

Leave of Absence

Tuesday, June 02, 2015

SENATE

Tuesday, June 02, 2015

The Senate met at 10.30 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. James Lambert who is out of the country and to Sen. Shamfa Cudjoe who is ill.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona, S.C., O.R.T.T.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: MR. WAYNE STURGE

WHEREAS Senator James Lambert is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, WAYNE STURGE, to be temporarily a member of the Senate with effect from 2nd June, 2015 and continuing during the absence from Trinidad and Tobago of the said Senator James Lambert.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 1st day of June, 2015.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
 CARMONA, O.R.T.T., S.C., President and
 Commander-in-Chief of the Armed Forces of
 the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
 President.

TO: MR. STUART YOUNG

WHEREAS Senator Shamfa Cudjoe is incapable of performing her duties as a Senator by reason of her illness:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, STUART YOUNG, to be temporarily a member of the Senate with effect from 2nd June, 2015 and continuing during the period of illness of Senator Shamfa Cudjoe.

Given under my Hand and the Seal of the
 President of the Republic of Trinidad and
 Tobago at the Office of the President, St.
 Ann's, this 2nd day of June, 2015.”

OATH OF ALLEGIANCE

Senators Wayne Sturge and Stuart Young took and subscribed the Oath of Allegiance as required by law.

**GAMBLING (GAMING AND BETTING)
 CONTROL BILL, 2015**

Bill to provide for the regulation and control of gaming and betting and matters related thereto, brought from the House of Representatives [*The Minister of Finance and the Economy*]; read the first time.

Motion made: That the next stage be taken at the next sitting of the Senate to be held on Monday, June 08, 2015. [*Hon. G. Singh*]

Question put and agreed to.

PAPERS LAID

1. Annual Administrative Report of the Chaguanas Borough Corporation for the

- period 2010/2011. [*The Minister of Local Government (Sen. The Hon. Marlene Coudray)*]
2. Annual Administrative Report of the Cocoa and Coffee Industry Board of Trinidad and Tobago (CCIB) for the period 2008 to 2009. [*The Minister of Food Production (Sen. The Hon. Devant Maharaj)*]
 3. 37th Annual Report of the Ombudsman of Trinidad and Tobago for the period January to December, 2014. [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]

**JOINT SELECT COMMITTEE REPORTS
(Presentation)**

Madam President: Sen. Elton Prescott SC.

Sen. Elton Prescott SC: Thank you, Madam President. I beg to present the following reports:

Ministries, Statutory Authorities and State Enterprises (Group I) Anti-Corruption Investigation Bureau

Thirteenth Report of the Joint Select Committee appointed to inquire into and report on Ministries, Statutory Authorities and State Enterprises (Group I) on the Administration and Operations of the Anti-Corruption Investigation Bureau (ACIB).

National Insurance Property Development Company Limited

Fourteenth Report of the Joint Select Committee appointed to inquire into and report on Ministries, Statutory Authorities and State Enterprises (Group I) on the Administration and Operations of the National Insurance Property Development Company Limited (NIPDEC).

FAMILY AND CHILDREN DIVISION BILL, 2015

Order for second reading read.

Madam President: The Attorney General. [*Desk thumping*]

The Attorney General (Sen. The Hon. Garvin Nicholas): Thank you, Madam President. I beg to move:

That a Bill to make jurisdiction for all family matters and children matters exercisable in a Division of the High Court to be called the Family and Children Division and to make provision for matters connected therewith, be read a second time.

Madam President, it is indeed a privilege to be piloting this Bill today, the Family and Children Division Bill, 2015. The main aim of the Bill is to formalize the structure within the Judiciary for the handling of family cases in the Family Court. It is my earnest belief that all children need to be protected from harm, from becoming victims of the court system and that our main focus should be on the best interest of the child in whatever fora. It is my belief that a significant barometer of our humanity is the way we look after our children in general.

Madam President, before I go into the details of the Bill, let me say that this Government is very child centric and it has ensured and continues to ensure that children are at the foremost of its policies. The Government's significant contribution to the development of health, education and overall well-being of children is testament alone to this. In fact, one of the very first things this Government did was to establish the Children's Life Fund. [*Desk thumping*] The fund's aim is to help to provide funding and critical support to vulnerable children with life-threatening illnesses where the treatment required is not available in our public or private health care system. This fund has seen countless success stories which secured the lives and future of children who were truly in need.

I would like to acknowledge and commend the hon. Prime Minister and other Ministers who generously donated part of their salaries to this fund—
[*Interruption*]

Sen. G. Singh: Continue to do so.

Sen. The Hon. G. Nicholas:—and continue to do so [*Desk thumping*] but the Government did not stop there, Madam President. The Government took it not only a step further, but a leap further. The Government built a children hospital right here in Trinidad and Tobago, so that children will now have the facilities previously only available aboard right here at home. [*Desk thumping*] The Government decided that it was not good enough to establish only the Children's Life Fund as dynamic as it is, but also to build a facility where not only the children of Trinidad and Tobago could benefit but the entire region.

This stands true to the Government's focus and commitment towards the children of our soil, our future generation. In fact, I would like to quote from a great leader who said:

“It is our belief that children must not die in the dawn of life in my country—or in any other country—because they cannot afford health care. There must be new arrangements and relationships between countries that have advanced medical technology and those without so that children and vulnerable groups

of the poorest nations can grow as healthy human beings and achieve their full potential. It is only when this is done the world will progress. We have a duty to the future. It will be measured by how we fulfil our responsibilities today.”

Madam President, these powerful words were stated by our very own hon. Kamla Persad-Bissessar in 2010 [*Desk thumping*] and it should be noted that she has stayed true to her promise to the children of Trinidad and Tobago. [*Desk thumping*]

The Government has sought to also improve the quality of the education and the access to education available to children of Trinidad and Tobago.

In our short tenure, we were able to build 93 schools with 91 more under construction. [*Desk thumping*] The Ministry of Education has been mandated by the Government to deliver universal early childhood care and education by 2015 based on research that brain development between the ages of one and seven is critical in the development of children to establish that platform for educational growth. The Ministry is aggressively pursuing this mandate.

10.45 a.m.

Currently, there are 175 Government and Government-assisted ECCE Centres operating in Trinidad and Tobago and these accommodate nearly 6,000 children. Additionally, there are 678 registered private ECCE Centres that accommodate almost 18,000 children. But again, we did not stop there, Madam President. We understood that it was not just access to education that mattered but also technology to enable our children to truly succeed in these times. We therefore gave 90,000 laptops to students. [*Desk thumping*] We believe that every child should be given the chance to see his or her full potential and they should not be prejudiced based on where they may live.

Madam President, we have continuously brought to this honourable House, legislation which is aimed at improving the quality of life enjoyed by children by putting measures in place to protect them. Under this administration, we have seen the passage of the Children Act, the Adoption of Children (Amdt.) Act and the Children’s Life Fund Act. We have even operationalized the Children’s Authority, so that finally, our country has a dedicated body charged with the duty to promote the welfare, care and protection of all children and safeguard them from all forms of abuse and neglect.

We now bring before this honourable House, the Family and Children Division Bill, 2015. This is yet another step taken by the Government to uplift the lives of the children of this nation. The Bill aims to revolutionize the current

judicial structure by creating a special division in the High Court to focus on children. The Government supports the policy of the Judiciary to have cases in which children are central under the proposed children court. Under this system, charges against children and all matters related to their care, including civil matters involving juvenile delinquency and breach of school rules applications, can be heard.

Madam President, the Family Court pilot project has been a success story and today it is no longer just a pilot project. This Bill, the Family and Children Division Bill, 2015, builds on that success story and provides the people of Trinidad and Tobago with the benefit of more focused and well-defined concept of a family court and a children court.

This Bill seeks to confer jurisdiction for all family and children matters to a division of the High Court, namely, the Family and Children Division of the High Court. Children in conflict with the law are invariably the result of family issues needing social services support. This is in keeping with international concepts with respect to how the justice system conceptualizes and addresses the issue of children in conflict with the law. These child offenders are also children who are in need of support services.

Madam President, the Family and Children Division Bill, 2015, has been the subject of wide local and international consultation and local stakeholder discussions. The Judiciary has decided upon this formulation after being informed by wide consultation with family, juvenile and youth courts in the US and Canada; wide consultation with children probation and support services in the United States; discussions with the US National Center for State Courts; extensive study of rules of court in several jurisdictions; discussions with specialists in Jamaica, Canada, New Zealand and England; study of the scientific research on children and adolescent development and its relation to delinquency and child care; the operations of the family court pilot over the last 12 years and wide local discussions with local stakeholders.

Having determined the proceedings and processes required and the services which must be brought to bear on these matters, the Judiciary has determined that the proposed structure is best suited at this time to the handling of these matters. In developing the draft Bill, the Judiciary's Family Court Monitoring Committee used the version which had originally been drafted by the Chief Parliamentary Counsel for the family division of the High Court and expanded it to a family and children division of the High Court, with two subdivisions: the family subdivision and the children subdivision.

In four 8-to-10-hour sessions chaired by the hon. Chief Justice, the members of that committee met to scrutinize the latest draft and make all required amendments. The members of the Family Court Monitoring Committee included judges, magistrates, registrars, Family Court staff, social work representatives, Ministry of Justice representatives, law association representatives, family law association representatives and court administrators and court administration consultant.

The Judiciary was very mindful when developing the draft Bill that the civil family bar representatives did not wish to have children's criminal or delinquency matters mixing with the civil family matters. Furthermore, the Children's Authority, mindful of its onerous responsibility, once its doors are opened, wished to have the ability to service children with maximum convenience. The Bill reflects these proposals and considerations. The Judiciary has taken into consideration together with the need to ensure the widest accessibility of the public to high quality services and the need to ensure that all children who are before the court in any capacity are provided with the correct specialized services.

The Judiciary is aware that a clear delineation between child care matters in civil family matters and child care matters in other family matters is not definitive, and so has provided for the rules of court to determine which case types will be assigned to which subdivision and for the Chief Justice to further delineate this by direction, as part of his role as the official constitutionally charged with the administration of justice. Consequently, the Children Act, 2012 shall be amended for jurisdiction to be given to the Family and Children Division of the High Court, rather than the court with jurisdiction in family matters.

Madam President, this Bill contains seven Parts and 47 clauses. This Bill requires a simple majority vote. It does not require a special majority vote as we do not seek to amend the Constitution or interfere or breach any of our fundamental rights under Chapter 1 of the Constitution. Primarily, the Family and Children Division Bill, 2015, seeks to make the jurisdiction for all family matters and children matters exercisable in a division of the High Court to be called the Family and Children Division and to make provision for matters connected therewith.

