays of family cases.

1805 Can I say this: I know the hon. Gentleman has consulted the Chief Justice and, indeed, although I had consulted the Chief Justice and the President of the Court before on how it would work, in terms of how the Family Judge would actually prioritise the... and section 12A actually reflected what had been discussed with them. It is certainly true that the Chief Justice – not the President of the Court; I had discussion with the President of the Court – but the *Chief Justice* was not too enamoured with the idea that we reflect the position that we had agreed with him and place it on a statutory footing. Presumably, that is why the Government comes today and is reversing the amendments that we made in 2010.

1815 We have great concerns that what will happen is that we are going to be returning to a position certainly pre-2010, but 2007. When I was Minister for Justice, I would consult, I would talk to the Family Judge on a regular basis, because I wanted to know from the Family Judge directly whether these provisions were working, whether he had spare capacity and whether he was doing other work. The view that he always expressed to me – and I have not spoken to him since I left the office, I did not think it was proper for me to talk to the Family Judge about this, once the Bill had been advertised – but his view to me was that in fact there was a lot of family work and that he needed to prioritise family work, and of course, he did do other work, but that a reversal of the position contained in the section would be a retrograde step.

1820 I do not know whether that continues to be his position, or whether it is not his position. It is certainly the position that was expressed to me when I was Minister for Justice. Our concern here is that, effectively, what you are doing is converting, in the short term – it will not even be in the medium term – a Family Judge into a generalist judge and that undoes the very careful work that we did in this area. Indeed, I will read to him what I said during the Second Reading, the debate on the Bill, I said this:

1830 ‘It is a reflection of the Government’s commitment to ensuring family proceedings, which include proceedings under the Children Act, the Maintenance Act, the Matrimonial Causes Act and, amongst others, the Adoption Act’

– all of which we amended in our time in Office –

1835 ‘are dealt with expeditiously and effectively by a dedicated judge. It is a major part, indeed, it is a cornerstone of the Government’s architecture in this area and, of course, involves an increase in the number of judges of the Supreme Court from two to three.’

This undoes that careful architecture, that cornerstone and therefore we cannot support it.

1840 **Mr Speaker:** Does any other Member wish to speak on the general principles of the Bill? No. Well, I will call on the Minister to reply.

1845 **Hon. G H Licudi:** Mr Speaker, I very much regret that the Opposition will not be supporting this. Although I regret it, I have to say I am not surprised, because what we are amending is something that the hon. Member himself, when he was Minister for Justice, introduced.

1850 The hon. Member expresses the Opposition’s lack of support, on the basis of a concern of a possibility of the Family Judge being turned at some point in the future to what he describes as a generalist judge. He does not say that that will happen, he does not say that he has any reason to believe that that is imminent, that that is what the purpose of this legislation is. A concern but it is simply based on hypothesis, it is simply based on speculation. We consider that it is wrong for the hon. Members to take a view...

1855 I can understand them abstaining, because we are amending their legislation, legislation that the hon. Member introduced, so I could understand him abstaining and say, ‘Well we do not know how this is going to work in practice – whether in fact the Family Judge is going to be turned into a generalist judge – and because we do not know and we have a concern that it *might* happen, then we are abstaining and we will see what happens.’ But the hon. Member says, ‘We will vote against on the basis of a hypothetical and speculative concern.’

1860 What the hon. Member has described is true: there were issues with family proceedings, but those issues preceded the engagement of a Family Judge and preceded the enactment of section 12A dealing with the jurisdiction of the Family Judge. We are not changing that. As I have said earlier, we will still have a Family Judge and we are not changing section 12A(1) which says there will be a puisne judge to whom shall be designated family proceedings. So on what basis does the hon. Member believe that we will not have a specialist Family Judge, when that is what the legislation says and we are not changing that at all? So of course that will continue to happen.

1865 The hon. Member also refers to a possible lack of consistency, when you have got more than one judge dealing with a particular type of case. Well, it happens in chancery work, it happens in commercial work, it happens in contract work, it happens in all areas of the law, except in family law.

But it can happen, in any event, in family law in Gibraltar, because the legislation that the hon. Member enacted, section 12A(7) says:

1870 ‘Where a judge other than the Family Judge deals with a family proceedings reference in any other legislation to the Family Judge shall be a reference to the judge that has dealt with those proceedings.’

1875 So the hon. Member himself, when he introduced this, legislated for the possibility that there would be other judges who could deal with family matters. It is right that there has to be the possibility of other judges being able to deal with family matters.

