



**2018/19 SESSION**  
**of the**  
**BERMUDA SENATE**  
**OFFICIAL HANSARD REPORT**

**27 March 2019**

*Sitting number 12 of the 2018/19 Session*  
*(pages 441–460)*

**Sen. The Hon. Joan E. Dillas-Wright, MBE, JP**  
**President**

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**BERMUDA SENATE****OFFICIAL HANSARD REPORT  
27 MARCH 2019  
10:01 AM**

*Sitting Number 12 of the 2018/19 Session*

*[Sen. the Hon. Joan E. Dillas-Wright, President, presiding]*

**The President:** Good morning, Senators.  
The Senate is now in session.  
Shall we pray?

**PRAYERS**

*[Prayers read by Sen. the Hon. Joan E. Dillas-Wright, President]*

**The President:** Please be seated.

**CONFIRMATION OF MINUTES**

*[Minutes of 20<sup>th</sup> and 22<sup>nd</sup> of March 2019]*

**The President:** Item 2, Minutes of 20<sup>th</sup>, 22<sup>nd</sup> and 25<sup>th</sup> of March 2019.  
Senator Jardine.

**Sen. James S. Jardine:** Madam President, I move that the Minutes of the meetings of Wednesday, the 20<sup>th</sup> of March and Friday, the 22<sup>nd</sup> of March 2019, be taken as read, and that consideration of the Minutes of the meeting of Monday, the 25<sup>th</sup> of March 2019, be deferred.

**The President:** Is there any objection to that motion?  
No objection.

**Sen. James S. Jardine:** Madam President, I move that the Minutes of [Wednesday, the 20<sup>th</sup> of March](#) and [Friday, the 22<sup>nd</sup> of March 2019](#), be confirmed as correct records of those meetings.

**The President:** Is there any objection to that motion?  
No objection.  
The Minutes of the 20<sup>th</sup> and the 22<sup>nd</sup> of March are confirmed.  
Thank you, Senator Jardine.

*[Motion carried: Minutes of 20<sup>th</sup> and 22<sup>nd</sup> of March 2019 confirmed.]*

**MESSAGES**

**The Clerk:** There are no messages, Madam President.

**The President:** Thank you.

**REPORTS OF COMMITTEES**

**The President:** There are none.

**ANNOUNCEMENTS****PARLIAMENTARY SEMINAR**

**The President:** Senators, I would like to remind you [of] the Parliamentary Strengthening Seminar on May 1<sup>st</sup> and the 2<sup>nd</sup>, for which you have received an invitation from the Speaker of the House. [This] is a reminder, and would you please RSVP to Mrs. Place.  
Thank you.

**NOTICES OF MOTIONS**

**The President:** There are none.

**PETITIONS**

**The President:** There are none.

**STATEMENTS**

**The President:** There are none.

**INTRODUCTION OF BILLS**

**The President:** There are none.

**FIRST READING OF PUBLIC BILLS**

**The President:** There are none.

**FIRST READING OF PRIVATE BILLS**

**The President:** There are none.

**QUESTION PERIOD**

**The President:** There are none.

## ORDERS OF THE DAY

**The President:** The first Order of the Day is the second reading of the Liquor Licence Amendment Act 2019.

Senator Kathy Lynn Simmons, Attorney General and Government Leader, you have the floor.

## BILL

### SECOND READING

#### LIQUOR LICENCE AMENDMENT ACT 2019

**Sen. the Hon. Kathy Lynn Simmons:** Thank you, Madam President.

Madam President, I am pleased to share with the Senate today the [Liquor Licence Amendment Act 2019](#) to usher in needed reform to our liquor licensing regime.

The salient features of this Bill are: (1) to reconstitute the Liquor Licensing Authority; (2) to create a new type of permit for restaurants offering catering services; (3) to create new classes of licence in relation to itinerant restaurants and special events; (4) make provision for ministerial guidance to be issued; (5) provide for inspectors to be appointed to ensure enforcement of the Liquor Licensing Act 1974; and finally, (6) to provide long overdue updated permit and licence fees and fines for licence applications and violations.

Madam President, at present, appointments to the Liquor Licensing Authority, except the Chairman, are made by the Governor on the advice of the Minister responsible for liquor licensing. The Governor was forwarded a copy of the Bill for comment. And in a letter dated the 4<sup>th</sup> of March 2019, he advised regarding the changes of appointment. And I quote, Madam President, “At present, appointments to the Authority are made by myself as Governor on the advice of the Minister. The proposed change to appointment by the Minister is therefore not in itself substantive so there is no objection to the amendment.”

Madam President, the Senior Magistrate, as Chair of the Liquor Licensing Authority, was consulted during the drafting of the Bill and provided suggested changes that were included in the amendments to enhance the Bill. Further, there has been considerable feedback provided by those in the industry. All of these recommendations were particularly instructive and carefully considered.

Madam President, expanding the scope of the liquor licensing regime is necessary to cover instances where there are gaps in persons being eligible to obtain a liquor licence. Those familiar with the principal Act will know about the al fresco dining permit provided in section 21A of the Act. This permit allows for a restaurant licence holder to obtain a permit to sell

alcohol in an open-air area adjoining the licensed premises that is designated in a sketched plan submitted with the application for the al fresco dining permit.

The Act presently does not afford the opportunity to sell or supply alcohol at a catered event at an off-site venue. Accordingly, Madam President, the amendment provided in clause 10 of the Bill gives the holder of a restaurant licence the ability to apply for a permit to serve alcohol when providing catering services at off-site venues.

A catering permit is attached to a restaurant licence granted under the Act, and there is no fee for the catering permit. Therefore, the holder of a restaurant licence can apply for a permit to sell or supply alcohol at a venue that is not adjoined to the restaurant. To be eligible for the permit, the restaurant has to operate a catering business as part of its business. This paves the way for restaurants to have the opportunity to enhance their business by obtaining this permit and expand their service to customers.

Madam President, provisions have also been added to grant two new classes of licence. The first is an itinerant restaurant licence, which will allow the holder of a licence under the Public Health (Food) Regulations 1950 to operate an itinerant restaurant, to apply for a licence to serve alcohol at a gathering or event.

Madam President, there are case terms which are provided for in the definition section of the Public Health (Food) Regulations. If you do not mind me quoting—

**The President:** Absolutely. Carry on.

**Sen. the Hon. Kathy Lynn Simmons:** Thank you.

“‘Itinerant restaurant’ includes—(i) any restaurant operating for a temporary period in connection with a fair, carnival, circus, public exhibition or similar gathering; (ii) any moveable stand or vehicle from which food is sold;” (and that is relevant today) “and (iii) any kitchen in which food is prepared for any such restaurant, stand or vehicle.”

Connecting the new itinerant restaurant licence to the health licensing legislation ensures that not just anyone who cooks for and provides food at a gathering or event can obtain this licence.

Madam President, the second new class of licence is a special event licence. A special event licence is for temporary or infrequent events that fall outside the parameters of the criteria for the classes of licence presently available under this Act. This licence will allow for the supply of alcohol at private or promotional events, or the sale of alcohol at a public event. Examples of a special event include a sip-and-shop at retail stores and the increasingly popular wine tasting events.

Madam President, it is important to highlight that the new classes of permit and licences address concerns raised by the Bermuda Tourism Authority.

The Authority advises that due to a lacuna in the Act, destination weddings, which more often than not require catering services, were in jeopardy due to the inability to [serve] alcohol at the wedding. Serving alcohol at these weddings is presently unlawful. So, with the expanded classes of permits and licences, alcohol will now be able to be lawfully supplied at destination weddings and other such special events.

Madam President, it is worth noting that Forms 17 to 19, inclusive, under clause 22 of the Bill, are quite instructive as to the requirement for a catering permit, an itinerant restaurant licence, and a special events licence. The form of permit and licence will clearly specify the event, the location, the complete address, and the date and times, for the sale or supply of alcohol at the event.

The new permit and licences will be granted subject to the same conditions as an existing permit or licence, as provided for in section 15 of the [principal] Act.

Madam President, particular attention was given to reform the governing body that grants and renews liquor licences in clauses 5 and 20 of the Bill. Presently, there are three liquor licensing authorities that are divided into separate licensing districts, as provided in section 3 of the Act. Each licensing district encompasses three of the nine parishes, and persons are appointed from each parish within a district.

In 1974, this model presumably ensured that the membership would be more attuned to related issues within each district, such as the suitability of the proposed venues for alcohol sales. However, Madam President, today, with increased mobility, the geographical criteria used to constitute the Liquor Licensing Authority in section 4 of the Act, is no longer justifiable. Ease of transportation and communication means that there is no geographical remoteness or isolation.

Further, the restrictions in the Act regarding appointments to the liquor licensing authorities have presented unnecessary impediments and are not aligned with a modernised liquor licensing regime.

Accordingly, these three separate districts will now be removed and replaced with a single authority, as provided in clause 5 of the Bill. Madam President, presently, the liquor licensing authorities have a combined 10 members, who are appointed by the Governor. The chairman of each licensing authority is the Senior Magistrate, who is statutorily appointed under section 4(1) of the Act.

Among the anticipated benefits of reforming the governance structure of the Liquor Licensing Authority is the enhanced representation from different professional backgrounds and sectors of the [community]. The Bill provides that the Minister responsible for liquor licensing, not the Governor, will appoint members to the new single [liquor] licensing authority. The new Liquor Licensing Authority will include members

from the following sectors: legal; security; drug treatment and social work; hospitality; and retail.