Part I of the Bill would provide for certain preliminary matters and would contain three clauses. Clause 1 of the Bill would provide the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide the commencement provision. The Bill provides for the court to sit anywhere and for the Chief Justice to designate places

as family courts or as children courts. Phased proclamation by time may be required as the Family Court is already up and running but the children court will not be operational until 2016, as buildings have to be prepared.

Clause 3 of the Bill will provide for the interpretation of certain words and phrases used in the Act. Special note should be given to the definitions of “family matter” and “children matter”.

“‘children matter’ includes any—

- (a) children charge matter;
- (b) children care matter;
- (c) children drug matter;
- (d) matter which is not a family matter within the meaning of this Act, but the primary issue in the matter is the care and protection of the child; and
- (e) any matter in which children are required to appear in court;”

And, Madam President:

“‘family matter’ means any cause, matter or legal proceeding—

- (a) concerning dissolution of marriage, judicial separation, maintenance, guardianship, wardship, access, custody, care matter, adoption or welfare of children, civil abduction, succession and inheritance, excluding probate and the administration of estates; and
- (b) arising out of the written laws listed in the Schedule 1 or any other written law and which is connected with, or arises out of a matrimonial, familial or other domestic relationship and is not a matter in which a child is charged or in which a child’s liberty may be curtailed;”

Part II of the Bill provides for the establishment of the family court and the children court making the jurisdiction for family matters and children matters exercisable by the Family and Children Division of the High Court. It would also provide for the sittings of the family court and the children court.

Clause 4 of the Bill establishes a division of the High Court to be known as the Family and Children Division which shall comprise a family court subdivision known as the family court and a children court subdivision known as the children court, with jurisdiction in family and children matters, respectively. This clause would also provide for the complement of puisne judges and masters for the

Family and Children Division. The Family Court will have jurisdiction for family matters while the children court subdivision will have jurisdiction for all children matters including children criminal matters.

The children court subdivision is extremely critical as there has been an increase in the number of children, ages seven years to under 18 years, who have found themselves in conflict with the law and thus have entered the criminal justice system. The criminal justice system then becomes a revolving door for some of these repeated child offenders with each charge being greater than the previous. Hence, the urgent need for the children court subdivision as provided for in the Bill which will have at its disposal the specialized wrap-around services which focus on children issues including the support of duty counsel, children's attorneys, children's probation services and children's social services.

11.00 a.m.

Children in conflict with the law, invariably are the result of social and familial issues needing social services support. This is in keeping with the international concepts with respect to how the justice system conceptualizes, and addresses the issue of children in conflict with the law. These child offenders are also children who are in need of support services. We do not have to look far back to see the disturbing and heart-wrenching incidents currently plaguing our nation, where young children are entering the criminal justice system. I am sure we have all read about the 13-year-old boy who is charged with arson, and the four primary school boys charged with rape. This revolutionizing of the current system has, therefore, come in a very timely manner, where we need to do more to ensure that the children of this nation, are guided down the right path to become the respectable, successful adults which they all have the capacity and capability to be.

Clause 5 of the Bill provides for the sittings of the Family Court and the children court to be held at such locations and at such time as the Chief Justice may appoint, and also that the courts may sit at any time and conduct hearings by telephone, video conferencing or other appropriate electronic means. It would also provide for the exercise of concurrent jurisdiction in family matters in courts of summary jurisdiction, and the High Court, until the Chief Justice directs otherwise. This would enable the phasing in of the Family Court until the buildings in San Fernando and Tobago are prepped.

Part III of the Bill, clauses 6 to 8, makes provision for the administration of the family and children division. Clause 6 of the Bill provides for the assignment of Deputy Registrars and Marshals, Assistant Registrars and Deputy Marshals, to the

family and children division who possess the requisite special training, experience and temperament suited for the appointment to the family and children division. The clause would also set out the rights, powers and immunities of the Deputy Registrar and Marshal and Assistant Registrar.

Clause 7 of the Bill establishes a family and children court, administration department, comprising of the central office of the family and children court division. A family court subdivision and a children court subdivision and provide for staff.

Clause 8 of the Bill appoints a Deputy Court Executive Administrator to head the family and children division. The Deputy Court Executive Administrator shall report to the Court Executive Administrator, and shall be assisted by a Family Court Administrator, and a Children Court Administrator.

Part IV of the Bill, which deals with clauses 9 to 25, sets out the appointment and assignment of family court judges, and family court masters and staff of the Family Court.

Clause 9 of the Bill would provide for the jurisdiction and powers in family matters, to be exercisable by the Family Court. Clause 10 of the Bill would enable the Chief Justice to assign to the Family Court, puisne judges who when they are sitting in the Family Court, will be called family court judges.

Clause 11 of the Bill would set out the powers of a family court judge or master in family matters, and would give the judge all the powers that a magistrate now has, under the Summary Courts Act, Chap. 04:20, to deal with maintenance and failure to pay maintenance, and in domestic violence matters.

Clause 12 of the Bill would enable the Chief Justice to assign Masters to the Family Court, who when sitting in the Family Court shall be known as family court masters.

Clause 13 of the Bill would set out the powers of a family court master.

Clause 14 of the Bill would provide that the order of a family court master would have the same effect as if it were made by a family court or family court judge.

Clause 15 of the Bill would provide for the enforcement of maintenance orders issued by the Family Court or a family court judge, or a family court master, in furtherance of the magisterial jurisdiction of the Family Court. This takes into account reciprocal enforcement of maintenance orders between countries.

Clause 16 of the Bill would provide for the staff of the Family Court. Clause 17 of the Bill could establish a family court administration department, headed by a family court administrator and units of the Family Court. The Family Court administration department, would fall under the family and children court administration department.

Clause 18 of the Bill would provide for a family court manager in each location of the Family Court. Clause 19 of the Bill would require that a member of staff of the Family Court, make an oath or affirmation of secrecy, before entering upon the performance of his function.

Clause 20 of the Bill would prescribe the Family Court Proceedings Rules, as applicable to any family matter before the Family Court.

Clause 21 of the Bill would enable the Family Court to restrict publication of the names of the parties, or of any proceedings before the Family Court. It would also allow for proceedings to be held in camera and not be published or order copies of any proceedings, judgment or rulings to be redacted by the Family Court Records Management, Court and Law Reporting Unit, before it is published. The Family Court may also seal the copies of any transcript of any proceedings involving a child or relevant documents.

Clause 22 of the Bill would allow the Family Court to appoint a guardian ad litem of a child and request the appointment of a children attorney, to represent and safeguard the voice of a child in any family matter.

Clause 23 of the Bill would allow for an adjournment by the Family Court, in order for an application to be made under the Legal Aid and Advice Act.

Clause 24 of the Bill would enable the transfer of matters from any other court to the Family Court, where the court is of the view that elements of the matter make it desirable that the matter should be dealt with and adjudicated by the Family Court.

Clause 25 of the Bill would preserve the appellate procedure applicable to any judgment or order of a magistrate or judge to the Court of Appeal to be so applied in respect of appeals from the Family Court.

Part V of the Bill would provide for the Children Court staff, as well as provide the administrative provisions of the Children Court, this part contains two clauses. Clause 26 of the Bill would provide for the staff of the Children Court Sub-Division. Clause 27 of the Bill would provide for the composition of the Children Court Sub-Division, of the Family and Children Court Administrative Department.

Part VI of the Bill would provide for the jurisdiction and all powers of the High Court and Court of Summary Jurisdiction, in the Children Court or in a Children Court judge, with provisions relating to Children Court Judges, and Children Court Masters and their respective powers.

This part would also provide for proceedings of the Children Court and contains 16 clauses. Clause 28 of the Bill would provide for the jurisdiction and powers in children matters, to be exercisable by the Children Court. Where there is a question of jurisdiction, the Children Court would be guided by its view as to whether the course, matter or proceedings, is appropriate to be determined by the Children Court.

Clause 29 of the Bill would enable the Chief Justice to assign to the Children Court Puisne Judges, who shall be known as “Children Court Judges”.

Clause 30 of the Bill would outline the additional powers of a Children Court Judge or Master. The provision would ensure that if necessary, the Children Court Judge or Master, could make a maintenance order or enforce one, and also hear a domestic violence matter or enforce it. This is to ensure that a litigant does not have to go to two different courts, where either of these matters arises in the course of a children matter. It would also allow for a child to make a domestic violence application if necessary.

Clause 31 of the Bill would empower the Chief Justice to assign Children Court masters to the Children Court, who shall be known as “Children Court Masters”.

Clause 32 of the Bill would provide for the powers of a Children Court Master and whose powers would be the same as a Master under the Supreme Court of Judicature Act, and any rules made thereunder. It is envisaged, that there would be rules to govern the Children Court.

Clause 33 of the Bill would provide that an order of a Children Court Master, shall have the same effect as if it had been made by the Children Court or by a Children Court Judge.

Clause 34 of the Bill would provide for a Children Court Manager in each location of the Children Court.

Clause 35 of the Bill would require that a member of staff of the Children Court make an oath or affirmation of secrecy before entering upon the performance of his functions, before a judge or justice of the peace.

Clause 36 of the Bill would allow the Children Court to order that copies of any proceedings, judgment or ruling to be redacted in order to protect the identity of any child, by the Children Court Records Management, Court and Law Reporting Unit before it is published. The Children Court may also seal the copies of any transcript, of any proceedings involving a child or relevant documents.

Clause 37 of the Bill would enable the Children Court to appoint a guardian ad litem of a child, and request the appointment of a children attorney to represent and safeguard the voice of a child in any children matter. It also provides that probation services be provided for a child prehearing, or for supervision of a child. It allows a court to order prehearing assessments of a child. This is a standard procedure in all jurisdictions which deal with children matters.

Clause 38 of the Bill would allow for an adjournment by the Children Court in order for an application to be made under the Legal Aid and Advice Act.

Clause 39 of the Bill would enable the Children Court to refer a child who is a first-time offender, charged with a minor offence, with the agreement of the child and his or her parent or guardian in a children matter, to the Peer Resolution Centre.

The introduction of the concept of peer resolution, Madam President, is a novel way of allowing the child offender, to take responsibility for his or her actions. This is a voluntary restorative justice programme in which children participate in a court like process of assessment, sanctions appropriate to the offence are recommended with a view to raising civic awareness. Being judged by your peers and being held accountable for your actions, will only serve to ensure that you recognize the harm that has been done. It will enable the child offender to manage and resolve their issues and perhaps change their perception, and become a more responsible adult within the society. This is a concept which is in keeping with international standards and concepts.

Clause 40 of the Bill would enable the Children Court to refer a child to the Peer Resolution Centre, where it is in the best interest of the child.

Clause 41 of the Bill would require the Children Court to explain the court annexed peer resolution process in plain language to the child, the parents or guardians before seeking agreement for referral to the Peer Resolution Centre.