1880 The hon. Member comments from across the floor that there may be circumstances where a particular judge is absent, but where a particular judge is absent and you have got another judge dealing with family cases, you would expect that judge to apply the law as it is, to apply jurisprudence as it is or as that judge understands it to be, in the same way as different judges apply jurisprudence as they believe it to be, in contract and court cases and other areas of law, and in the same way as happens in the Family Division in England. In the Family Division in England, you have specialist judges, as we have with the Family Judge in Gibraltar. They do not have one judge in the Family Division. So where is the argument of consistency or lack of consistency? It is simply not a valid argument, in our view, with the greatest respect to the hon. Member, because you do have a Family Division in England with a number of judges dealing with the same type of cases – all specialists.

1885 So we do not believe that those concerns arise and we believe that, for the reasons that I set out earlier, this is the right thing for us to pass.

1890 **Mr Speaker:** I now put the question which is that a Bill for an Act to Amend the Supreme Court Act be read a second time. Those in favour. (**Government Members:** Aye.) Those against. (**Opposition Members:** No.) Carried by Government majority.

Clerk: The Supreme Court (Amendment) Act 2012.

1895

**Supreme Court (Amendment) Bill 2012
Committee Stage and Third Reading to be taken at this sitting**

1900 **Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

1905 **Mr Speaker:** Do all hon. Members agree the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

**Trade Licensing (Amendment) Bill 2012
First Reading approved**

1910 **Clerk:** A Bill for an Act to amend the Trade Licensing Act, the Hon. the Minister for Tourism, Public Transport and the Port.

1915 **Minister for Tourism, Public Transport and the Port (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Trade Licensing Act be read a first time.

1920 **Mr Speaker:** I now put the question which is that a Bill for an Act to amend the Trade Licensing Act be read a first time. Those in favour. (**Members:** Aye.) Those against. Carried.

Clerk: The Trade Licensing (Amendment) Act 2012.

**Trade Licensing (Amendment) Bill 2012
Second Reading approved**

1925 **Minister for Tourism, Public Transport and the Port (Hon. N F Costa):** Mr Speaker, I have the honour to move that the Bill be now read a second time.

1930 Mr Speaker, this Bill has three purposes. In the first place, the Bill enables the Trade Licensing Authority to refuse a transfer of a business where the business in question is to remain on the same premises, if the transferor owes tax and rates in respect of the business or if the transferor has been charged with an offence in relation to the business he is running.

1935 The second change relates to the composition of the Authority. In this respect, two additional members will be appointed, after consultation with the Gibraltar Federation of Small Businesses.

The final amendment, Mr Speaker, delegates various powers from the Governor to the Government.

As hon. Members are aware, I am currently reviewing the entirety of the trade licensing system and I hope to be able to bring proposals to the House by way of a Bill, after the New Year, which will bring about fundamental changes.

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The Government is considering, in accordance with its manifesto commitments, to set up an Office of Fair Trading, which will oversee all matters to do with trading and have appropriate enforcement powers. One of the drawbacks, Mr Speaker, of the present system is that enforcement is somewhat haphazard. Before, Mr Speaker, I present an entirely new legal architecture to this House, this Bill will correct the present system in a small way, immediately.

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In respect of the first mischief intended to be rectified by the amendments, I note that the Authority has limited powers to refuse a transfer, where the business is to remain on the same premises. I am advised that this has meant in the past that the holder of a trade licence has disappeared and transferred the licence to a new company. It may well be that the new company, although a different person in law, is controlled by the very same people who controlled the old company. This, of course, Mr Speaker, is a convenient way of getting rid of unpleasant debts incurred by the former company and still being able to carry on business. Allowing this phoenix-like behaviour is not desirable and so the Bill will close this existing loophole.

1950

Further, Mr Speaker, it may be that the transferor of the licence has been involved in criminal activity relating to the business. I am sure that all hon. Members agree that it is not desirable for the licence to be transferred to another linked person, who may well just carry on that criminal activity.

1955

In both of these cases, the amendments brought afford the Authority the discretion to refuse the transfer. Clearly, Mr Speaker, where everything is above board and there is no hidden agenda involving the transfer, there will be no difficulties put in the way of honest and decent traders.

1960

In respect of the second objective, the Gibraltar Federation of Small Businesses has long suggested that it ought to be represented on the Authority along with the Chamber of Commerce and the Trades Council. Her Majesty's Government of Gibraltar is so persuaded and this is now achieved.

The last of the amendments, Mr Speaker, delegates, as I said, all relevant powers to the Government.