Madam President, in his letter, the Governor stated that he did not see any difficulty in the proposal to remove the three licensing districts provided in the Act or to include in the Liquor Licensing Authority persons with knowledge in hospitality and retail.

Madam President, comparable jurisdictions, such as the Cayman Islands, Turks and Caicos Islands and the British Virgin Islands have all modernised their liquor licensing regime. They more adequately reflect the multi-faceted considerations that inform the decision to grant or renew a liquor licence. In many cases, the liquor licensing agency is fully independent of the judiciary, thereby maintaining an arms-length relationship for the courts to hear appeals where applications for licences are unsuccessful.

Madam President, the Bermuda Police Service presently has various powers of enforcement under Part V of the Act, and an officer has been assigned to enter and inspect licensed premises. These policing powers include the power to search a licensed premise and will remain in force. However, the Bermuda Police Service has conceded that there is a need for additional officers to carry out the prescribed activities. Consequently, amendments to Part V of the Act will allow ministerial discretion to appoint persons as may be required as inspectors to ensure compliance with the Act.

The proposed expansion in the classes of licence will increase the need for the Minister to have this discretion. These measures will enable the reconstituted single [liquor] licence authority, in collaboration with law enforcement, to better ensure compliance with the Act and any terms and conditions of a licence or permit.

Madam President, to decrease the chances of diminishing standards over time under the new law, provision is made under clause 3 for ministerial guidance to be published from time to time. This will have the added advantage of informing the public of their obligations under the Act, including how one is eligible and able to apply for a licence. It is anticipated that this will also have the added effect of encouraging compliance with licensing requirements.

It should also be pointed out, Madam President, that the process for obtaining a liquor licence or permit is quite involved and seemingly onerous on an applicant. There are presently over 12 procedural steps in an application that must be adhered to before a licensed application is considered. This is further justification to streamline the administration, as proposed by this Bill.

Enhanced provisions for guidance are advantageous to expedite these steps and to decrease the chances of any errors which prolong the application process.

Madam President, the streamlining of the application process will eventually include online applica-

tions to assist applicants in a less onerous process. The sittings of the Liquor Licensing Authority will still be required, but allowing online applications will assist with not only with the modernisation of the application process, but also with the timely scheduling of the annual and special sittings of the Liquor Licensing Authority.

Madam President, this takes us to the final issue of updating the 23 fees and 30 fines under the Act. The most recent increases to the licensing fees were in 2016, in amendments to the Act that introduced the tourism event licence.

The PLP, as Opposition at that time, reviewed the Bill and particularly the increases in fines, and suggested to the former Attorney General that no additional expenses be placed on members' clubs, which include sports and community clubs, by way of an increased fee.

During the second reading of the Bill, the former Attorney General stated, as reflected in Hansard, "In terms of the licences, we have agreed to keep members' clubs licenses at the same level—which was \$375."

Madam President, we are mindful that members' clubs still may be in a similar financial position and with their benefit to the community, while there was an increase in the other licensing fees, this fee remains the same.

Madam President, it has been almost 45 years since the Liquor Licensing Act came into operation. And the amendments to the fines are the most comprehensive to date. The increase is intended to be a deterrent for contravention of the provisions of the Act, or any terms and conditions of a permit or licence. Accordingly, the fees and fines were examined to ensure that they are up to date. It should be noted that the fee for a Class A licence went from \$2,000 to \$3,000. It may appear to be a significant increase; however, Madam President, it reflects an increase of \$83 per month. With respect to the fines, consideration was given to ensure that they provide sufficient deterrents.

Before closing, I would like to take this opportunity, Madam President, to thank the men and women who have served the liquor licensing authorities over these years and who continue to serve. Special thanks are extended to the Senior Magistrate and Chair, the Worshipful Juan P. Wolffe, not only for his suggested changes to the Bill, but also for his contributions made to the authorities over the many years.

With that, I conclude and thank you, Madam President.

**The President:** Thank you, Madam Attorney General.

## ANNOUNCEMENT BY THE PRESIDENT

### SENATE VISITOR

**The President:** And before I open the floor, I would just like to acknowledge in the Senate the Permanent Secretary of Legal Affairs, Marva O'Brien, as well as the parliamentary counsel. Welcome to you all.

Would any Senator care to speak on this Bill? Senator Kempe, you have the floor.

*[Liquor Licence Amendment Act 2019, second reading debate, continuing]*

**Sen. Nicholas Kempe:** Thank you, Madam President, and thank you, Madam Attorney General for the summary.

I would appreciate, I guess, just for my own clarity, if you could walk me through the enforcement policy. I understand that there is a summary conviction for the fine, but what if the event . . . I am especially looking at the ad hoc events. What are the next steps if the event does not cease?

How would the non-police inspectors appointed by the Liquor Licensing Authority manage events that continue operating without a licence? I am assuming that they do not have any powers of arrest, and this kind of thing.

I would also like to know . . . I recognise that certainly with putting in fines that are relatively on par with the licence fee, that simplifying the application process was necessary, so I commend those 12 steps being reduced down.

I am looking particularly, I guess, at the payoff for a one-time event operator between having to go through whatever the simplified application process is [with] the one-time fee of \$200 versus the fine of \$500, with there not being a lot of margin.

If you could . . . I was not sure if that simplified process only applied to the kind of standard Class A, B, et cetera, licences, or if it was much simplified for the one-off compared to the existing process?

And when is the online application process expected to be available.

Thank you.

## ANNOUNCEMENT BY THE PRESIDENT

### SENATE VISITOR

**The President:** Senators, I would just like to acknowledge another person in the Senate who is the policy analyst, Mr. Livingston Wedderburn.

Welcome to you, sir.

Would any other Senator care to speak? Senator Jardine, you have the floor.

<sup>1</sup> *Official Hansard Report* (House of Assembly), 27 May 2016, page 1878

*[Liquor Licence Amendment Act 2019, second reading debate, continuing]*

**Sen. James. S. Jardine:** Thank you, Madam President.

Madam President, certainly, I applaud anything that sort of streamlines processes, and combining the three into one Liquor Licensing Authority makes a lot of sense in our small Island.

It is, I gather, that all these different licences are there for a purpose. It should be rather interesting for whoever who is trying to monitor all of this because we have catering permits, we have itinerant restaurant licences, which are defined, and we have special event licences, and then [in clause 12] section 22C(3) we have the following, which says: "The licensing authority may grant a special event licence for an event of an infrequent or temporary nature that is not within section 22C(1)."

So there is a very broad spectrum of granting privileges which are given for a variety of events. And I understand there are obviously criteria that everybody has to meet in order to obtain a special event licence. But it seems like, again, one would have to have a pretty good understanding of how these licences are granted. And so I think having one authority to monitor all of this makes a lot sense because they will have to get up to speed fairly quickly, I am sure, with the number of licence applications that will be made.

I did have a comment about the fines perhaps being a bit low. I think, perhaps, one could monitor that over the first year or two that they are in place, and if we find that there are a lot of violations, then perhaps those could be increased in order to discourage any improper use or non-obtaining of licences, and so on.

In terms of the increase in fees, I do not recall the period of time that Madam Attorney General said, but it was, certainly, I think, 45 years or some extended period of time since these fees have been raised, and so I think that raising them from \$2,000 to \$3,000, it is a pretty significant jump. There is no question about that. But when you think back over the period of time [since] there has been an increase, I suppose it is reasonable to assume that.

So I support this Bill. I think the Government is obviously trying to modernise, as we have heard earlier, some legislation which has been in place for a long period of time, and so I would support this Bill, Madam President.

Thank you.

**The President:** Thank you, Senator Jardine.

Would any other Senator care to speak on this Bill?

No? Then Madam Attorney General, there are a few questions.

You have the floor.

**Sen. the Hon. Kathy Lynn Simmons:** Thank you, Madam President.

With regard to the enforcement provision, there is no intention for any inspector to have the powers of the police. What is necessary is for the police to be informed, so the oversight with the ministerial appointments in terms of inspectors is simply to gather the information necessary for enforcement. So there is no intention to extend those powers.

With regard to the simplification of the process, all licences will be subject to the same simplified process.

With regard to the online application process, this is being worked on. What we are going to do is probably allow this session to continue as is while we make the amendments that are necessary. The process is quite extensive, as I said earlier, and the Senior Magistrate has basically undertaken to streamline the administrative part of it during the upcoming session. So not every applicant will be required to go before the committee and that is because some of them are just renewing. And so when we have new applicants it will be imperative for us to ensure that they have in place [all that] is necessary, Madam President, to ensure that they are in compliance.

With regard to the various categories of licences, and it does seem quite intricate when you look at the Act, what is important to note is that there are different levels of compliance necessary for the different classes. Because a major event requires, for instance, more security and more oversight, and so what we are trying to do . . . I mean, there was the thought to actually streamline it so that we have one licence. But the different activities surrounding the sale of alcohol . . . there are just so many issues.

But what we try to do is balance the economic interest so members of the public can choose to engage in this as a business enterprise with the prevention aspect. And therein lies the challenge. And so during the process of formulating the Bill, what we had when I came into office was various vendors who sent in their concerns, particularly with respect to wine tasting and other such activities, which were improperly regulated. And in order to maintain the balance of the economic advancement of businesses, as well as the prevention in deterrences we actually had to make specific provision for the categories of licences and permits which were out there and not properly regulated. So there you see the itinerant licence and the like that we have.