Clause 42 of the Bill would enable the transfer of matters from any other court to the Children Court, where the court is of the view that the elements of the matter, make it desirable that the matter should be dealt with and adjudicated by the Children Court.

Clause 43 of the Bill would preserve the appellate procedure applicable to any judgment, or order of a Children Court Master or Children Court Judge, to the Court of Appeal, to be so applied in respect of appeals from the Children Court.

Part VII of the Bill would deal with certain miscellaneous provisions and would contain four clauses.

Clause 44 of the Bill would allow the Rules Committee to make rules for the Family and Children Division subject to the negative resolution of Parliament. It would enable the Rules Committee to determine which matters will be in which subdivision, and it would enable the Chief Justice to define this by case type.

11.15 a.m.

Clause 45 of the Bill would enable the President to amend Schedule 1 by order, and such order shall be subject to the negative resolution of Parliament.

Clause 46 of the Bill would provide for the transitional provisions which would allow for family and children proceedings, which have been instituted in the High Court or courts of summary jurisdiction prior to the commencement of this Bill to continue to be tried in their respective courts.

Clause 47 would provide for a number of consequential amendments. The Supreme Court of Judicature Act, Chap. 4:01, would be amended to increase the number of judges to 49. The Probation Act, Chap. 13:05, would also be amended so that the Children Court may order a probation officer to conduct assessments, investigations and reports also for pre-trial hearings and post hearings. The Children Act, 2012 would also be amended to provide for the substitution of the words “Family and Children Division” for the words “Court with jurisdiction in family matters” and also the word “children” would be substituted for the word “juvenile”.

Madam President, this Government has put in place specific measures which would strengthen current family support services. The Government recognizes the value of our children in society, and the need to engender a restorative and rehabilitative approach especially for those children who find themselves in conflict with the law. These children need proper guidance and protection as they are the vulnerable in our society. Many of them do not get the care and direction that they need. Imagine, Madam President, that we have adults out there who would encourage their children to hold bottles of alcohol and act in such a way, I am told, that it is humorous to do so. It is clear, therefore, that we have to protect our children from this and ensure that the proper systems are put in place to ensure the misguided can be guided.

Madam President, the Family and Children Division Bill, 2015 recognizes these principles and more. It offers a window of opportunity and hope to those children and families who find themselves in the legal system for whatever reason. The Government is adamant to fulfil its promise to the nation and we therefore endeavour to continue pressing forward to ensure the protection of the welfare of our children. The children of our nation are our future, and we have a responsibility to ensure continuous improvement so that they can lead an even better life than we have been blessed with.

As I conclude, Madam President, allow me to quote from Mahatma Gandhi, one of the greatest leaders of our time:

“If we are to teach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with the children.”

Madam President, with these few words, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Stuart Young: Good morning, Madam President, Senators of the Senate. I rise, once again, as I am given the privilege and the opportunity, to contribute to what I think is a progressive and necessary piece of legislation. I thank you all very much for the opportunity and hope to continue adding some words and contributing to the development of law in Trinidad and Tobago.

Madam President, I have practised law in Trinidad and Tobago for the last 17 years as a barrister and I have some amount of experience with our court system, including some recent experience in the Family Court jurisdiction. To see this piece of legislation reach the floor this morning, some 11 years after the Family Court was made a pilot project, I think it is fair to say it was long in coming, as I will get to in a short while. One of the benefits of this legislation is that we are looking to introduce both a Family Division as well as a Children Division. I say at the outset that it is progressive for us to move away from the use of the word “juvenile” to the use of the words “child” and “children”. I think that is a welcome move and one that has many psychological connotations that are positive.

I think it is imperative, in my respectful view, for any developed country and any country moving to First World status to have an efficient and effective judicial system. An efficient and effective judicial system provides not only our citizens, the citizens of Trinidad and Tobago, but even those resident, with a sense of comfort in knowing that there is a Judiciary to whom they can go for redress to decide their problems and their issues, but also it helps to attract international

investment, because international investors, especially in this very competitive global environment, are looking for a safe, secure and stable judicial system. That is something we in every contribution have pressed and pushed for us to move ourselves towards a more developed and First World status. The judicial system is an important and integral element in that equation.

As the hon. Attorney General said a short while ago, and I agree with him, the way a society deals with its children and treats its children is reflective of the developmental status of our society. Children are the future of the nation. There is no doubt about that, and they are an important category of citizens and, therefore, we must move with haste to protect them. I was glad to see the legislation effecting the Children's Authority has finally been proclaimed. I think it was proclaimed sometime last month, in May—[*Interruption*]

Hon. Senator: May 15th.

Sen. S. Young: May 15th, correct—and that is a very, very important step for us as a Republic of Trinidad and Tobago towards ensuring the protection of our children. We have debated not so long ago the Adoption of Children Act, and we have been moving perhaps, too slowly, but we have gotten there with respect to legislation affecting children, and that is something the Legislature should be applauded for—better late than never.

In my view, Madam President, respectfully, this is very, very important legislation. I understand that this legislation before us, this Bill before us, a significant part of it was actually drafted by the users of the legislation, those who have been charged with the responsibility of developing a Children Court and all of the necessary and integral parts of it, I have been informed that they played a very significant role in the development and the drafting of the legislation. In going through it, as I will in a short while, we see the benefits of that.

However, I do also understand, unfortunately, the Law Association has informed that this recent Bill, they were not provided with the opportunity. There was no consultation with respect to this Bill and the recent developments in creating the Bill. Once again, we remind that the Law Association represents those who will practise in these courts as the attorneys—[*Crosstalk*]—well that is what we were told. Whether it is true or not, that is information that I have been provided with—and they are important as the Attorney General would recognize. They are an important and integral part of the process, and we would hope that they would get on board, even without consultation with this latest version of the Bill that there would still be some support or necessary support for it.

I say without hesitation that I agree the time is right in Trinidad and Tobago for us to have different divisions in our judicial system. Right now, we just really have the Civil Division and the Criminal Division. To see that we are moving formally now to adopt a Family Division dedicated to dealing with family matters and, more importantly, a Children Division that would be sensitive to the needs of the children in our society—and children are defined as all those under the age of 18—I think it is irrefutable that they formed a very integral and important part of our society, and also that they are in their formative years and children will make mistakes.

We all as children made mistakes. You are not as mature as people expect you to be, and you should not just cast them into the current criminal system and treat them as though they are not different, because they are different. So, this is a welcome means, and when we get to the Bill we will see the importation of various specialist areas to deal with the children and the development of different roles via the legislation to populate the Children Court and I think that, again, is to be applauded and it is a progressive and a move in the right direction.

I have had some limited experience in the Family Court Division and it is really trying to help those, the less fortunate in the society, because it is not an area of law that I personally enjoy practising in, but when approached by those persons in society who are less fortunate and who are the subject of abuse, I could not say no. So my recent interactions in the Family Court, I am pleased to report that pilot project is, in my respectful view, a success, and I am glad we are finally formally giving them the recognition that they deserve and creating a division. I hope that the Children Court will equally be a success.

My concern here today is really resource based. We see when we look at this Bill and this legislation it will require tremendous resources. We are increasing just at minimum—we are proposing an increase in the number of puisne judges—those are judges of the High Court—I believe from 36 to 49. That is an immediate increase of 13 puisne and High Court judges. Having been in the profession for the last 17 years, it has always been a cry—and those who practise, the hon. Sen. Prescott and others, have always heard the Judiciary screaming for more resources, and also saying that they need more judges and more High Court judges.

So, again, whilst I think this is an honourable move and a move in the right direction towards developed country status, I have some concerns I would like to raise here today, especially with what we are hearing within recent times: the lack of financial and fiscal resources in the country. What I would really be doing is making a plea and making submissions to lay a foundation for a commitment

from the Government that we properly resource these two institutions that we are formally creating.

I thought it quite fitting to start this morning that on the front of one of our daily newspapers we had none other than the President of the Republic telling us that we are operating with “donkey cart law”. So we started off this morning when I was preparing and saying, once again, I would have the opportunity to come and make a contribution to the Senate, we are having a very high office joined by none other than the Chief Justice telling us that there are serious concerns with respect to the resources and how the High Court and the judicial system is operating in Trinidad and Tobago.

I am very concerned when we have it being called “the practice via donkey cart law”. So I start off with that as an important red flag for us as we debate this important piece of legislation that we have to ensure that, once again, we do not create, via legislation, institutions that are given a disadvantage and impetus towards failure due to a lack of resources.

11.30 a.m.

We then move along very quickly to an article in yesterday’s newspaper, the *Trinidad Express*, by Ms. Asha Javeed, and it talks about “Govt borrowing \$478m to buy patrol vessels”. When I was thinking, well, how are we going to fund, because I know how expensive it is to fund a judicial system—and we are creating a number of offices in two new divisions, a Family Division, as well as a Children Division for the High Court, and we are having Deputy Court Executive Administrators, and other bodies that I will get to in a short while—how important it is that we ensure that our judicial system is properly resourced, and we are being warned that:

“The Government ordered 12 vessels from Dutch Damen Shipyards for TT\$1.358 billion for the Trinidad and Tobago Coast Guard without the money in hand to pay for them.”

That was another red flag to me, and it goes on to say:

“It accepted one vessel - the TTS Point Lisas - which Prime Minister Kamla Persad-Bissessar toured last Wednesday when it was docked at the Port of Spain Waterfront, without being able to make a downpayment.

The Government needs an immediate US\$75 million to pay for six of the vessels.

And it will go to Parliament this week to secure it.”

We have the hon. Minister of Finance and the Economy being quoted as:

“We are borrowing to buy boats

The Express understands that the Government’s decision to vary its budgetary expenditure to accommodate the cost of the vessels is because it could not conclude a loan from a European Development Bank to fund the transaction on time.

Informed sources explained that it had approached First Citizens to secure a bond but was unable to do so because it would impact on the country’s debt ceiling.”

This is a massive red flag here, Madam President, if, in fact, the content of this article is correct. When we are talking about the country’s debt ceiling, it says:

“According to the Central Bank data, as of March 2015, the Government had not yet reached its ceiling.

For the Development Loans Act, the legal limit is TT\$30 billion and at the end of March 2015, the figure was TT\$27.3 billion.”—not that far off.

“For the External Loans Act the legal limit is TT\$15 billion and at the end of March 2015, the figure was TT\$9.3 billion.”

So, I raise these concerns because as we are talking about creating these two divisions in the High Court, I do not want them to fail once again for a lack of resources. We then had the Central Bank’s Monetary Policy Committee at its May 2015 meeting, and I am quoting from a *Trinidad Express* article dated June 01, yesterday, agreeing to raise the Repo rate for a fifth consecutive time by 25 basis points to 4 per cent. The article says that one of the reasons given by the Central Bank’s Monetary Policy Committee for raising the Repo rate is the:

“Growth of consumer credit remains strong, suggesting consumers are still willing to borrow to finance the purchase of new motor vehicles and other consumer durables, despite subdued economic conditions. We expect recently concluded wage agreements with teachers and civil servants as well as successful settlement of outstanding negotiations with the Police, Fire and Prisons Services to increase consumer spending and inflationary pressures.”