1965

Mr Speaker, I also refer the House now to the amendments I have today given notice: today, in my letter to the Speaker of even date, which are self-explanatory and I therefore do not intend to go through them. In this respect, Mr Speaker, I must, I feel, highlight the constructive approach applied today by my hon. and learned Friend, Mr Bossino, who in fact called me during the course of the morning to discuss the proposed amendments that he would suggest and one of which in fact, Mr Speaker, does find its way into my proposed amendments as set out in my letter.

1970

I take the opportunity, Mr Speaker, to say that I am glad that he has taken up my offer for him to be able to call me at any time to discuss any matters, in order to have a constructive approach outside and inside this House.

Mr Speaker, for all of the reasons I have submitted, I commend the Bill to the House.

1975

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

1980

Hon. D J Bossino: Yes, Mr Speaker, I am grateful for the opportunity to speak, although it will be very short, and the Opposition will be supporting this Bill. I did think it would save parliamentary time if it was possible for both of us to agree on the rather obvious amendments which I suggested and I am very grateful to the hon. Member for having it taken it on and worked on appropriate wording, which he also kindly sent to me and I agreed it before it was sent to the House.

So I have no difficulty, as spokesman for the Opposition in respect of this Bill, to support it.

1985

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Trade Licensing Act be read a second time. Those in favour. (**Members:** Aye.) Those against. Carried.

Clerk: The Trade Licensing (Amendment) Act 2012.

1990

**Trade Licensing (Amendment) Bill 2012
Committee Stage and Third Reading to be taken at this sitting**

1995

Minister for Tourism, Public Transport and the Port (Hon. N F Costa): I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

COMMITTEE STAGE

2000

Income Tax (Amendment) (No. 2) Bill 2012
Court of Appeal (Amendment) Bill 2012
Supreme Court (Amendment Bill) 2012
Trade Licensing (Amendment Bill) 2012

2005

Clerk: Committee Stage and Third Reading, the Hon. the Chief Minister.

2010

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Income Tax (Amendment) (No. 2) Bill 2012; the Court of Appeal (Amendment) Bill 2012; the Supreme Court (Amendment Bill) 2012; and the Trade Licensing (Amendment Bill) 2012.

2015

In Committee of the whole Parliament

2020

Income Tax (Amendment) (No. 2) Bill 2012
Clauses considered and approved

Clerk: A Bill for an Act to amend the Income Tax Act 2010. Clause 1.

Mr Chairman: Clause 1 stands part of the Bill.

2025

Clerk: Clause 2.

Mr Chairman: Clause 2 stands part of the Bill.

2030

Clerk: The long title.

Mr Chairman: The long title stands part of the Bill.

2035

Court of Appeal (Amendment) Bill 2012
Clauses considered and approved

Clerk: A Bill for an Act to amend the Court of Appeal Act. Clause 1.

2040

Mr Chairman: Clause 1 stands part of the Bill.

Clerk: Clause 2.

2045

Minister for Education, Financial Services, Gaming, Telecommunications and Justice (Hon. G H Licudi): Mr Chairman, in clause 2, which introduces section 3A of the Court of Appeal Act, in 3A(2), it says:

‘Section 61(4)(a) of the Constitution does not apply to the hearing...’

2050

There should be an ‘of’ there – ‘hearing *of* an appeal certified under subsection (1).’

Mr Chairman: It is a typographical error: ‘does not apply to the hearing *of* an appeal certified’.

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Hon. P R Caruana: Mr Chairman, just to inform the House, in the time available on the internet, I have not been able to find what the position is on civil appeal, but in the criminal jurisdiction of the Court of Appeal in England, in a two-man... there is a limited list of things that a two-man court can deal with and if they are split, there has to be a re-hearing before a full court.

Now, I do not know whether that is also the case in a civil court or not. I have not had time to... It is not so obvious. It does not come up so obviously on Google.

2060

Hon. G H Licudi: Mr Chairman, I am grateful for that observation by the hon. Member. We certainly agree that that should also be the position in Gibraltar. As I said earlier, *if* there is a need for a legislative change to have that provision, then we will introduce it.

2065

I can also say that we do have provision already in section 13.

Mr Chairman: I have noticed that hon. Members in Committee today these days sit down. It seems to me a perfectly good practice. In my day, we used to stand during the Committee, but since we are in Committee and more relaxed, why not? Well done!

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Hon. G H Licudi: Mr Chairman, that has been the practice certainly since I have been in Parliament since 2007. We have always sat for Committee.

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But I can tell the hon. Member that, in the Court of Appeal Act, there is provision in section 13, which deals with criminal matters, and section 24 which deals with civil matters for the powers of the court to be dealt with by a single judge. As the hon. Members will know, there is also a possibility of the Chief Justice as an *ex-officio* member of the Court of Appeal to be able to sit.