With regard to persons understanding the rules, it is imperative that we have the guidance provision. And so as we go along the road to further modernisation, I will be issuing guidance to ensure that everyone understands what this process involves and what the expectations are with regard to compliance.

So what we have today is the first step toward modernisation. And I am extremely keen to refine the process, because that is where I think we are having most of the challenges in terms of persons who want to engage. But I will say that it is incumbent upon ap-

plicants to make sure that they actually follow the processes that are in place, because we have had in the past many complaints coming from industry. But when we delved down into the actual problems, we found that people were actually breaking the rules—the applicants were applying late, they were not necessarily in compliance—and what we are going to do as we would do with any new policy is exercise some oversight and monitoring to see where we may have to further refine, issue guidance, and aid the process.

**The President:** Thank you, Madam Attorney General.

**Sen. the Hon. Kathy Lynn Simmons:** Mm-hmm.

**The President:** Now, your second reading.

**Sen. the Hon. Kathy Lynn Simmons:** Thank you, Madam President.

I move that the Bill be now read a second time.

**The President:** Is there any objection to that motion?  
No objection.  
Carry on.

*[Motion carried: The Liquor Licence Amendment Act 2019 was given a second reading.]*

**Sen. the Hon. Kathy Lynn Simmons:** Am I suspending Standing Order 26?

**The President:** Yes.

#### SUSPENSION OF STANDING ORDER 26

**Sen. the Hon. Kathy Lynn Simmons:** Madam President, I move that Standing Order 26 be suspended with respect to the Bill.

**The President:** Is there any objection to that motion?  
No objection.  
Carry on.

*[Motion carried: Standing Order 26 suspended.]*

### BILL

#### THIRD READING

##### LIQUOR LICENCE AMENDMENT ACT 2019

**Sen. the Hon. Kathy Lynn Simmons:** Thank you, Madam President.

I move that the Bill entitled the Liquor Licence Amendment Act 2019 be now read a third time.

**The President:** Is there any objection to the third reading?

No objection.

**Sen. the Hon. Kathy Lynn Simmons:** Thank you, Madam President.

I move that the Bill do now pass.

**The President:** It has been moved that the Bill entitled the Liquor Licence Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection. The Bill is passed.

Thank you, Madam Attorney General, and Senators.

*[Motion carried: The Liquor Licence Amendment Act 2019 was given a third reading and passed.]*

### ANNOUNCEMENT BY THE PRESIDENT

#### SENATE VISITOR

**The President:** We will now move on to the second reading of the Customs Tariff Amendment Act 2019, and before we actually do I would just like to acknowledge in the Gallery the presence of the Permanent Secretary of Health, Mrs. Jennifer Attride-Stirling, and also the parliamentary counsel, Dr. Anthony Richardson. Welcome to you.

Senator Richardson, this is your Bill? You have the floor.

**Sen. Anthony Richardson:** Good morning, Madam President.

**The President:** Good morning.

**Sen. Anthony Richardson:** Hello Senators and members of the listening public.

### BILL

#### SECOND READING

##### CUSTOMS TARIFF AMENDMENT ACT 2019

**Sen. Anthony Richardson:** Madam President, I move that the Bill entitled the [Customs Tariff Amendment Act 2019](#) be now read a second time.

**The President:** Is there any objection to that motion?  
No objection.  
Carry on, Senator Richardson.

**Sen. Anthony Richardson:** Thank you, Madam President.

I am pleased to invite Honourable Senators to give consideration to the Bill entitled Customs Tariff Amendment Act 2019.

Madam President, the Bill proposes to amend the Customs Tariff Act 1917, the principal Act, with measures that include (1) increase to the duty rate to 75 per cent for food and beverage items affected by the sugar tax on the 1<sup>st</sup> of April 2019; and (2) apply the above-mentioned duty rate to chocolate and cocoa preparations containing added sugar.

These measures affect the First Schedule of the principal Act. I am pleased to be speaking on behalf of the Minister responsible for the policy initiative pertaining this amendment.

Madam President, in June 2018, the Government introduced, as promised in the Throne Speech and the Budget Statement, an increase in the duty rate on sugar-sweetened beverages, candies and pure sugar. These proposals were outlined in detail in the Health Ministry's Sugar Tax Consultation document and subsequent reports.

Madam President, in June 2018, the Minister advised the public that Bermuda's new sugar tax would be phased in gradually. On 1<sup>st</sup> of October [2018], a 50 per cent duty rate was implemented on the said items, as part of a transitioning phase. Today, it is proposed to raise the duty rate on the said items to 75 per cent from 1<sup>st</sup> of April 2019. In addition to the full 75 per cent duty rate implementation, chocolate is proposed to be included in the tariff as of 1<sup>st</sup> April 2019 also at the 75 per cent sugar tax rate.

Madam President, Bermuda's food system is an interconnected network of providers, servers and consumers. Accordingly, policy changes in one area can affect all parts of the network. Government is determined to take progressive steps to influence a cultural shift toward healthier food choices in Bermuda in order to tackle our obesity and chronic disease epidemic.

Unhealthy weight is a leading risk factor for chronic diseases such as heart disease, diabetes, kidney disease and cancer, as well as health problems like hypertension and stroke. It is estimated that diabetes and kidney disease currently account for 10 per cent of the country's total health spending.

Madam President, this means just two lifestyle-induced preventable conditions are costing us, Bermuda, \$78 million. This has to stop. The sugar tax is an important part of the measures needed to change choices and behaviour.

Madam President, three out of four adults in Bermuda are overweight or obese, and Government wants to emphasise HEAL—Healthy Eating and Active Living. The elements of HEAL go hand in hand, but it is almost impossible to exercise yourself out of an unhealthy diet.

The World Health Organization recommends that free sugar should be limited to less than 5 per cent of the daily energy intake, or less than 25 grams of sugar per day. Madam President, this means that a single soda—I underscore *single* soda—already exceeds the World Health Organization's recommended

daily intake. And since 50 per cent of adults in Bermuda drink at least one sugary drink a day (I started to smile), we can begin to appreciate how it may contribute to 75 per cent of our population being overweight or obese.

As an aside, Madam President, when we talk about "obese" we think of it as being like just a completely negative thing, but I did not realise until recently that it is not like this gross overweight, it is amazing the degree to which people can be deemed to be obese from, I guess, a medical perspective.

**The President:** Mm-hmm.

**Sen. Anthony Richardson:** Which is more than I would have thought.

But, Madam President, in one Hamilton grocery store, the grocer has affixed blue labels under sugar-taxed items that state, "This item has been affected by the sugar tax." (And I am going to come back to that later on, by the way.) In one aisle alone, the Minister counted 28 labels, and wants to thank the grocer for putting out these labels since it increases awareness. The advice? If your shopping cart and daily diet includes one or more of those items, it is likely that you need to rethink your drink or change your diet.

It is sobering to recognise how many sweetened, calorie-dense food and drink items have flooded our grocery stores and diets. Items that were previously consumed in moderation (i.e., candies) or as treats have become regular fare. Bermuda, we are immersed in an obesogenic environment, and it is going to take awareness, vigilance, and hard work to change that for the better.

Madam President, the World Health Organization proposes the use of taxes as part of a broad strategy to prevent obesity and non-communicable diseases, including type 2 diabetes, to improve health outcomes and direct persons towards healthy options. For instance, the World Health Organization has recommended that sugar-sweetened beverage taxes should be designed to increase retail prices by 20 per cent to meaningfully impact health. Indeed, a number of other jurisdictions have introduced measures in recent years, and studies before and since the introduction of sugar taxes have shown that they help to reduce consumption of these products. And I am sure there will be some comments in a minute in terms of whether this really works, but in any event . . .

A recent study published on the 30<sup>th</sup> of January 2019, showed that the Barbados sugar-sweetened beverage tax of 10 per cent, introduced in June 2015, increased the retail price by 5.9 per cent and decreased sales by 4.3 per cent. I want to emphasise that, or repeat it, in that the beverage tax of 10 per cent, caused the actual retail prices to increase by 5.9 per cent (i.e., less) and decrease sales by 4.3 per cent. At the same time, sales of non-sugar-sweetened

beverages increased by 5.2 per cent, with bottled water sales going up by 7.5 per cent, which is encouraging from a health perspective. In other times, when it comes to numbers, it is like, just numbers. But the reality, this is saying that by increasing the price of these goods, there was less consumption and more healthy alternatives were used instead.

While sugary drinks have been the focus of the sugar tax in most other jurisdictions, the tax proposed for Bermuda includes items such as candies, which now includes chocolate and plain sugar. The goal is to curb unwanted consumption of these foods, which contribute no nutritional value to our daily diets.

As a reminder, the Health Department's full consultation report on the sugar tax is published on their website. I actually have a copy of it here. Madam President, there were 351 responses to the consultation. The findings of the consultation supported the implementation of a sugar tax, with most respondents indicating that the tax would change consumers' behaviour. Again, I smile, because you wonder who the respondents would have been, but anyway. A clear majority of 60 per cent said that candy should be taxed, and many questioned why chocolate was not included. That is why we are now including chocolate.

There was broader support from the consultation for the tax to be introduced at 75 per cent duty, on the suggested items, and that is why we are now proposing to implement the full 75 per cent duty rate. So those who responded wanted a significant tax on these chocolates and candies, and what have you. Sugar and sugar-sweetened items have become more expensive at retail locally, and the increase has prompted greater awareness and adoption of healthier buying habits. There continues to be much support for the sugar tax. And the Minister has received letters of thanks from persons who have been motivated to drastically reduce their daily sugar intake and introduce high fibre and lean protein with every meal. Some amazing results, including diabetes reversals, are possible, and they are being achieved.