We are tying this in, of course, Madam President, with how are we going to fund these increases being given.

“Even though the Repo rate has increased by a cumulative 125 basis points since September 2014, the MPC believes monetary policy still remains

accommodative to economic growth.

The MPC also agreed to maintain an aggressive programme to absorb excess liquidity to strengthen the impact of higher interest rates throughout the financial system. With the strength of the Central Bank's monetary policy signal improving on account of lower liquidity levels, commercial banks began to increase their prime lending rates. The median commercial bank prime lending rate rose to 8 percent in May 2015 from 7 ½ percent in September 2014,..."

One problem, respectfully, Madam President, is that these rates of interest rising by these commercial banks for people who are borrowing, but we are not seeing the rise on the interest rates paid on deposits. That is a very serious concern for the citizens of Trinidad and Tobago. *[Interruption]* I did, he is no longer in the system.

I ask this question, what is the Central Bank doing? The truth is that there is excessive liquidity in the system. This is something we have been hearing and this goes towards resources, but has the Central Bank explored whether the economy is being inflated by illegitimate sources of funds? Has there been a commensurate increase in tax collection by the Government to absorb some of this liquidity? We have been hearing about the rates of expenditure by contractors, have they been paying their tax, Madam President? Has the Central Bank been really looking hard to see where this liquidity comes from and what can be done? The answer cannot be just the continued increase in Repo rates. Has the Central Bank had conversation with the Bankers Association? For the first time, certainly in my knowledge, I saw them rush out this week to produce a statement with respect to some recent things that were occurring in Trinidad and Tobago. Has the Central Bank's Governor and his team sat down with the commercial banks and asked them, "You are increasing your rates on borrowing but what about the composite increases on your deposit rates?"—because people are suffering.

There are suffering—there is a lack of investment on their rates of fixed deposit, which leads to another issue that I think is tied into the resources of Trinidad and Tobago. We have been hearing since 2009, Madam President, that a large part, or one of the reasons for the continuous deficit budgets by the Governments of Trinidad and Tobago is the whole CLF/Clico debacle. This took place in January 2009, and here we stand, Madam President, in 2015, over six years later—and, respectfully, Madam President, when we are dealing with legislation, such as that before us, and we are looking to create these new institutions, we are going to have to fund it and we are going to have the resources

for it, so I am calling upon the Governor of the Central Bank and the Government to start telling us, with full and frank disclosure, what has really been going on with the CLF and the Clico debacle.

We see the Governor of Central Bank saying, in another *Express* article published today, that the Clico trauma is near ending, but I hereby, through you, Madam President, and this senatorial House, I am calling on the Governor of the Central Bank to tell us, how many lawsuits have been commenced against those who caused CLF and Clico to end? Right. He is talking about setting aside an amount of money, tens of millions of dollars for directors. The Clico and CLF problem was not created by the taxpayers of Trinidad and Tobago. It was created by a select bunch. What has the Governor of the Central Bank done from 2009—2015?—six years, where we have a statute of limitation. The taxpayers have been paying for the CLF and Clico—[*Interruption*]

Sen. Maharaj: Madam President, 35(1), as far as I know, this Bill is children and Family Court and not CLF.

Madam President: Hon. Senator, 35(1), relevance, I must admit that you have taken what appears to be a scenic route that has very little relevance to the clauses in the Bill, so please confine yourself to the specific clauses in the Bill.

Sen. G. Singh: All you had to do was to ask Monteil.

Sen. S. Young: Sorry, Madam President. Madam President, I am focused. When I get to the Bill we will see that, as I have mentioned, it is creating a number of offices, and for the Bill and these divisions of the High Court to successfully operate, and to operate and fulfil the responsibilities that we are charging them with, they will require resources. Right now, Madam President, the citizens of Trinidad and Tobago have serious concerns about what is the true financial state of the country and the economy of Trinidad and Tobago.

So, I was raising these concerns and it is directly linked to the passage of a Bill, which is going to require, by a guesstimate, tens of millions of dollars on an annual basis to be successfully operated. We are operating in an environment now where every day more and more red flags are going up as to the problems with the economy, and, as usual, always hear about what the PNM is doing and those on this side are doing, but, Madam President, respectfully, unless there are proper—[*Interruption*] Unlisted, it is like being put on hold—unless there are proper resources and our economy is a stable one, we are not going to be able to sufficiently fund this court, and that is my concern, Madam President.

Another issue we hear from the other side as to how they plan to fund recurrent expenditure is an IPO of PPGPL, which we have serious concerns with,

because you have the President of NGC admitting to the country that the price at which they intend to put out these shares for sale is lower than—[*Interruption*]

Sen. Maharaj: Madam President, again, 35(1), he is using latitude to go into expenditure and other things under the guise of the establishment of these offices.

Madam President: Senator, the hon. Senator, in citing 35(1) is correct, you are irrelevant, and if you are to continue in the debate please confine yourself to the Bill. If you want me to reread the title of Bill, I will do so for your benefit.

Sen. Maharaj: “Read over de title ah de Bill, nah.”

Sen. S. Young: Much obliged, Madam President.

Sen. Al-Rawi: They get jumpy on these issues.

Sen. S. Young: I realize.

Madam President, as the Senate is aware, we are dealing with the Family and Children Division Bill, so on your urging, I will move directly to the Bill before us. [*Crosstalk*] I know Sen. Maharaj likes when I speak about the law. So when looking at this Bill, Madam President, and I have outlined my concerns about resources and I will highlight it as we go along, we are told through the recital, the preamble, that the Family Court was established in 2004. As I said before, that is under a PNM government and it has been a success. I think everybody who practises in it—and I want to place on record, it has been a success because it is a court that is composed to deal with—and the practitioners in there, and the judges in there, the magistrates in there, and, certainly, the staff in the Family Court are to be applauded because the way that they practise they are very sensitive to the type of matters that are coming before them in the Family Court.

So every time you go to the Family Court you see how the success of having a specialized court with people who are trained to deal with persons in a very emotional time of their life, the success that it can be, and that is something that they should be applauded for. It has taken us a while to get here but we are here now, and we are moving on to also have a Children Court. I am glad to see in the preamble we are talking about using a rehabilitative approach for child offenders. We are moving away from the use of the term “juvenile” to the use of the term “children” and “child”. I think, Madam President, respectfully, just by the use of that terminology, it softens, and I think one of the ambits of this court and the umbrellas of this court should be to use a softer more understanding approach when dealing with children who have fallen afoul of the law in our society. They are not to be written off. [*Interruption*] Thank you very much, Sen. Singh. [*Laughter*]

We see it throughout the definition stages, clauses of the Bill, for example, where we use “children charge matter”, “children charge matter” is, of course, softer language and language more appropriate when we are dealing with children. “Peer Resolution”: “Peer Resolution”, Madam President, is very innovative. It is positive and forward-thinking, and I was happy to see the adoption of this type of—it is not really sentencing, but how you are dealing with someone who has been convicted or has admitted that they have run afoul of the law. It is a much more case-sensitive, softer approach in dealing with our children, and that is something that is to be encouraged.

Madam President, it seems as though the suggestion when we are using—the use of the term “Master”, and the hon. Attorney General could confirm this, that what we are doing is we are going to convert the magistrates who are part of the system, the Family Court system, into “Masters” now, and we are going to do the same thing when we are developing the Children Court. I think that is—*[Interruption]*

Hon. Senator: Unprofessional.

Sen. S. Young: Well, unbalanced. It is a positive move, we must just be careful. *[Interruption]*

Hon. Senator: Resource.

Sen. S. Young: Well, it is also based on resources, but remembering as well that these magistrates would now require specialized training as they are moving from—anybody who has practised—and fortunately I do not have much of a practice in the Magistrate’s Court—in that arena will know the cut and thrust and the rigours of what the magistrates are forced to deal with on a daily basis, and now we are moving away to a Family Court setting and a division in the High Court specific for children. We must be cautious and ensure that that softer approach we are aiming to get—and not softer in how we apply the law, but in how we deal with the litigants before us—are dealt with.

11.45 a.m.

Madam President, this one concerned me: that we are also for Clerks of the Peace or Clerks of the Court to be made Registrars and Deputy Registrars. I am not certain that the qualifications for a Clerk of the Peace or a Clerk of the Court are the same types of qualifications that are required of Registrars and Deputy Registrars, but I assume when we get to that legislation, red-flag it, make sure that we have made that change and you do not have a legitimate expectation argument because I do not think Clerks of the Peace or Clerks of the Court are required to be qualified lawyers, whereas Registrars and Deputy Registrars are.

Again, at clause 4 we are seeing where we are moving to 22 puisne judges and up to 28 masters being required. This is where the concerns start to arise with respect to resources. How are we going to fund this?

Clause 5(5) states:

“Without prejudice to the foregoing, upon commencement of this Act the jurisdiction in family matters previously exercised in Courts of Summary Jurisdiction, save for the Magisterial District of St. George West, shall continue to be exercised in these Courts until the Chief Justice directs otherwise.”

My concern with this is that we have known since 2004, when we started the pilot project with Family Courts, that we were creating this separate jurisdiction, and we should have really been developing over time in the parts of the country that we intended to have these family courts. We should have developed the infrastructure. So we are still reserving here that they will continue in Magistrates’ Courts certain areas of Trinidad and Tobago. I heard the Attorney General talk about 2016; we are moving to get the buildings ready for 2016. We really have to move with haste to get that done.

We talk throughout the legislation for the Deputy Registrars, Marshals and other officers, and we use language:

“... shall possess the requisite special training, experience, temperament suitable for appointment to the Family and Children Division.”

That is clause 6(2). Again, it sounds good that we are asking for specialized training. It will be resource-based, and we need to make sure, whether it be via regulations, or otherwise, that we particularize as much as possible what we consider to be—what is the term “temperament suitable for appointment”?—in legislation. I think we understand what it means, but we should try and particularize it.

When you move to the Family Court Masters, I think the Attorney General has just confirmed that we are going to be seeking to promote magistrates to being Masters of these divisions.

In particular, Madam President, I think it is to be highlighted when we get under the heading of “Proceedings in the Family Court” from clause 20 onwards to clause 25, and in particular clauses 21 and 22, these are very good protective measures, where we are seeing that the proceedings as we see in a lot of case law would presumably be like *R v R*, and persons would not be easily identifiable, or

identifiable at all. The court has the right to hold its proceedings in camera and for names not to be published, to really seal court proceedings, et cetera. Courts of this nature give people even more comfort in use of courts of this nature because they would not want their business being published to the general public. So I think this is good and progressive, as is clause 22.