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But sections 13 and 24 do provide powers of a judge in interlocutory matters, both in respect of criminal matters... or rather, in criminal matters, you would not have interlocutory matters, but there are certain matters, if there is permission for appeal which is necessary in any event, those sort of matters can be dealt with by a single judge. So we already have provisions for that sort of similar arrangement as exists in the UK, to be exercised by a single judge here.

2085

Hon. P R Caruana: Mr Chairman, I can tell him that the only bit of intelligence that I have found about appeal is in the Ministry of Justice's website in England and a two-man court can hear a substantive appeal in civil matters.

What I have not been able to find out is what happens if they are split, which we have been able to find out in respect of criminal, but not in civil. But they can hear a full substantive appeal, a two-man court is confirmed on the Ministry of Justice's website.

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Hon. G H Licudi: I am grateful for that, Mr Chairman.

Mr Chairman: Clause 2 stands part of the Bill.

Clerk: The long title.

2095

Mr Chairman: The long title stands part of the Bill.

2100

**Supreme Court (Amendment Bill) 2012
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Supreme Court Act. Clause 1.

2105

Mr Chairman: Clause 1 stands part of the Bill.

Clerk: Clause 2.

Mr Chairman: Clause 2 stands part of the Bill.

2110

Clerk: The long title.

Mr Chairman: The long title stands part of the Bill.

2115

**Trade Licensing (Amendment Bill) 2012
Clauses considered and approved**

2120

Clerk: A Bill for an Act to Amend the Trade Licensing Act. Clause 1.

Mr Chairman: Clause 1 stands part of the Bill.

Clerk: Clause 2.

2125 **Mr Chairman:** The Hon. the Minister for Tourism.

Minister for Tourism, Public Transport and the Port (Hon. N F Costa): Yes, Mr Chairman, in respect of clause 2:

2130 In the proposed new section 7(2)(c), to add the words ‘, to the Government,’ after the words ‘while owing’.

In the proposed new section 7(2)(c), to amend ‘accounts’ to ‘amounts’.

In the proposed new section 7(2)(d), to change ‘of’ to ‘or’.

2135 **Mr Chairman:** Those in favour of the amendments. (**Members:** Aye.) Clause 2 as amended stands part of the Bill.

Clerk: The long title.

2140 **Mr Chairman:** The long title stands part of the Bill.

BILLS FOR THIRD READING

2145 **Income Tax (Amendment) (No. 2) Bill 2012**
Court of Appeal (Amendment) Bill 2012
Supreme Court (Amendment Bill) 2012
Trade Licensing (Amendment Bill) 2012
2150 **Third Reading approved; Bills passed**

Clerk: The Hon. the Chief Minister.

2155 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Income Tax (Amendment) (No. 2) Bill 2012, the Court of Appeal (Amendment) Bill 2012, the Supreme Court (Amendment) Bill 2012 and the Trade Licensing (Amendment) Bill 2012 have been considered in Committee and agreed to, with amendments, and I now move that they be read a third time and passed.

2160 **Mr Speaker:** I now put the question, which is that the Income Tax (Amendment) (No. 2) Bill 2012, the Court of Appeal (Amendment) Bill 2012, the Supreme Court (Amendment) Bill 2012 and the Trade Licensing (Amendment) Bill 2012 be read a third time and passed. Those in favour. (**Several Members:** Aye.) Those against.

Do you wish me to take each of them individually?

2165 **Several Members:** Yes.

Mr Speaker: Very well. Those in favour of the Income Tax (Amendment) (No. 2) Bill 2012 (**Members:** Aye.). Those against. Carried.

Those in favour of the Court of Appeal (Amendment) Bill 2012 –

2170 **Hon. P R Caruana:** We abstain.

Mr Speaker: Carried by Government majority.

2175 Those in favour of the Supreme Court (Amendment) Bill 2012. (**Government Members:** Aye.) Those against. (**Opposition Members:** No.) Carried by Government majority.

Mr Speaker: Those in favour of the Trade Licensing (Amendment) Bill 2012. (**Members:** Aye.) Those against. Carried.

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Adjournment

Clerk: The Hon. the Chief Minister.

2190

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that this House do now adjourn *sine die*.

2195

Mr Speaker: I now propose the question, which is that this House do now adjourn *sine die*. I now put the question, which is that the House do now adjourn *sine die*. Those in favour. (**Members:** Aye.) Those against. Passed.
The House will now adjourn *sine die*.

The House adjourned at 6.50 p.m.