Madam President, I will pause here to make the statement that there has been some concern in response to the sugar tax that some retailers are actually increasing prices unnecessarily. The most alarming . . . and I say that anecdotally because I just cannot believe this. But anyway, that in one instance the price of eggs has increased, supposedly, in response to the sugar tax, which, clearly, makes no sense. And so in my role as the chair of the Price Control Commission, I have been asked to monitor any unnecessary increases in prices, which may relate to actual price gouging.

And for Senators and members of the public, the idea is that . . . let's assume it is a chocolate bar that is bought overseas at \$1.00. When you import it, of course, it is going to be . . . the prices for shipping and duty and the rest of it, the cost of duty is not on that, it is on the original purchase price. So it is going

to be inappropriate if the retail price of a chocolate bar, a big chocolate I would say is \$2.00, it is going to be inappropriate if the retail price increases by 75 per cent as a result of this sugar tax. And that is what we are going to be looking into. Also, to make sure that the items that do not contain sugar are not used as an excuse for these increases.

And I am saying that because as part of the Price Control Commission, the challenge was how do you monitor things and, you know, we cannot put in place price controls, per se, but there is the responsibility to ensure that there is not any unnecessary price gouging from this process. And so I am letting everybody be aware that we are going to look at this in a proactive way to ensure that there is not the inadvertent increase in prices.

Madam President, the three most important decisions that we all make for our health every day are breakfast, lunch and dinner. How many ate breakfast today? The Government has already eliminated duty on potatoes, cauliflower, broccoli, turnips, carrots, oranges and apples (I don't see grapes) to further support healthier nutritional choices, showing that this Government is absolutely committed to improving our diets. And so the comment that healthy items are too expensive for us to consume, the Government's response has been to eliminate the duty.

And, again, the commentary has been, When Government puts in place these regimes, do the importers reflect the reductions in their prices? And so, realistically, unless something has changed with the base price, the price for potatoes, cauliflower, broccoli, turnips, carrots, oranges, and apples, for example, should reduce if the duty on those items has now been reduced.

As the Government indicated in a previous Budget Statement, the additional revenue collected from the sugar tax is to support the promotion of healthy living initiatives. Since the October 2018 implementation, the value of imported goods fell by 24 per cent, representing a decrease of \$1.2 million. While it is still early days, and we will continue to monitor, it may well indicate that importation of these items fell during the first five months of the implementation. If this reflects reduced consumption of sugary items, then this is good news. But we have to monitor for a longer period, together with behavioural surveys of consumption, to see the impact conclusively.

I know I am taking a while this morning, Madam President, but I will also say that for the longer period, we have to see whether or not the importers stockpiled before the tax came into play, because that would have the same impact in terms of there would appear to be a reduction, so we have to monitor this for an extended period, as the brief says.

Nevertheless, despite the reduced imports, and there was a net gain in duty of \$695,000 for the affected items, that is a 66 per cent increase in duty despite reduced imports. So it may be having the in-

tended impact. I emphasise that it is early days, but so far the figures are promising.

The additional funds generated by the sugar tax will be allocated to support healthy living initiatives as they are developed. And that is another question, *Well, Anthony, with the sugar tax in place, where has the money gone?* Pardon the grammar, but that is what they have asked. And the answer is, to date, the additional revenue has helped to offset a \$200,000 reduction in revenue from duty losses arriving from the reduction of duty on healthy items of 0.0 per cent duty. So there is no more duty coming in from the other things I talked about just now, and some of the sugar tax has gone to offset that so the Government does not have a net negative revenue.

Also, nutrition labelling on menus and vertical farming have been identified as initiatives that will be supported. And so the rally cry is, *If you are interested in vertical farming let it be known.* Let's get that going.

This continues to be work in progress as potential initiatives develop further. Madam President, I welcome and encourage entrepreneurs to tap into the public's increasing demand for healthier alternatives with reduced or no sugar. A market exists for this, and more and more products can be seen on many retailers' shelves reflecting the changing mood and taste of the population.

The consultation process also noted that local businesses were concerned that taxing sugar would make it more expensive for them to do business, as their goods will be more expensive than imported goods. Local preparers of foodstuff have been given the opportunity to apply for concessionary rates from the Minister of Finance, under the existing provision for commercial manufacturers of goods. And I asked about that because I know sometimes for small bakers, in particular, it is a very cumbersome process. We have been informed that at least two businesses, well-known businesses, have applied and were approved by the Minister of Finance to be included in the Customs Tariff Approved Organisations Notice of 2019, which is Crow Lane Bakery and Dunkley & Pioneer Dairies Ltd.

And I say that because persons have actually asked about that and my response is to do what they need to do to register so they can at least reduce their costs and carry on, you know, whatever they are doing. Especially because we know that there are so many either small or home-based bakeries that, in my opinion, have excellent goods and you would not want those prices to increase unnecessarily.

So, Madam President, the department will monitor consumption levels through health surveys and imports. The first price survey was completed in the summer of 2018 and will be repeated this summer. The STEPS survey will be repeated in 2019 and will monitor overweight and obesity to evaluate whether our interventions are making the difference we need.

Before I conclude, Madam President, I want to give recognition to the staff at the BLDC because yesterday . . . this was a huge point of discussion, some of the points I am making today, and they helped to bring some clarity. And I had to try to reassure them that, yes, healthy alternatives are available and specify that Government has in fact reduced the duty on what are deemed to be healthier alternatives.

So, Madam President, the Government remains committed to reducing chronic diseases and lifestyle-related health problems in Bermuda and we encourage all residents to make a personal commitment to doing the same.

Thank you, Madam President.

**The President:** Thank you, Senator Richardson.

Would any Senator care to speak on this Bill? Senator Jardine, you have the floor.

**Sen. James. S. Jardine:** Everybody is shrugging, so I guess I will jump in.

[Laughter]

**Sen. James. S. Jardine:** As a chocoholic—

[Laughter]

**Sen. James. S. Jardine:** —obviously, a 75 per cent tax on chocolates that I previously enjoyed is going to have a significant impact. There is no question. In addition to my wife who watches very carefully what I eat.

[Laughter]

**Sen. James. S. Jardine:** So from my point of view, the sugar tax, I think, is something that is very worthwhile.

I know we had a debate back in June, I believe, when we passed the first amendment Bill, about sugar tax and the effects that it is having in various countries around the world. And just very briefly, Madam President, I wanted to recall some of the facts. I had a quick look on the Internet for any updates, but certainly in France, when they introduced the sugar tax on soft drinks there, it had a significant impact in terms of the amount of consumption of soft drinks. Belgium, not so much of an effect, but it did have [some effect]. And the United Kingdom, it has had an effect.

What is interesting to note is that the United Kingdom is now pushing forward, as I understand it, with a sugar tax on chocolate, which, as you can imagine in the United Kingdom, is a significant step for them. Chocolate is a major part, unfortunately, I guess, of children's diets over there. It has become so. So, the United Kingdom is moving forward with it

and I guess one could say, well, maybe Bermuda is taking the lead on this, which is a good thing.

So, from my point of view, I understand that obviously a 75 per cent increase in the duty on chocolate is going to, I think, have a significant impact on the consumption of chocolate. It will impact businesses that use sugar. And we have heard from the Senator the consideration that is going to be given to small family businesses which produce home-baked goods and other businesses with respect to that 75 per cent tax.

I was pleased to obviously hear about the reduction to 0.0 per cent on duty on healthy foods, because that is a major issue. If you shop regularly in the food stores, and my wife does not let me shop, because I always buy things that are not on the list.

*[Laughter]*

**Sen. James. S. Jardine:** But if you look at the price of healthy foods in most food stores, they are very, very high. And so those with a limited budget are reduced to buying things that are not quite so healthy simply because they cannot afford the more healthy foods. And so that is good news to hear that duty on things like cauliflower and other vegetables is coming down. I would encourage Government to continue to look at other areas of food stuffs in the grocery stores to see what other foods, more healthy foods, they can reduce the duty on.

I was also pleased to hear the Senator talk about controls or reviewing price gouging, because that is a real concern, where prices of certain goods may go up prior to the implementation of some of these additional duties. And we want to make sure that the benefits that are supposedly being passed on to the consumers are indeed being passed on. So I was pleased to hear that the Price Control Commission is going to be looking at that to hopefully prevent any price gouging that might take place.

So, Madam President, I think on balance, I was certainly in favour of the changes that are being recommended here to the customs tariff with respect to breakfast cereals that have a lot of sugar in them, other baked goods that have a lot of sugar, and I can see my consumption of chocolate bars disappearing into the past.

And so with those few words, Madam President, I support this legislation.

**The President:** Thank you, Senator Jardine.

Would any other Senator care to speak?

Senator Robinson, you have the floor.

**Sen. Dwayne Robinson:** Thank you, Madam President.

Regarding the sugar tax, I believe most of us, if not all of us, agree with the fact that we need a healthier population and that, you know, there needs

to be more emphasis put on sugary items. My only concern regarding this sugar tax was that it did not come with an accompanied breakdown of exactly where the percentages were going to go, and a national plan to combat sugar usage, and overeating in things that do cause diabetes.