In clause 22 we are saying:

“In a family matter, the Court may appoint a guardian of a child and may request that the Solicitor General or the Senior Children Attorney assign”—an attorney to the child.

Clause 25, and I will come to it later on as well, I think we should consider when we are giving a right of appeal to the Court of Appeal, why do we just stop at the Court of Appeal, and should that right of appeal not be all the way to the Privy Council, like we have in the Judicial Review Act? *[Interruption]* I know it does not take it away, but as we know, the process would then entail an application being made to the Court of Appeal for leave to appeal to the Privy Council, and hopefully the judges there would not stand in the way. But certainly if we adopt the language as used in the Judicial Review Act, there is no discretion really on the part of the Court of Appeal to prevent someone from appealing.

In family cases especially, when it would come to custody of children, et cetera, I certainly suggest, and it is my respectful view, that litigants should have a right of appeal all the way to the Privy Council.

When you look at clause 27—*[Interruption]*

Sen. Maharaj: Not being a practitioner, is there anything at present in the clauses that you have cited that would debar somebody from carrying it all the way to the Privy Council as it stands right now?

Sen. S. Young: The answer to that is—as I was just having a side conversation with Sen. Prescott—the answer is no, but in being a practitioner, you know that the way it is currently drafted you will need to make an application for leave to the Court of Appeal, for leave to the Privy Council, which is that the Court of Appeal judges then have a discretion as to whether they grant you leave or not.

By putting specific language in the Act, like the Judicial Review Act, you have taken away that discretion from the Court of Appeal judges, and you have given every citizen and everyone who utilizes the Children Division or the Family Division a right, as of right, to go to the Privy Council. So the Court of Appeal

cannot stop you in your tracks at the Court of Appeal level. The way it currently is drafted they can, they have that discretion. Whether they do it will ultimately depend on them exercising their discretion.

Sen. Maharaj: Can they appeal on the basis of a point of law?

Sen. S. Young: No, this is not confined to a point of law. You are adding an application that will have a cost to it; whereas if it is “as of right”, it just flows much quicker.

At clause 27—this is where we are creating a number of offices that I have serious concerns about, whether we have the resources to fund it. When we get further down in the Bill and you get to the administration and staff of the Children Court, again, it requires quite a lot of resources, but then once again I commend the proceedings in the Children Court, from clause 36 onwards, as being good and protective measures for the users of the court—that is, the children.

I have a concern which we will get to at clause 37(2), which is:

“During the course of any criminal investigation or interrogation in which—

(a) a child is a suspect or is being interrogated;”—so this is at the genesis of potential proceedings. The police or whoever the authority is holding the child and interrogating the child—

“(b) the actions of a child are being investigated; or

(c) a child is witness

the Children’s Authority, the Police or the Duty Counsel may apply to the Court to have a Children’s Attorney appointed for the child...”

Excellent provision, but my concern is what happens when a child is held by the police and goes into the police station. We need to try and put in here—and it is a red flag—that it is compulsory that the police at that stage contact the Children’s Authority before they begin an interrogation or investigative process, to allow the Children’s Authority the opportunity to get an attorney to this child who is now in police custody. We should make it mandatory and we should express that that be done, respectfully.

Clause 39 is a referral to peer resolution. As I have said before, this is a progressive and a welcome path.

Sorry, the last point was when you are looking at clause 37(2), and the police, for example, have held a child prior, we should make it mandatory, via this legislation, that prior to them beginning any interrogation or any conversation

with the child, the police must contact the Children's Authority to then give the Children's Authority the opportunity to appoint an attorney for the child. Do not leave it up to the police or the judges' rules, as we now know, and leave it up to them, "Well, we will give them an opportunity". Let us make it mandatory now that once a child is held and is about to be interrogated, the Children's Authority is contacted because they are the authority that we have created via legislation to be responsible for the rights of children.

Again, at clause 43, consider an expressed right of appeal to the Privy Council.

Madam President, by and large, it is my respectful view and opinion that this is progressive, necessary and good legislation. When we come to the committee stage, if there are difficulties we can raise them and deal with them there. My concern at this stage is that we must find a way to resource these two bodies that are being created properly, and give them every opportunity for success, because they are dealing with two critical areas of our society, when people are having family disputes, matrimonial issues and problems. But more importantly, the sections that we are creating to create this Children Division of the High Court, it must be properly manned, and not allow this important division of the High Court to go under-resourced, and therefore it creates a level of frustration in the system, because we are trying to move away from that to allow children every opportunity.

Madam President, with those few words I wrap up my contribution and thank both yourself and the Senate for the opportunity once again. [*Desk thumping*]

Sen. Elton Prescott SC: Thank you very much, Madam President and colleagues.

I rise with your leave to enter into the debate on the Family and Children Division Bill, 2015, and I am sure I will not be the last of those here today to congratulate the Minister, and the Government by extension, for recognizing the need to do something about the state of the matters pertaining to the family in this country.

There will be differences of course on how we approach what ought to be done. I am not fully satisfied that we are ready, but the longest journey commences with just one step. So to that extent, I am sure I am on good ground to say this promises to be good legislation.

In order to fully address what I have before me, I need to read some parts of the preamble, in order to allow the general public to get a better picture of what

are the motivations and the objectives of the Government. I say it against the knowledge gained from elsewhere that, as wide as the consultations have been, there are bodies who have said “I have not seen the Bill. I know of the plans, but I have not seen them concretized into a Bill.” I did not get from the Attorney General that he was saying that the Bill had been produced to others. Indeed, maybe this might be a good point to say: it appears from the way it has been presented that the Judiciary—indeed, the words used were “decided on this formulation and this structure”.

I recall once we had a bit of difficulty here with one saying if the Judiciary has already decided on how this legislation should look, we may be faced with some uncomfortable moments, when we come before one of them and say to him, “Although you drafted this piece of legislation, or you have ‘grandfathered’ it, I totally disagree with you.” But I am sure good sense will prevail and maybe in the committee stage we might be able to address much of the languaging and be ourselves satisfied that we ourselves would have done it that way.

In the preamble therefore, if I may, there is a reference to the pilot project which led to this Bill. It reminds us that:

“...in May, 2004 a Family Court was established as a pilot project...”

According to those who drafted the preamble, that project proved successful. It has produced the desired results. That is what now informs the preparation of legislation here. It seeks as the hon. Attorney General reminded us to bring all family and children matters before a division of the High Court, exclusively dealing with family and children matters.

So it says:

“...jurisdiction for all family matters exercisable by the High Court and the Magistrates’ Court will be exercisable in the Family Court and all the essential elements and resources appropriate to the operation of a Family Court will be combined into one entity including a social service unit, a mediation unit and such other units and services as are critical to the resolution of a family’s problems:”

Quite clearly, and we are going to hear it more often as we go through the debate on this matter, the Government cannot be in position today to satisfy us that it is ready to implement what is needed to make this a successful piece of legislation.

12.00 noon

It seems to me that they have taken on a gigantic task, intended to create a superstructure that needs to be funded from the ground up. And the path from the ground to the very top does seem to be quite long, demanding a great deal of rigour, and as some people say, the story contemplates many, many people, in many, many buildings, in many institutions, in many committees, all striving towards this end that we all would be proud to have, that family and children matters are well managed. I will focus some time on what it might cost, not being able to put a figure, of course, but what it might cost in terms of man hours and men—and by men, I mean human resources—to make this work.

The Preamble goes on to say the following, which is instructive:

“...it is intended that such a court should provide the highest quality service to its customers...”

We note that the court is now speaking in market terms of customers and not litigants. To provide to those customers and to the community:

“...the highest quality service...through—

- (a) a strong focus on customer service;
- (b) the employment of dedicated judicial, administrative, professional and support staff specifically trained and having the suitable temperament for family matters and children at risk;
- (c) the simplification of the process of accessing the appropriate court or agency in which to obtain family justice, by establishing a single intake system; and”

Certainly laudable, much to be hoped for, because family matters are quite different from any other civil matters where they had languished for a long time in the civil court.

I am assuming, I am going to make it clear to parents and to children that the court is interested in providing you with a service and not have you running from the first floor, to the second floor, to the third floor to get one matter dealt with. And I say first floor, second floor and third floor to make it appear as easy as that, but we are probably talking about moving from building A in one district, to building B in another and to having to deal with different levels of public officers with different kinds of training, different kinds of objectives in their minds although all aimed at the same target eventually.

The Preamble goes on to stress that there is a rehabilitative approach to what used to be called child offenders. They would not go away, we will always have

them. It must be, I think from my experience I can say, it must be part of a child's make-up and his experiences that he must do something wrong one day. And if his parents are not on spot he may well find himself in the hands of the judicial or police authorities. There are many of us here who might claim to have got away by the skin of our teeth, but if there were a court of this nature, a division of the high court that dealt entirely with this, it would not have been too traumatic to be found in the hands of a policeman, because you may come out of the system more experienced and better informed about your responsibilities as a young citizen, but not marked as a child offender. And that is something that we would all live to be happy about, that we have moved away from treating children as criminals, unnecessarily, and we are more concerned with their rehabilitation. Of course there is a stage before rehabilitation that we would all like to see, but it probably resides in people's homes and not in the judicial authority.

So the Preamble goes on. As I said there is going to be this strong focus on customer service. It speaks of:

- “(d) a strong emphasis on diversionary programmes and rehabilitative programmes to assist in the rehabilitation of children who are in conflict with the law;
- (e) early and credible assessment of the risk level of children who come before the court;”

I am reading into that, that we are going to be actually intervening prior to the child stepping outside of the bounds of the home. I may be wrong, but it would be good if it could, that we could have professionals in place who can, by their interventions, avoid a situation where children come before the court.

- “(f) a strong emphasis on programmes, policies and procedures which may divert children away from conflict with the law;”

Well that supports what I was, I think, what I was just saying:

- “(g) a focus on trauma informed child justice;”

I do not understand it. I am sure the hon. Attorney General might feel free to help me.

“...trauma informed child justice...

- (h) a solutions-based approach to children's matters;
- (i) an evidence-based approach to options for solution;
- (j) providing an environment conducive to the resolution of children matters and appropriate services and programmes.”

So, if it were possible to make a snide remark about this one, one would say that this is great marketing. And we now look forward to it being put into workable methods and processes so that we can get to the point where we all hope to be at some time. But hon. Attorney General, you could have spent some time in telling us what you learnt, have been told, were the successes of the pilot project.