So, I do support the endeavour to create a healthier population, but I do think that taxes like these should be paired with a national plan that should have been presented to the people of Bermuda so that they could know exactly where those tax breakdowns were going and what initiatives were [coming] down the pipeline so that it showed that there was preplanning and that it was a dedicated tax initiative that was meant to better the people of Bermuda.

So, that would be my only concern. I look forward to seeing a national plan to combat diabetes and the support of initiatives that are already combating diabetes. And I also look forward to seeing a precise breakdown of how those initiatives will be funded and how the sugar tax percentages will be divvied up.

Thank you, Madam President.

**The President:** Thank you, Senator Robinson.

Would any other Senator care to speak?

Senator Kempe, you have the floor.

**Sen. Nicholas Kempe:** Thank you, Madam President. And thank you, Senator Richardson, for the introductory statement.

I have a few questions about the logistics of the Bill as well as the carveouts. I note that the general intent of the Bill is to curb behaviour by affecting price through importation duties. We are all aware of the prevalence of diabetes in Bermuda. And one of my first set of questions comes around behaviours developed in childhood.

And I just wanted to understand if there was any research or anything that supported the carveout for sugary breakfast cereals, which is obviously a main breakfast item for young children. Certainly, as you get older, perhaps, you start to eat more eggs and this kind of thing, but for young children the fact that there is 0.0 per cent custom duty on sugary breakfast cereals feels a bit like a missed opportunity to affect behaviours there.

I also wanted to ask about the . . . if we look at section . . . where are we in the Bill? Section 2(3) where it refers to custom tariff heading 22.02, and it tackles beverages that have added sugar, but it does not affect the fruit or vegetable juices under heading 20.09. I note that under heading 20.09 of the Customs Tariff that there is only a 5 per cent duty on fruit and vegetable juices, whether or not they contain added sugars. So, again, it feels like the . . . whilst people might be turned away from water with even a small amount of sugar in it, there is going to be no matching price change on fruit juices that could have an ex-

traordinary amount of sugar in it as the customs duty on heading 20.09 is only 5 per cent.

I also worry about, again, without the accompanying communication plan or whatever, that when you look at . . . if you squeeze a juice from a fresh orange at home, you get approximately two ounces of juice out of it. However, you standard to-go size fruit juice contains about 10 ounces of juice and can have 23 grams of sugar even though there is no added sugar in it. Compare that to a Coke that has about 39 grams of sugar. So it feels like there is a bit of a missed gap there, and I just wanted to get some clarity around that from the Senator.

I am also looking at the way in which the duty is levied in the case of any solid imported food stuffs, i.e., not liquid. It seems to be, and I would accept clarification here if I am misreading this, it seems to be per kilo of food, as opposed to per kilo of sugar, which would mean, if I am interpreting this correctly that, for example, a Kind nut bar that has 5 grams of sugar in it, will see the same price increase as a Kind nut bar that has 9.2 grams of sugar in it. So it would seem that it is not assisting people to direct their choices toward the healthier of two options, in this case. It simply is going to drive up the price of any food stuff that has any added sugar in it.

I also wanted to talk about the logistics of shipping and the exemptions as it relates to small businesses. It is all well and good that the largest importers can apply for the tariff exemption when they do their own baking, but for most of the small businesses that engage in baking in Bermuda, they buy their sugar from the wholesaler. And by the time they go and purchase it, the sugar has already been imported and already had a customs declaration filed.

So it becomes very onerous and expensive to then go back and file further declarations to get the lower duty rate on the smaller quantities of sugar purchased by home bakers, which again, kind of makes it harder as a local producer to get these benefits that have been kind of put in after the fact.

So I just want to kind of highlight that I am worried about the actual impact for the small producers because unless they import their own sugar directly from overseas and file their own customs duty declaration, it is going to be very challenging for them to actually benefit from these carveouts.

## ANNOUNCEMENT BY THE PRESIDENT

### SENATE VISITORS

**The President:** Thank you, Senator Kempe.

Before I pass on to the next Senator who wants to speak, I would just like to acknowledge in the Senate the Junior Minister of Finance, the Honourable Wayne Furbert. As well as the Financial Secretary, Mr. Anthony Manders. Welcome to you both.

I think Senator Michelle Simmons, you have the floor.

*[Customs Tariff Amendment Act 2019, second reading, continuing]*

**Sen. Michelle Simmons:** Thank you, Madam President.

I just have a brief comment and a question. I will first say that I applaud the Government for moving forward with this next stage of the sugar tax. Yes, it will hurt because some of us will become more conscious of the fact that we have to pay a lot more to indulge in things that we probably know we should not be indulging in anyway. But, so be it.

I would also like to encourage the Government to go even further with one aspect of what they are doing. And that is with regard to further customs duty relief for fresh fruits and vegetables. The reason I am asking them to go even further and provide more relief on fresh fruits and vegetables is tied to a word that was used earlier, and that is “obesogenic.” I went straight away to the Internet and I found a paper here. It is written by the University of Nevada Cooperative Extension. And it says at the top, “What is an obesogenic environment?” And I would just like to quote a small section of this. May I, Madam President?

**The President:** You certainly may, Senator Simmons.

**Sen. Michelle Simmons:** It says, “The term ‘obesogenic environment’ refers to ‘an environment that promotes gaining weight and one that is not conducive to weight loss’ within the home or workplace . . . . In other words, the obesogenic environment refers to an environment that helps, or contributes to, obesity. Focusing on modifying the obesogenic environment at the community and policy level can impact the community residents at large. These changes could include access to healthy food and access to places to be physically active . . . .”

So one of the things that we have to continue to strive for is making sure that as many people as possible have access to healthy food. And that access can only be provided if the prices of some of the healthy foods are lower.

I agree with us trying to [have an] impact on thinking and habit by taking away, in a sense, access to the sugary foods, but unless that is supported with us providing better access to healthy foods, then it may not have as great an impact on thinking in the community as we would like. So, my plea, once again, to Government is, please consider going even further in reducing customs duties on more healthy vegetables and fruits. And with that, Madam President, I will end my remarks.

**The President:** Thank you, Senator Simmons.

Would any other Senator care to speak on this Bill?

Senator Campbell, you have the floor.

**Sen. Vance Campbell:** Thank you, Madam President. Madam President, a lot of the discussion around expense has been focused on individuals purchasing and the increased cost they will face. But when you draw back, Madam President, and you look from a macro level, a higher level . . . some people say fly at 35,000 feet. One of the greatest expenses facing individuals in this country today is the cost of health.

These products containing sugar, we have heard, contribute to obesity and other illnesses that are driving the cost of health through the roof. So, we can focus on the impact on Vance Campbell when he buys his chocolate, and I do like chocolate—

[Laughter]

**Sen. Vance Campbell:** And I am also one of those people . . . I was shocked to find was obese. I never considered myself to be obese. But according to the charts, I am.

[Laughter]

**Sen. Vance Campbell:** Yes, I could afford to lose some weight, but I never considered myself obese. But I want us to draw back and stop focusing on our individual purchase and look at the cost to the country through health insurance that these products are causing.

Thank you, Madam President.

**The President:** Thank you, Senator Campbell.

Would any other Senator care to speak? No?

I would just like to make a couple of comments myself as a health professional in the past and certainly I am fully aware of the obesity that is in this Island. I think most of us can remember, way back when, you looked at people in the community and they were not obese, they were not fat, young people. But now what we see is a tremendous increase in the obesity levels in Bermuda.

And, of course, as a health professional I can say that I have been exceedingly concerned, as Senator Campbell has duly noted, about the cost of health care in Bermuda. If you compare us with the other OECD countries, Bermuda, next to the United States, has the highest health care costs.

So I think that if anything is put in place by the Government to draw attention to what we as individuals and as a population can do to lower the cost of health care, it is certainly our diet and the sugary drinks, and even when you look at children . . . I am glad to see in schools that they have programmes when children are involved in activities and recreation.

It just warms my heart to see all the activity because the obesity is not just in the adults, but you have to start in the schools. You have to start with the diet and you have to start with education in schools.

So I fully support and commend the Government for bringing this Bill forward.

Senator Richardson, I believe it is over to you and you have a few questions to respond to.

**Sen. Anthony Richardson:** Sure. Again, Madam President, I obviously take the serious nature of what we are proposing to do, and I will start, I guess, by underscoring the comment from Senator Campbell in terms of this Bill is really not an individual Bill, it is a country-specific Bill. It is for the Island to try to certainly reduce our levels of un-healthiness. In my mind right now, to be honest, there is a picture of persons who have amputations.

**The President:** Mm-hmm.

**Sen. Anthony Richardson:** And, you know, yes, there may be some other elements that attributed to their circumstance, but, clearly, we do not want it to get to a stage whereby we see an increased incidence of amputations that are already quite high. And so we want to be very, very mindful of that.

To add to that, and I take your point, Madam President, in terms of the children at school do engage in physical activity. What I am still surprised at, though, is that in the middle school and also in the senior school, they do less gym or PT, or whatever you refer to it, that activity thing, to the extent where, you know, “back in the day” we had gym like every week all year round.

**The President:** Mm-hmm.

**Sen. Anthony Richardson:** Whereas now, I am like, *Guess what?* The comment sometimes is that, *We don't have gym for an entire term. We deselected gym this term and have it next term.* And I am like . . . this is quite surprising to me.

And we all complain, I guess, around the table. I did smile when Senator Simmons said that she immediately went on the Internet to look what “obesogenic environment” was. I smile only because that is an amazing aspect. But for our young people, they use the electronic devices to an excess whereby on a Saturday, for example—we talked about it recently—we may be outside running around doing whatever, where [our young people] would spend the entire day in front of a TV monitor doing whatever they are doing.

And so part of it, I believe, is going to be a shift from the parents' point of view to stop using the electronic devices as a convenience for babysitting, effectively. Like, find a way to get outside, get the children outside, get them engaged. Yes, there are

some other attending costs about paying for this, that and the other, but we have to, I think, do more to ensure that Bermuda as a country does do more activities.

And to add to that also, Members may not be aware that Government does have initiatives to place more outdoor exercise equipment throughout the Island. I am not sure of the extent they are going to do it, [if not] in all the parks, but in [some of] the parks. Again, my bias, being from St. George's, I know that they have started to do so in the east whereby, you know, there is free equipment and I guess we can engage ourselves in going and working out, you know, just doing some of those fun things. And some of those things are actually free.

I know my personal preference sometimes is to ride a pedal bike, which is not as easy as people think sometimes. When you do it, it is nice. You can go do [these] things, you know, it's relatively free and not too much stress on your body.

Now, I will try, Madam President, to go through some of the direct questions. Starting with Senator Jardine, I think there is a general lament with you in terms of there is going to be less chocolates available.

*[Laughter]*

**Sen. Anthony Richardson:** However . . . sorry, Madam President. The good news, though, is that there are, apparently, sugar-free chocolates. And to the extent that there are sugar-free chocolates—

*[Crosstalk and laughter]*

**Sen. Anthony Richardson:** Madam President, I am being told that nobody wants a sugar-free chocolate.

*[Laughter]*

**Sen. Anthony Richardson:** However, Senator Jardine, that is going to be the option if you want to keep on consuming without the increased costs.

There was also the question of the impact of cost to small businesses. And if I may, Madam President, I want to read a short portion. There is a formal response to that.

**The President:** Mm-hmm.

**Sen. Anthony Richardson:** And it is that, approved bakers or pre-approved manufacturers, bakeries, and itinerant restaurants will be able to obtain a 5 per cent concessionary rate on sugar in one of two ways. If they are importing sugar themselves, they can complete a customs declaration form and take a copy of their licence from the Department of Health with the declaration and that will enable them to get the 5 per cent. Or, if they are purchasing sugar from another

approved business, from a wholesaler, the buyer must provide the seller with a copy of their licence from the Department of Health.

So I will go to one of the importers, for example, to buy some sugar. If I have a licence, I will show them that and I will get the 5 per cent. And then they in turn have to go to Customs to get their refund. So it may be a bit cumbersome, to be honest, but there is a process by which if I am small business and I rely on the cost of my sugar, I will go through that process to make sure that I am not unnecessarily impacted.

So, again, to the general public, the sugar tax is 75 per cent, but for an approved business (let's call it) they can get a 5 per cent [tax] instead. Which I think is quite reasonable.

**Sen. Nicholas Kempe:** Point of clarification.

**The President:** Senator Kempe, what is your thought on that point of clarification?

#### POINT OF CLARIFICATION

**Sen. Nicholas Kempe:** Yes, thank you.

I just want to understand. When a restaurant, or a bakery, or whatever goes to a wholesaler or a supermarket with this kind of proof that they are eligible for a lower customs' rate, must the supermarket wholesaler give them a discount? Or, is this something that is agreed between the two parties?

**The President:** Senator Richardson.

**Sen. Anthony Richardson:** Madam President, I am looking . . .

*[Crosstalk]*

**The President:** Senator Richardson is obtaining a response to your question, Senator Kempe.

*[Pause]*

### ANNOUNCEMENT BY THE PRESIDENT

#### SENATE VISITORS

**The President:** While we are waiting, I would just like to acknowledge the fact that we do have representatives from the Customs Department and Senator Richardson is obtaining information from them.

And I would also like to welcome the young people in the Gallery. There are some youngsters here, actually, who are here observing.

Senator Richardson, you have a response to Senator Kemp? You have the floor.

*[Customs Tariff Amendment Act 2019, second reading, continuing]*

**Sen. Anthony Richardson:** Yes, Madam President.

The response is that the importer must give the reduction.

As a process, though, I am going to, as a small business, I am going to need to prove to the importer that I do have the exemption. And that is why I was saying that, to the general public, if you are impacted, my suggestion would be to go to Customs and make sure you go through that proper process, especially if the success of your business is dependent on the cost of sugar for you.

I want to also say, as a general comment for everybody present, that I find this process interesting because a Senator has asked the question, there is a very detailed response to that, and I do not know if we can easily convey the full answer in this format and so, again, I say to any person that is impacted, please, go to Customs and go through the process. It is going to be very important. So, thank you, Senator, for asking for clarification.

There was a question, Madam President, in terms of a strategy, like, I guess, a long-term strategy that goes with the sugar tax. And the answer is yes, there is in fact a national strategy on diabetes. And it is actually available on the Department of Health's website and it was published in 2018. So, yes.

There was also a question . . . I know I am going by multiple Senators [and their questions] at this stage, but there was also a question in terms of breakfast cereals, and the Government has said that they did not put the duty on all cereals at this stage because they wanted to do some more investigation to make sure that they can separate out sweet breakfast cereals from less sweet ones.

And if I may, Madam President, read a formal response?

**The President:** You certainly may, Senator Richardson.

**Sen. Anthony Richardson:** Thank you.

Following the initial intention, "there was further feedback received and discussed and it was determined to defer the addition until the tariff code could differentiate between high-sugar cereals from healthy cereals."

And so we did not wish to penalise healthy breakfast cereals and inadvertently penalise families which are trying to do the right thing. So those who like Honey Nut Cheerios, for example, you can carry on.

There was also a question in terms of fruit juices . . . and I am trying to make sure I get this correct. So if they are 100 per cent fruit juices, the duty is 5 per cent based on the nutritional value. So there is some element in that regard. But I take your point clearly, Madam President, in terms of the lesser sugar content beverages should be encouraged to be consumed. One thing I think we missed, all of us, certain-

ly, is that the least expensive beverage is probably the most abundant one, which is water, encourage us to drink more water.

There was also a question in terms of . . . I actually answered this earlier, about the duty. The duty is charged, I said earlier, on the value of what you are buying, it does not include all of the shipping and the rest of it.

There was a question . . . I might have repeated this one, sorry.

[Pause]

**Sen. Anthony Richardson:** I think that is a repeat. Okay.

Madam President, Senator Simmons asked the question in terms of will the Minister of Finance consider further relief on healthy goods? And I think that [answer] is yes.

**The President:** Address the Chair.

**Sen. Anthony Richardson:** Sorry, Madam President.

That answer is yes. For the Government, it is a question (I think I read this earlier) of—reducing the duty on various goods is going to cause a reduction in Government revenue, and so there will have to be some offset. Having said that, the consideration also is what Senator Campbell said earlier, the bigger picture. So we have to now do some more work, of course, to make sure that we can make the correct decisions in terms of is there going to be a direct correlation between reducing the value of so-called healthy goods to an absolute minimum and how would that be compensated either in reduced health costs or other revenue.

And I will say again, from my earlier comments, one of the activities of the Price Control Commission is to look at some of Bermuda's prices. And I will say again that there is no question of us trying to impose price control. But there is the intention to ensure that prices are not unnecessarily high or [that price-gouging occurs]. Because that is not going to be appropriate either. I know I always use the example of grapes. Grapes are not inexpensive, and the reality is, are they at an appropriate price or not? And unfortunately for all of us it seems as though the grapes are on the shelves on, let's say, a Thursday and by Saturday they are going brown or something. And so we have to really understand that.

And I was interested to hear also, and I hope I got this right, that things, for example, like apples, they are actually grown once a year. And so are actually stored, once they are picked, until they are needed. So it is not as though you pick apples every month, for example, and so we have to understand some of the realities of food. We always talk of course in terms of, you know, you have to buy the product overseas and you got to ship it here and do all these

kinds of things. And so, again, the idea now is to try to ensure that we understand the pricing mechanisms for the local providers and also to ensure that the consumers are aware of the nature, you know, the components of prices, and hopefully in a bigger way, to change purchasing habits where necessary because this will all have an impact on the sugar tax that we are talking about, or the impact of those goods.

And so I want to conclude by saying that, clearly, this is not an intention from Government to penalise individual consumption, [but] trying to encourage us to make healthier choices so that in the long run Bermuda will benefit from reduced health care costs, because ultimately, we all do pay the price for poor health choices because the health system has to then bear the brunt of their role, and of course that is affecting our health payments and all that kind of stuff, so . . .

Madam President, I think I have answered all the questions.

**The President:** Senator Kempe, you have a question that you wanted a response or have not had a response for?

**Sen. Nicholas Kempe:** Yes, thank you, Madam President. Thank you, Senator Richardson.

My question was asked about the . . . I think I got a bit of an answer with the comment on breakfast cereal, that the duty is not being increased on sugary cereals, because this amendment does not have the ability to distinguish between breakfast cereals that have a lot of added sugar and a minute amount of added sugar. So I think that answers my question about the per kilo rate.

But I guess it goes to there if you are getting a snack bar. One that has a drop of honey and high-quality ingredients will suffer a 75 per cent increase based on its purchase price, as well as a candy bar that is mostly sugar.

This Act does not distinguish between snack items which are healthier, and perhaps more expensive, and [those which are] very sugary and cheaper in nature. So it perhaps could curb behaviours toward the less healthy options. I just wanted clarity on how the duty is assessed and the unintended consequences.