I took the time to enquire of someone who is engaged in the process—a practitioner and a knowledgeable person—and I learnt from it that there have been some. Litigants, I am told now find that the court is a user friendly court in the course of interacting with the pilot project. People found that they were more inclined to go to the authority there without the traditional fear of judges and officialdom. No doubt it has to do with how our judges were trained to deal with family matters and how the staff themselves were trained. I am told also that there have been efforts that are Court Annexed Mediation which commenced in the course of the pilot project and that too has had tremendous results. Mediation indeed is now court annexed, insofar as the High Court, generally, is concerned for civil matters, and that is a place that we must all aim towards.

There are some similarities we are told between the family and the children court, and now that it is going to be addressed in the Bill, but people find that they have closer access to social services. I am taking the time to do all of this because, hon. Attorney General, we claimed that there have been successes and it is a fact that there have been. And maybe the audience that really needs to know this are those who will eventually find themselves the customers of the family and children court. And the one that pleased me most is that attorneys who practise there, have become less combative. And I have a particular practitioner in mind who may be away from the Family Court, that is, her usual combative self, but this person who spoke to me said that attorneys in that court setting have become less combative. Not difficult to understand, if the environment in which you are practising encourages discussion and resolution and rehabilitation, invariably it will impact on you or you will leave and go to the other place where we enjoy the arbitrations of private war.

So those are, what I have been told, the successes. I am sure there must be many others. I am sure if the hon. Attorney General is of that mind he may regale us with some greater successes coming out of that court. But there have been some downs, and one may call it lessons learned if you like, but these are the ones that I have been told about.

The pilot project must have been intended to be rolled out into other districts so that one could see how things operate outside of Port of Spain. People in St.

George West behave differently from people from, and let me not be too careless, I better call a place I know, Toco. I was inclined to say Nariva, but—
[Interruption]

Sen. Dr. Mahabir: No, Toco.

Sen. E. Prescott SC:—let me say Toco.

Hon. Senator: Rampanalgas.

Sen. E. Prescott SC: Rampanalgas? [Laughter]

Sen. Dr. Mahabir: They have culture in Rampanalgas?

Sen. E. Prescott SC: They are cultured differently.

Sen. Dr. Mahabir: You have people in Rampanalgas? [Laughter]

Sen. E. Prescott SC: So they approach authority differently. It is a given. It takes a long time as you would know, my friend across there, for you to finally come to terms with the fact that Port of Spain people are different. They talk differently, they deal differently. “We rural people are brought up” and not brought up in the criminal sense, but brought up in a civilized, socialized sense.

Sen. Dr. Mahabir: Oh Lord, “town people will do for you”.

Sen. E. Prescott SC: So, had there been a roll-out of the pilot project we might have been better able to gauge how this thing would work, because what is now being planned in the Family and Children Division Bill is the very roll-out that one had hoped for. It would have been good if we had been able to do that. I am told that the reason for that is there is no money. And it appears from a previous speaker that we are going to be in the no-money situation for quite some time. But let me not spend time on that because it could become a matter of relevance. But if we do not put administrative structures in place, if we do not put the buildings in place, if we do not put the people in place, the roll-out will not succeed. And that is what is going to be the focus of my contribution in this matter.

The managerial element appears to be lacking. I am told that the administrative structure, if there is one, has not been doing so well in the pilot project, and so we are going to find that it is going to be doubled—the difficulties that is—at a later stage. Very importantly and very controversially, there has not been any improvement or enhancement, if you like, in the facilities provided, and informally called the homes. I understand that we are still limited to St. Jude’s for girls and St. Michael’s for boys.

I understand that girls in particular are at a disadvantage because almost every girl who finds herself in conflict with the law, whether in a grave matter or not, goes to this place, and a girl of eight or nine, exposed to a girl of 17 or 18 is at risk of growing up too fast. The homes simply do not have the facilities, the resources, nor anymore the money nor the inclination to do right by young people and it is something that has to be addressed. And I am sure it is well intentioned that this law will bring that about, but the law as you know is mere words until we can put some resources behind it. It is a risky business.

So mere expensive structures being established will not do. We need to think in terms of homes that are in “family residences”, in neighbourhoods, so that you do not just build a structure up in Aripo or in Caura and put children there away from real people. You need to have parental intervention, responsibilities. You need to have neighbourhoods. They must be able to walk around and see how people keep their lawns and so, and know that there is a life that they can live. It may sound airy-fairy, I hope it does not sound too Pollyannaish, but that can be a way of treating with children who fall afoul of the law because children fall afoul of the law. They are “experimental” and that happens.

Let me deal with parents too. I understand that the majority of times that a parent and a child come to court is because the parent is throwing his hands up in the air and is saying, this child is beyond control. And beyond control has absolutely nothing to do with criminal behaviour. Beyond control is probably a reaction to failed parenting or inexperienced parenting or inadequate parenting. A child must test you and if you cannot use a pot spoon well, the child wins. You must provide a meal.

12.15 p.m.

You thought I was talking about “licks”. [Laughter] But I am. A parent must control. And there are new approaches to disciplining children from my day, but I am sure I could make the point differently and I would not. A parent loses control of a child, in my view, because the parent lacks experience, maturity, time, money, assistance, all of these things that we used to have once upon a time.

So, in talking about the downside or the lessons learnt, hon. Attorney General, I trust you will take into account those things that I have identified and face up to the fact that we may have set out to create a superstructure that needs a foundation that is lacking in the—and will never be found in the legislation itself. It has to do with who we are.

Indeed, I have had to ask myself: are we not putting ourselves in a position where we cannot get the complementarity we need between structure and functions? You know, we can establish great structures, but the functioning of it becomes an issue for us, and there must be that complementarity. Go back out there, make sure that you know what people are looking for and hoping for, and make sure that you can provide them with it in order for this to work.

Most importantly, I am told, in the way the pilot project has developed, is that it has become the victim of delays in the system. I am told that there is a dichotomy, in that the civil court rules are still applicable and the matrimonial court rules are themselves applicable. So that—and I do not know how true this is because my mind could not conceive of it—when a matter affecting a child or the family arises in a home outside of Port of Spain, or outside of St. George West, attorneys are now inclined to file it in Port of Spain, because Port of Spain has the pilot project; the pilot project is meant to move along more swiftly. So what happens? The Churchill-Roosevelt—what they call it? The Butler runs into the Churchill-Roosevelt.

So one clearly would rush to say, well, let us expand. But we need to address the dichotomy in the rules. We need to remove the dichotomy.

Hon. Senator: It could be removed with the expansion.

Sen. E. Prescott SC: Well, sorry, let me not pretend that I am hearing what you are saying because I will lose my focus. The dichotomy that I am speaking about is that there are rules which apply in the north which those outside of the north—St. George West—feel to function better for their clients and so they rush to it and the bottleneck is created. And the way to address the bottleneck, hon. Attorney General, cannot be found in this legislation. But one needs to know that those who have created this piece of legislation and mean to create the division of the court—that bifurcated division—will look down the road and say, one of the reasons why we cannot succeed with this will have to be, people do not like to have to choose between the rules of the civil court and those of the High Court.

Sen. Nicholas: Thank you, hon. Senator, for giving way. A simple question, really: is it that the dichotomy has arisen as a result of the pilot project having its own rules as opposed to the rest of Trinidad and Tobago that functions with the Civil Proceedings Rules? Is that what you are talking about?

Sen. E. Prescott SC: I think the best answer is that in a milieu where there are two different sets of rules existing, those who function within the profession chose the one that suited them best.

Sen. Nicholas: And those rules that are different, you speak of, are the Family Court pilot rules.

Sen. E. Prescott SC: Yes. The rules that are being administered in the Family Court are much more susceptible to expeditious treatment of matters. The civil court rules, with all its different languaging and so, is difficult. So that although this piece of legislation may not be able to address it, an adventurous mind ought to start thinking that “I need to change those ancillary areas that are going to make progress much easier when the High Court Division has been established.

In my note, I am reminded that there is clause 9 of the Bill which will need to be looked at, apropos of what I am saying. It says:

“On the commencement of this Act, jurisdiction and powers in all family matters exercisable by the High Court and Courts of Summary Jurisdiction, shall be exercisable by the Family Court.”

Which is where we want to go.

“(2) The question whether any cause, matter or proceeding is a family matter within the jurisdiction of the Family Court under this section, shall be decided by the Family Court and in case of doubt, the Family Court shall be guided by its view as to whether the cause, matter or proceeding is appropriate to be determined by the Family Court by reason of the matrimonial, familial or domestic relationship between the parties or any of them.”

But juxtaposed to that is what is at clause 5(5) and clause 5(6). I may need to be assisted in understanding it. It might be simply my understanding. But let me just read it into the record. Clause 5(5) says this:

“Without prejudice to the foregoing,...

The foregoing being matters dealing with the sittings of the court:

“upon commencement of this Act the jurisdiction in family matters previously exercised in Courts of Summary Jurisdiction, save the Magisterial District of St. George West, shall continue to be exercised in these Courts until the Chief Justice directs otherwise.

(6) Without prejudice to the foregoing, upon commencement of this Act, the jurisdiction in family matters previously exercised in the High Courts shall continue to be exercised in these Courts until the Chief Justice directs otherwise.”

And it is there my apparent confusion resides. I gather that we are reserving our options in case we do not succeed in making a clear leap—departure, rather—from what now applies to what we hope to get.

Hon. Senator: It is lost in transition. That is all.

Sen. E. Prescott SC:—and that leads me to something I thought I should mention. The way we are approaching this, I could not believe that the hon. Chief Justice was thinking of himself when he placed all these burdens upon himself in this matter—in this new High Court Division. We may well have to begin to think of introducing the Chancellor, somebody who is the administrative head of the Judiciary so that judges who are inclined to do judicial work will do it, and we will find somebody who can do administrative work. Because if the Chief Justice was part of this group of people who came up with this, he must have been seeing himself down the road in a total mess. I hope he will forgive me for saying that. A total mess he will put himself in. So the Bill has said of the Chief Justice that it is he who will determine when all of this should come together. And I leave that there for now.

May I move forward? A term came to my mind when I began to read what follows about the work planned and its super-optimistic-execution challenge. It is not plagiarized from—I think *Sesame Street* used to have something sounding similar. But it really says that we have gone into this with great optimism, but we know that we are challenged to do the execution, and we just have to be always wary of that fact.

We have historically done this. We have erected institutions and they have failed because we have not been able to keep it going. Many of you may know of community centres in the '60s. They were the great new way to resolve things in the society. But that has not been the case. They are mere buildings where people go occasionally to conduct some of their social affairs. We built junior secondary schools and put a whole set of administration around it. Eventually, they failed. We even had price inspectors once. When I first started to practise law there was a whole batch of people who were price inspectors, going into shops to see if you are charging the right price for a tin of corned beef.

But those were merely plasters. We were trying to get somewhere but we did not seem to be able to do so. And today, again, we are at the beginning of doing something similar if, as has already been pointed out by Sen. Young, the money is not available, the people are not available, the trained staff are not in place. There must be complementarity.