**Sen. Anthony Richardson:** Madam President, may I just confer . . . ?

**The President:** Yes, you certainly may, Senator Richardson. You can confer with your . . .

[Pause]

**The President:** Senator Richardson, I believe you have a response.

**Sen. Anthony Richardson:** Madam President, the response is that there is the intention to try to differentiate based upon the quantity in certain products. And I was interested to learn that honey is not deemed to be sugar, so those products will not be impacted.

But to address Senator Kempe's question directly, some of the goods that are imported, the customs officers are able to distinguish based upon the content which tariff code to use, and they will exercise their discretion. Because the intent is not to negatively impact items, in this case snack bars that do not have sugar.

As the brief said, there is the intention to do some more work. Because the tariff codes themselves are fairly rigid, and it is not going to be as easy as we may think, or at least as immediate, to try to change the actual tariff codes, so they will continue to work until we can get this a little bit more efficient.

**The President:** Thank you, Senator Richardson. Now you will do your second reading.

**Sen. Anthony Richardson:** Madam President, I move that the Bill entitled the Customs Tariff Amendment Act 2019 be now read a second time.

**The President:** Is there any objection to that motion?  
No objection.

[Motion carried: The Customs Tariff Amendment Act 2019 was given a second reading.]

## SUSPENSION OF STANDING ORDER 26

**Sen. Anthony Richardson:** Madam President, I move that Standing Order 26 be suspended in respect of this Bill.

**The President:** Is there any objection to that motion?  
No objection.

[Motion carried: Standing Order 26 suspended.]

## BILL

### THIRD READING

#### CUSTOMS TARIFF AMENDMENT ACT 2019

**Sen. Anthony Richardson:** Madam President, I move that the Bill entitled the Customs Tariff Amendment Act 2019 be now read a third time.

**The President:** Is there any objection to the third reading?  
No objection.

**Sen. Anthony Richardson:** Madam President, I move that the Bill do now pass.

**The President:** It has been moved that the Bill entitled the Customs Tariff Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection.

The Bill is passed.

Thank you, Senator Richardson, for all the time you have taken to answer questions.

*[Motion carried: The Customs Tariff Amendment Act 2019 was given a third reading and passed.]*

**The President:** We move now, Senators, to the third item on the Orders of the Day and that is the Customs Tariff Amendment (No. 2) Act 2019.

Senator Campbell, you have the floor.

## BILL

### SECOND READING

#### CUSTOMS TARIFF AMENDMENT (NO. 2) ACT 2019

**Sen. Vance Campbell:** Thank you, Madam President. Madam President, I move that the Bill entitled the [Customs Tariff Amendment \(No. 2\) Act 2019](#) be now read a second time.

**The President:** Is there any objection to that motion?

No objection.

Carry on, Senator Campbell.

**Sen. Vance Campbell:** Madam President, this Bill proposes to amend the Customs Tariff Act 1970, the principal Act, with measures that include (1) increasing the import duty rates for alcoholic beverages and tobacco products, and (2) amending certain end-use reliefs. These measures affect the First and Fifth Schedules to the principal Act.

Madam President, in the Budget Statement in support of the Estimates of Revenue and Expenditure 2019/20, the Government promised to raise duty on cigarettes and tobacco, and on beer, wines and spirits. The increased duty rate is expected to achieve additional customs revenue of about \$1.5 [million] to \$2.5 million. Accordingly, the Bill proposes the following duty increases: The duty on beer and cider will increase by \$0.10, from \$1.26 per litre to \$1.36 per litre. The duty on wines will be increased by \$1.00, from \$5.00 per litre to \$6.00 per litre. Duty on spirits, liqueur and cordials will increase by \$0.65, from \$31.35 per litre of alcohol to \$32.00 per litre of alcohol.

The duty on cigarettes will increase by \$0.03 per cigarette, from \$0.37 to \$0.40 per cigarette, or \$80.00 per carton of 200. The duty on all other tobacco products, except cigars, cheroots and cigarillos will increase to \$500 per kilogram in order to achieve effective parity with the duty rate for cigarettes. And if

anyone is wondering what a cheroot is, it is a cigar with both ends that are clipped, they are open, and it is on paper. So.

*[Laughter]*

**The President:** We are duly edified.

*[Laughter]*

**Sen. Vance Campbell:** It sounds more like a vegetable; that is why I had to look it up.

Madam President I now progress to the measure of the Bill containing end-use reliefs.

Madam President, in the Budget Statement, it was pointed out that the most significant items of capital development expenditure in the 2019/20 budget included school maintenance at \$3 million. In order to help that expenditure go that much further, the Bill proposes to add the following items to the list of qualifying goods under CPC 4110, [Customs Procedure Code] which provides duty relief for school equipment and educational supplies: Lighting fittings, wall clocks, network equipment and cabling; telephones; flooring materials and systems; security cameras; plumbing; drywall supplies; dollies and casters; and doors, windows, and their frames and thresholds for doors.

Madam President, the Bill also proposes to amend CPC 4195, which currently provides duty relief for chemical products and equipment for combating oil pollution. It is intended to widen the scope of relief under CPC 4195 to include all goods for combatting pollution. As a control measure, the Environmental Engineer of the Department of the Environment and Natural Resources [DENR] shall certify that the goods are eligible for this expanded relief.

Madam President, I will take this opportunity to mention that Bermuda Customs puts into practice a recommendation of the World Customs Organization [WCO] aimed at speeding up the forwarding of goods in the event of disasters, including pollution events. In the case of imports, Customs will permit the duty-free release of goods on presentation of the relevant cargo manifests. No import declaration or monetary security is required upon the importation of relief consignments. No export declaration is required for temporary imports of emergency items.

Guidance on customs import procedures for goods for disaster management and humanitarian aid can be accessed on the governmental portal.

Madam President, the Bill further proposes to amend CPC 4215, which provides duty relief for goods for commercial goods production. It is intended to widen the relief to allow the duty-free importation of retail packaging of local animal and vegetable products. The predominant packaging matter for local produce is clear clamshell packaging. Such packages are largely supplied to commercial farmers via DENR [or the] Agricultural Service Centre. The packaging is de-

signed to keep local produce clean and safe for human consumption in order to ensure high quality and to prolong shelf life.

This expanded relief will help to reduce local food production costs, allowing local farmers to better compete with cheaper overseas imports.

Madam President, the Bill also proposes to amend CPC 4196 to provide further duty relief on medical equipment and supplies in relation to goods used to compensate for a physical, mental, or learning disability by extending the scope of goods covered under this CPC.

Finally, Madam President, the Bill does a little housekeeping in a simplified tariff, heading 9803, and in the Fifth Schedule to the principal Act. In the simplified tariff, the tariff code for footwear and watches is to be split into two separate tariff codes, one for footwear and one for watches. This split is revenue-neutral. Also, the tariff code for smoking tobacco and cigars is similarly split, and the new \$500 per kilogram rate is applied to smoking tobacco. Cigars will remain dutiable at 35 per cent of the value.

Madam President, in the Fifth Schedule, it is proposed to correct a small number of outdated references to the Director of the Department of Environmental Protection. The new style is, correctly, the Director of the Department of Environmental Protection and Natural Resources.

With that, I thank you, Madam President.

**The President:** Thank you, Senator Campbell.

Would any Senator care to speak on this Bill?  
Senator Kempe, you have the floor.

**Sen. Nicholas Kempe:** Thank you, Madam President. Thank you, Senator Campbell, for your presentation.

I have a couple of questions as it relates to this Bill. One of the ones, when I look at CPC 4110, which is on page 3 of the copy we have.

I note that the eligible beneficiary is all importers and there are such things as classroom and office stationery, art equipment and supplies, sports, physical education and recreational equipment, which are items that pretty much any parent of a school-age child could purchase. So I guess I would like to know, seeing as it is not limited to just teachers or just schools that are purchasing this stuff, is the onus that is going to be put on the commissioner of education to certify the goods that are eligible for this relief going to be cumbersome?

It is a very large pool of eligible beneficiaries and so I am worried that the scope of relief and the burden being put on the commissioner could cause a lot of unnecessary bureaucracy. And I just wanted to get some more clarity around the eligible beneficiaries and the end-use restrictions.

I would also like to talk about the heads on page 2 of the copy we have. [Tariff code] 9803, I note

with curiosity that cigars and cigarillos and stuff have a 35 per cent rate whereas we are taxing items with any added sugar at 75 per cent. It just seems an interesting contradiction.

I would also like to point out that smoking tobacco or otherwise, I guess, known as lib, is at \$500 a kilo and my concern is some of the unintended consequences around that. I am familiar that many people will switch from kind of their store-bought pre-rolled cigarettes to a loose smoking tobacco in order to curb their consumption of tobacco. And by massively playing with the price point on this I am worried that there will be some disincentives for those people trying to use self-rolled cigarettes as a reduction of consumption strategy.

**The President:** Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

Senator Jardine, you have the floor.

**Sen. James. S. Jardine:** Thank you, Madam President.

Madam President, I just had one question and it is on page 2, dealing with the 9803.141 and 9803.143 on footwear and watches.

I understood the Senator's comments that the changes were revenue-neutral. I was interested to know what the change was on the duty rates for watches, which are now stated at 12.5 per cent. I do not recall what the other rates were, but I do recall some while ago, I believe it was last year, it may have been the year before when changes were made to this particular category. There was concern expressed by some of the retailers who sell watches, principally to tourists who come here. Because of our competitive duty rate, they were able to sell them at a reduced price when compared to the United States. And so this was a very significant part of their business.

So I would be concerned if this rate of 12.5 per cent was significantly more than what the rate was last year because it will harm their businesses. If it is the same rate, then that is fine. But I just ask that question. I did not have an opportunity last night to go online and check what the old rate was. So I would be anxious for an answer on that question.

Thank you, very much, Madam President.

**The President:** Thank you, Senator Jardine.

Would any other Senator care to speak on this Bill?

*[Inaudible interjection]*

**The President:** Senator Kemp, you have additional questions?

**Sen. Nicholas Kempe:** Yes, I know I am not allowed one, but an extra one to the Chair. I just want to point

out what I feel may be an errata in the Bill. Under [tariff code] 9803.141 and 9803.143, this is replacing 9803.141 which levied the duty rate on unit of classification—a unit. It is now being levied on a kilo. So you are going to pay 6.5 per cent per kilo of shoes, and 12.5 per cent per kilo of watches, which seems rather counterintuitive.

**The President:** Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

No? Then we will wait for Senator Campbell to get the answers to the questions that have been raised.

*[Pause]*

**The President:** Senator Campbell, I see you are back in the chair. You have an answer to the question?

**Sen. Vance Campbell:** I have a couple of answers, yes.

**The President:** You have the floor.

**Sen. Vance Campbell:** In reference to Senator Jardine's question, the duty on watches and shoes has not changed. That is just to give each category its own separate tariff code. So that has not changed.

I am told that the "kilo" reference in that area will be changed. It is an error, and it will be corrected. So, hopefully, that alleviates any fears in that area.

The rate of 35 per cent on cigars was left in place from a tourism perspective. As it relates to, I think, the tobacco itself, the loose tobacco as opposed to . . . this here closes a loophole whereby the Government was losing a few million dollars a year in revenue. So this closes that loophole.

I am waiting for further clarification when it comes to whether this will be burdensome on the commissioner of education.

**Sen. Nicholas Kempe:** Madam President, I am not sure if this is a point of order or a point of clarification.

**The President:** What is your point of clarification?

#### POINT OF CLARIFICATION

**Sen. Nicholas Kempe:** The Member stated that as it relates to the new [tariff code] 9803.141 and 9803.143, that it was both revenue-neutral and did not change the existing tariff.

However, 9803.141 (if I have the correct copy of the customs tariff in front of me) appears to be a consolidated rate, as one would expect as it was one, and it is listed at 12.5 per cent. So one of the footwear is now being desegregated from the combined tariff

code and it is at a lower rate, so it is neither revenue-neutral nor is it the same rate.

**The President:** Thank you, Senator Kempe.

*[Pause]*

**The President:** We are awaiting a response to the additional question.

*[Pause]*

**The President:** Senator Campbell, you have a response?

**Sen. Vance Campbell:** Thank you, Madam President.

**The President:** You are welcome.

**Sen. Vance Campbell:** In reference to whether this will be burdensome to the commissioner of education, I am advised that the end user must be registered under section 12 of the Education Act 1996, which basically means schools.

**The President:** Mm-hmm.

**Sen. Vance Campbell:** I am also being told that when it comes to footwear it ties back to the First Schedule, and the duty rate in that Schedule is 6.5 per cent. The 12.5 per cent that we see here is related more to couriers than the average person.

**Sen. Nicholas Kempe:** Point of clarification.

**The President:** You are accepting the point of clarification?

**Sen. Vance Campbell:** Not at this time, Madam President.

**The President:** We will carry on then and move your—

#### POINT OF ORDER

*[Misleading]*

**Sen. Nicholas Kempe:** Point of order then, Madam President. The Member may be inadvertently misleading the Senate.

The tariff code that is being amended in this Act that is before us, amends chapter 98, which is for couriers. So any footwear brought in through a courier will now be 6.5 per cent instead of 12.5 per cent, which will result in a decline in revenue.

*[Pause]*

**Sen. Vance Campbell:** Madam President, I am advised that the couriers have the option to go to the First Schedule and bring the goods in at 6.5 per cent, and that is what they would do rather than bring any in at the higher rate. So that is what I am advised, Madam President.

**The President:** Thank you, Senator Campbell.

You will now move on to move the Bill, the second reading.

**Sen. Vance Campbell:** Thank you, Madam President.

Madam President, I move that the Bill entitled the Customs Tariff Amendment (No. 2) Act 2019 be now read a second time.

**The President:** Is there any objection to that motion?

No objection.

Carry on, Senator Campbell.

*[Motion carried: The Customs Tariff Amendment (No. 2) Act 2019 was given a second reading.]*

### SUSPENSION OF STANDING ORDER 26

**Sen. Vance Campbell:** Madam President, I move that Standing Order 26 be now suspended in reference to this Bill.

**The President:** Is there any objection to that motion?

No objection.

*[Motion carried: Standing Order 26 suspended.]*

## BILL

### THIRD READING

#### CUSTOMS TARIFF AMENDMENT (NO. 2) ACT 2019

**Sen. Vance Campbell:** Madam President, I move that the Customs Tariff Amendment (No. 2) Act 2019 be now read a third time.

**The President:** Is there any objection to the third reading?

No objection.

**Sen. Vance Campbell:** Madam President, I move that the Bill do now pass.

**The President:** It has been moved that the Bill entitled the Customs Tariff Amendment (No. 2) Act 2019 do now pass.

Is there any objection to that motion?

No objection.

The Bill is passed.

Thank you, Senator Campbell.

*[Motion carried: The Customs Tariff Amendment (No. 2) Act 2019 was given a third reading and passed.]*

**The President:** Moving on to the Orders of the Day, item 14, Motions.

## MOTIONS

**The President:** There are none.

Item 15, Congratulatory and/or Obituary Speeches.

## CONGRATULATORY AND/OR OBITUARY SPEECHES

**The President:** Would any Senator care to speak on this?

Senator Richardson, you have the floor.

**Sen. Anthony Richardson:** Madam President, just a brief congratulations which is extended to the Bermuda College, generally. And in particular, Dr. [Phyllis] Curtis-Tweed, Dr. [Duranda] Greene, and the other support staff on the introduction of the Phi Theta Kappa sorority. And they did it on the basis of the students who were inducted on the basis of academic excellence. And I emphasise the fact that there were, I think, 12 persons who were inducted and some of the students were dual enrolment students.

The implications, or the fact, rather, is that some children will go, to say, Berkeley and Cedar-Bridge and Bermuda College, and their grades were higher than full-time students at Bermuda College. And so the reality is, students who are, say, age 16, 17, and maybe some 18, would more than adequately compete at the college level and be able to attend high grades to be inducted into sorority. And sometimes . . . well, we do sometimes here we do not give appropriate credit to these successes.

So, again, I say congratulations to the Bermuda College for the work they are doing on behalf of our young people.

Thank you.

**The President:** Thank you, Senator Richardson.

Would any other Senator care to speak?

Madam Attorney General, you have the floor.

**Sen. the Hon. Kathy Lynn Simmons:** Thank you, Madam President.

I would like to send best wishes to the players and parents and coaches for the Kappa Football Tournament that I believe is taking place over this weekend. As a mother of footballers, I remember many, many, many, many years of attending this tournament with all the early morning preparations and anxiety during the day. But it is truly a wonderful tour-

nement that draws a huge arm of support from members of the community. And so to the fraternity, *Well done, once again*. And to the children (youngsters, I should say), I wish them all the best for an enjoyable tournament and that they maintain their sportsmanship and enjoy the occasion.

Thank you, Madam President.

**The President:** Thank you, Madam Attorney General. And I am sure we, all Senators, will join you in those comments.

Would any other Senator care to speak on the congratulatory and/or obituary speeches?

If not, we will move on to adjournment.

Madam Attorney General—

With that, the Senate stands adjourned until May the 8<sup>th</sup>.

Enjoy your recess. Thank you.

*[At 11:47 pm, the Senate stood adjourned until 10:00 am, Wednesday, \*8 May 2019]*

*\*[The Senate resumed on Wednesday, 22 May 2019]*

## ADJOURNMENT

**Sen. the Hon. Kathy Lynn Simmons:** Madam President, yes, I move that we adjourn to Wednesday, May 8<sup>th</sup>.

**The President:** Would any Senator care to speak on the motion to adjourn?

**Sen. the Hon. Kathy Lynn Simmons:** May I Madam President.

**The President:** Yes, you may, certainly.

## VOTE OF THANKS TO THE MINISTRY OF FINANCE TEAM

**Sen. the Hon. Kathy Lynn Simmons:** I would like to take this opportunity as we rise to thank the Government's technical officers and the Ministry of Finance for the work that they did in preparation of the heads for the Budget Debate this year.

I would also like to acknowledge the parliamentary counsel who have worked tirelessly once again to move the Government's legislative agenda, so in behalf of the Senate, and special thanks to my team today, Ms. Amani Lawrence. I will say this, there are times that the parliamentary counsel goes far above the responsibility to draft legislation and actually aid ministries and permanent secretaries in other areas, particularly with respect to the brief, and so my team is very dedicated to making sure that we give a thorough briefing in terms of the agenda that we advance with respect to our legislation, and so to Ms. Lawrence, thank you very much, as to the rest of the team.

And on behalf of the Senate, we look forward to the next session and the collaboration that ensures that we all are successful.

Thank you, Madam President.

**The President:** Thank you, Madam Attorney General.