The idea of court unification is great. We cannot not agree on that. This idea of court unification, apparently there is a worldwide movement in that regard and people are looking forward to the day when all family matters—all matters pertaining to children and their families—can be addressed in the same place with the least bureaucracy—the least bureaucratic hurdles. But I dare say, it takes a great mind, a great management-type mind, to house all of this in the same place.

So let me tell the population what is needed, what kind of administration is needed to complement these resources, and I will do it by reference to the Bill itself. I had read to you clauses 5(5) and 5(6). We heard one of them from the Minister himself. We are going to be going out there to find 13 more High Court judges. Now, over the years I have seen the number of High Court judges increase bit by bit, to 36. I am pleased to say that we have managed to get quality 89 per cent of the time, and those who are there now belong in the High Court because they are worth their salt. But we leap to—well, it cannot be a leap—getting to the next 13 will certainly be a push because we cannot sacrifice quality. There are not too many of us who practise law who will make good judges. There is something more than a mere knowledge of the law.

I remember one judge saying in the first place, it was knowing where to look for the law, and then having the mind to sit down and listen to others talk about it, even if “yuh think dey talkin stupidness”. And when they are through and you have extended the greatest courtesies to them, you could courteously tell them that they are wrong. But that takes a kind of being that you do not usually get by just putting an advertisement in the papers. Plenty people—and I use that colloquialism deliberately. Plenty people will apply. But I wish you well. You may get your 13 judges. You will need to get them before this thing begins to start running.

But that would not be all. In clause 9 of the Bill—sorry, that reference, by the way, was to—maybe I should just dwell on it. At clause 4, Madam President, through you, it says:

“The complement of the Family and Children Sub-Division shall be up to twenty-two Puisne Judges...”

So of the 13 new ones—oh, I almost said that wrongly. I was going to say, of the 13, 22 will be Puisne Judges, but it goes the other way:

“and up to twenty-eight Masters.”

A Master—today we have a very limited number.

Hon. Senator: Three.

Sen. E. Prescott SC: Thank you. So three from 28 is how much? Plenty.

Hon. Senator: Twenty-five.

Sen. E. Prescott SC: Thank you very much. So we are really going out there—it almost seems as though we do not want this to succeed or we do not expect it to get started. And I understand—I have heard it—that we need to get this thing off the ground in two years' time, in 2017. If that is right, Madam, we are going to have some hard work to do. Mind you, I do not see any bar to those judges coming from outside of Trinidad and Tobago.

Madam President: Hon. Senators, it is now 12.30. We will take the lunch break and resume at 1.30 p.m.

12.30 p.m.: *Sitting suspended.*

1.30 p.m.: *Sitting resumed.*

Madam President: Hon. Senators, when we broke for lunch Sen. Prescott SC was on his feet and he has 10 minutes more of original time. Sen. Prescott, please continue.

Sen. E. Prescott SC: Thank you very much, Madam President. I had hoped to hear it was more than 10, but I will move rapidly so that I could take advantage of whatever time is left.

Sen. G. Singh: Your original time.

Sen. E. Prescott SC: There was no promise of it, but I now accept that somebody will seek to provide me with that. I was looking at what sort of administrative structure will now be required to make these proposals reality, and I had looked at the quantity of Judges and Masters that needed to be put in place. I imagine that we are talking about housing each of these courts or rather housing this court in many different locations. Maybe the 14 magisterial districts or in the town centres, I do not know. We have not been told, but in each of the places that we have located the court, we no doubt will have to replicate many of these positions, and as you may recall, my thrust has been: how are you going to fund all of this? So I present that for consideration.

Then there is a suggestion—not a suggestion. There is in the Bill, provision for Deputy Registrars and Marshals, 10 Assistant Registrars and Deputy Marshals, and what is more—Sen. Young did make the observation—for practitioners we are not easily going to digest the idea of a Registrar of the Court,

Deputy Registrar of the Court being anyone other than a professionally qualified attorney. You may well be able to persuade us, but for the moment when we think of a Registrar or a Deputy Registrar we think of an attorney who has the control of that aspect of the business.

The Bill itself tends to, leans rather, towards saying Clerks of the Peace shall be deemed Registrars which probably means that it is going to be an animal that is a little less or a little below what we have grown accustomed to. But nonetheless, in clause 6 it says:

- “(a) a complement of up to three Deputy Registrars and Marshals of the Supreme Court”—will now become—“Deputy Registrars and Marshals of the Family and Children Division; and
- (b) a complement of up to ten Assistant Registrars and Deputy Marshals...shall be known as ‘Assistant Registrar and Deputy Marshals ...’.”

If they are coming from the body of Clerks of the Peace and Justices of the Peace, we would need to hear a greater amount of argument in favour of non-legally trained persons occupying those positions, hon. Attorney General.

To add to the administrative structure, there is going to be a Court Administration Department, the staffing of which is to be determined by the Chief Justice. I am sure I got that right. The Court Administration Department, clauses 7 and 8, there shall be a Family and Children Court Administration Department. It comprises:

- “(a) the Central Office of the Family and Children Division;
 - (b) a Family Court Sub-Division; and
 - (c) a Children Court Sub-Division.
- (3) The Family and Children Court Administration Department shall be staffed with an appropriate number of suitably qualified persons as determined from time to time by the Chief Justice.”

I have already made the observation, I cannot imagine the Chief Justice had put his managerial mind to this onus that he is undertaking. But if he has, well my only other suggestion is that we need to distinguish between the Chief Justice who sits in judgment in matters before him, and the one who administers the court in the way this is planned. The same goes for clause 8 where, again, the Chief

Justice is going to make appointments to the Family and Children Court of a Deputy Court Administrator, Family Court Administrator and Children Court Administrator.

Next: In the course of my reading of the Bill, I observe that there are going to be distinctions between children matters and family matters. Family matters being any cause, matter or legal proceedings except charges or matters curtailing a child's liberty. So that I gather from this, that if it is matrimonial or a family matter, or a matter involving any domestic relationship, be it marriage or otherwise, if there arises in the course of it, some matter which might point to criminal behaviour on the part of a child, or which might lead to the child's liberty being curtailed, a new step has to be taken, and I have not been able in the limited time available, to determine how is it intended that a matter which originated in the Family Court, and in the course of which criminal behaviour has become manifested—no, pardon me, not manifested—there is evidence of criminal behaviour on the part of a child, how is it planned that that will be addressed if the Family Court Judge does not have a jurisdiction to deal with it? I may be wrong and I would be pleased to be corrected on it, hon. Attorney General.

There is yet another limb to all of this administrative structure and that is a provision for Masters exercising all the rights, powers, immunities and privileges of a Judge, and I am sure I read somewhere that a Magistrate may well be treated as, or become a Master for this purpose. Not easy to swallow if you are a practitioner and have grown accustomed to the old ways, but granted this is a revolutionary piece of work as the hon. Attorney General has told us; he says we are revolutionizing the court structure, and so those of us who are listening and who have practised in the law will have to become acquainted with the view that Magistrates may morph into Masters within a very short space of time, and all that might be needed of them—greater than what they have now—might be a state of mind and a bit of training to become Masters.

Then, sundry other staff, and once again bear with me while I bring the full panoply of staff to the mind of the listener. Clause 16:

- “(1) The Family Court shall, in addition to judicial officers, be staffed with—
- (a) public officers;...
 - (b) an appropriate number of other persons engaged on contract by the Court Executive Administrator in accordance with the guidelines on Contract Employment established by the Chief Personnel Officer for such purpose, and who shall hold office for five years, but may be eligible for re-engagement.”

—might have to do something about the spelling there.

“17. The Family Court Sub-Division of the Family and Children Court Administration Department shall be headed by a Family Court Administrator and shall comprise a—

- (a) Family Court Office;
- (b) Children’s Authority Liaison Unit;
- (c) Family Court Mediation Unit;
- (d) Family Court Social Services Unit which shall be a sub-unit of the Family and Children Courts Social Services Unit;
- (e) Family Court Human Resource Management Unit which shall be a sub-unit of the Family and Children Courts Human Resource Division;
- (f) Family Court Finance and Trust Management Department which shall be an operational sub-unit of the Family and Children Courts Finance Unit and the Accounts and investment Unit of the Judiciary;
- (g) Family Court Communications and Information Unit...;
- (h) Family Court Records Management, Court and Law Reporting Unit; and...”

I have already called how many there? Eight? The ninth one:

“(i) such other Administrative Support Divisions as may be determined by the Chief Justice.”

So the list is infinite.

On top of that, Madam President, if we go to clause 26 we are going to get almost the same thing but slightly different in the children’s sub-division. So the public officers are going to be engaged and an appropriate number of other persons engaged on contract:

- “(a) Children Court Office;
- (b) Children’s Authority Liaison Office;
- (c) Peer Resolution Centre Coordination Unit;
- (d) Auxiliary Programmes Coordination and Monitoring Unit;
- (e) Children Court Social Services Unit...;
- (f) Children Court Human Resource Management Unit...;

- (g) ...Finance and Trust Management Unit...;
- (h) ...Communications and Information Unit...;
- (i) ...Court Records Management, Court and Law Reporting Unit;
- (j) ...Court Information Technology Unit;
- (k) ...Court witness support unit;”

How many is that? Ten? Maybe 11, and then:

“(l) such other Administrative Support units as may be determined by”—whom?—“the Chief Justice.”

Madam President, through you, the hon. Attorney General really would need to address us all on where are we going to find that kind of Chief Justice. Maybe it is better to leave it at that.

Next. In the course of my reading a moment ago I mentioned something call the “Peer Resolution Centre Coordination Unit” and clause 27(c) makes that reference. In his presentation, the hon. Attorney General did refer us to the Peer Resolution Centre of which he said it is court-annexed, children will now be the beneficiaries of judgment by their peers. These matters will be referred from the Children Court, and I have seen from the Bill that any other court may transfer a matter to the Children Court. But, Madam President, there is no establishing in the legislation of the thing called a Peer Resolution Centre. Put differently, the Bill does not establish a peer resolution centre. It speaks of Peer Resolution as being an exercise that may be embarked upon by people who know of these things—and no doubt trained in some foreign jurisdiction, which is always good for us, of course.

If you look at clauses 39 to 42, you will see reference to it there. It says in 39:

“In any children matter in which a child who is a first time offender is charged with a minor offence and admits guilt, the Children Court may with the agreement of the child, and the consent of the parents, guardian, or person with responsibility for the child, refer the matter to court-annexed Peer Resolution to seek a recommendation as to the sanctions which should be employed for the offence.”

Now we are all very pleased to know that a child may well have an opportunity to be judged, assessed, addressed by his peers and no doubt shamed into accepting that his behaviour is not good, and this Peer Resolution therefore could bring it about. But the hon. Attorney General, insofar as he spoke about a

Peer Resolution Centre, which seems to be another bureaucratic establishment, I have not seen provision made for it in the Act and I would invite him to look again and see whether we need to establish the thing, or is court-annexed Peer Resolution no different from mediation, a tool that we use to get to another end. It is going to be a building, a structure, an institution or not?

As I said, clauses 39 to 42 deal with the Peer Resolution. It has an interesting approach I must confess.

Madam President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. G. Singh*]

Question put and agreed to.

1.45 p.m.

Sen. E. Prescott SC: Thank you very much. I am dealing with the "Peer Resolution Centre". Clauses 40 and 41, let me tell the children of the country this one, if you do not mind. It says:

"...if the parents, guardian or person with responsibility for the child withholds consent to referral to court-annexed Peer Resolution but the child agrees to the matter being so referred, the Court may, if it considers it in the best interest of the child, refer the matter..."

So that you could disagree with your parents on this one and get your own penalty from your peers if you apply clause 40.

I am moving away from that, thank you, and ask the question. In 2000, we passed the Children's Community Residences, Foster Homes and Nurseries Act. Quo vadis? What has become of it, through you, Madam President, hon. Attorney General? Do we have these community residences, foster care, and nurseries all established and ready, waiting to receive children? Will we be able to satisfactorily treat with them if these residences and foster care and other similar institutions do not exist? I pause there not expecting an answer but I will be happy if you could consider it, please.

Next—and this is by way of credit to the framers of the legislation and those who foresaw what it could do—I am very pleased to know that we will now move away from criminality in the case of young children and move towards rehabilitation, so that the spectre of juvenile offenders disappears and in its place

we will have children who are in need of care and control and being prepared for an adult future in the way that society would wish them to grow.

But I fear we have not spoken too strongly in this Bill about how we will treat with a matter which, whether it is at the centre of it or peripheral to it, there is an element of domestic violence. Is there going to be a clear path from the court—the Family Court or Children Court—to another place to treat with domestic violence? Invariably in a family situation, whether it is the outcrop of a broken relationship, a divorced relationship, a divorce has ensued, a child ends up being violated by some parent, not necessarily physically but mentally or spiritually.

And so my concern is, if, in the classic domestic violence frame, there is an offence being committed, have we thought of how we should treat with the child who is the recipient of it? I have already dealt with the child who has become an offender. But the child who is on the receiving end, we ought to be told that something will be done. Maybe the institutions already exist but I have not seen a clear reference here to it so that I do not feel sanguine that something will emerge. I am happy that we have talked about how to treat with the children who are regarded by their parents as being beyond control. I am hoping that the structures that are now being presented are going to deal with that adequately.

I am pleased to say that we already have some success stories out in the society. I understand that the police youth clubs are doing great service to young children in many places [*Desk thumping*] and there cannot be too many of those. There cannot be too many of those. [*Crosstalk*] Well, there you are. And I had once heard of this, I did not know that it had become a reality in anybody's mind, but there is a talk about a children drug court. I am hoping to hear a little more on it.

I noted in the definition of “children matter” in clause 3 of the Bill, there is something called a “children drug matter”. By the way, the use of language in that definition is a bit troublesome. So there is something called a “children drug matter”, so I imagine that means a matter in which a child is involved and it has to do with prohibited drugs presumably. If indeed we do not yet have a children drug court, if it is being thought about, then I would be very supportive of that, because experimentation with drugs is not unheard of among children and it does not require an adult by any means or adult support, it just comes about.

So, the good news for all of us is that if it were possible to make the Family and Children Division of the High Court work, many, many people in this country will be happy. This society might well become a different kind of society two generations from now when the children of today have benefited from it. But I am

not sure, I do not feel certain, that we are about to achieve our 2016 or 2017 deadline at all because of what I have identified as being problems. I understand that rules of court are already being worked on and if that is so true, Madam President, I trust the Attorney General will satisfy us that that is so, because without it, we simply cannot have a working division of the High Court.

I have been told that the consultations have been very wide and indeed, the hon. Attorney General has himself assured us that there has been wide consultation. And I think I had pointed out earlier, it may have been consultation on the concepts but not on the languaging of the Bill and so there will still be need for that rather than us dealing with it here in committee stage, because none of us could claim to have all of these disciplines residing in our heads: police, prisons, probation, Judiciary, legal aid, THA and that kind of thing. The hon. Attorney General has also told us that consultations took them far and wide to see examples in countries, most in the Caribbean and elsewhere and that, too, is a very pleasing development coming out of the relevant Ministry.

So, at the end of the day, Madam President, you might have gathered that I am very supportive of the view of the Government for the future. I would have been much happier if I were able to say that the future seemed to be close by in relation to this matter. There is time for the hon. Attorney General to yet satisfy us that that is so. I look forward to the rules being put into place and the courts being established in all of the locations where children exist, that is to say not limited to St. George West. I thank you very much. [*Desk thumping*]

Sen. Wayne Sturge: Thank you, Madam President. Yesterday, I had one of those very rare days when I got off early from court; got out from the never-ending trial which has been going on for two years, and I used the opportunity to go to St. James to conduct business at T&TEC. When I got very close to my destination, it is near to Bengal Street in St. James, I observed close to 100 school children and it caught my attention because it was not an orderly procession of children. There were two large groups of children in two different uniforms getting ready to “mash up the place”, so to speak.

Thankfully, the police arrived on time, one police jeep, and did their best to disperse them. But that process took about half an hour and it occasioned no shortage of abuse to the police officers. I am quite surprised that the police exercise, the type of restraint they did, and I am quite certain had there been a greater force, a show of support from other officers, there would have been quite a few charges of obscene language and threatening language. I start off with this anecdote because we are dealing with a revolutionary new process where we are

recognizing that we need, at the earliest opportunity, when we see naughtiness manifesting itself publicly, that we do not deal with it with the heavy hand of the criminal justice system. So that whilst I am very disturbed at what happened, there is a happy ending in that, from what I saw yesterday, none of the children would be ending up before a court.

the greater number of criminal charges being brought are brought in But the thing is, and I seek to build on the contribution just made by Sen. Prescott, we have to ask ourselves how have we arrived at this juncture where we need a family division and not just a family division dealing with family matters, but a family division and a children division, because historically, we did not need it. When there was bad behaviour on the part of young people, we did not need 10 or 11 more courts to deal with them. In days gone by, bad behaviour would be dealt with at home and the punishment would end there and the punishment was so fitting and appropriate and effective, that it would come to an end. That proclivity would come to an end, it would be nipped in the bud.

But now we have reached the stage where the courts, the classical system as we have it, a distinction which is now, as it stands, the civil jurisdiction and the criminal jurisdiction, that we have outgrown it and it is sad that we have outgrown it and we have to ask ourselves why. And we will have to deal with the why before we get into the Bill. It is relevant to the Bill. Because a question was raised by Sen. Prescott and it can easily be answered. Sen. Prescott asked: why are we going to limit it to St. George West? At present, the pilot project with Family Court exists in Port of Spain and San Fernando and it is a success, and regrettably it does not extend beyond those two jurisdictions. But the thing is, it deals with the constituencies or the regions of the country that are highly populous. So if it is highly populace, then there is a need for the court and you are bound to have many users of the court.

So, to address the concern of Sen. Prescott, I think the research has shown that jurisdictions that are highly populous—the East-West Corridor, from Diego Martin straight up to the East-West Corridor. So that given the jurisdiction of the new court, the court would extend its way, I imagine, like the Family Court, all the way up to the east and if there is a court in San Fernando which deals with—that is another highly populous area. That is why we started off with these two courts. It may not be necessary to put much more courts in the further ends of the country, because it is not highly populous and the level of misbehaviour requiring these children being brought to the court would mean that it is so little, that it is not enough to warrant government resources being poured into those areas. So that is, in short, the answer, why we have started how we have started.

I have heard the contribution of Sen. Young and I am glad that he is supporting the Bill, and in a short bit, I will try to deal with some of the issues raised by my good friend, Sen. Young. But whenever I come here and I listen to the arguments made, I realize we have a fundamental misconception about how legislation works, and as a Senate, we harp on issues that are better dealt with administratively. So a lot of the matters raised can be dealt with as administrative issues by administrative personnel. So the legislation is simply there to give the framework and in this case, I think the framework is a very good framework having regard to what we have to deal with now.

2.00 p.m.

Now, so that the public understands the need to move into this new classification, one must understand, particularly with respect to children, how things work, how their minds operate.

I am sorry Fitzgerald Hinds is not here. Like Fitzgerald Hinds, I attended Belmont Secondary. I did not attend a prestige school. I remember, back in those days, there were a number of friends in different forms and the most popular nickname was “convict” and people wanted to have that name. Yes. Yeah, “convict”. I graduated in 1988/89. *[Interruption]* No, I am not a convict but that is a name that the young generation wanted to have. When someone had that nickname “convict” that was a badge of honour.

If you look at the way the criminal justice system works, as it is now, the danger is if you leave it as it is now and you have a child ending up before the court, in most cases, it still is a badge of honour. That is how it operates. That is how, sadly, children think. So whilst most of us would dread the prospect of facing a magistrate or a judge, I think there is a badge of honour when children who are, for want of a better word, miscreants among their little gangs and their colleagues, and so on, when they actually step out of their little circle and they reach into the formality of the court system, then there is an increase in rank, and when there is an increase in rank, that is not the impetus to stop, that is the impetus to go on. And that is the sad reality.

Now, how did we end up in this situation? That is why we have this new classification. This new classification would seek to take children out of the system, as it is, where you have a child facing a magistrate who is accustomed dealing with real miscreants and whose tone would necessarily be the type of tone you would expect of a judicial officer dealing with miscreants. Such a tone would become calcified and hardened because of the experience of that judicial officer. And it is very difficult to divorce oneself, knowing one’s history and then apply it

to a 12-year-old or a 13-year-old. So that the atmosphere as it is in the existing court system, is not suitable for rehabilitation.

The existing buildings, when you come into the court system charged at 12, 13, 14 or whatever, and you face the magistrate, the corridor you have to pass to go down is the same corridor the other prisoners pass. The only saving grace is that generally the law provides that the courtrooms must be cleared when young offenders are before the magistrate. But that is all well in a perfect world. That is how it is supposed to operate, but in reality I have seen instances where the young miscreant is in court with all the other “bad Johns”, if that is a term still used. And if you have them mixing, whilst you might put him in a separate cell, the cell is opposite the cells of the real ones. So you have to keep them in a separate place and treat them differently because if you do not, then you do not provide the impetus for change but you embolden them.

Now, I take the point by Sen. Young about contacting the Children’s Authority, and so on. But it is quite clear from the legislation and from the law generally as it is, there are adequate safeguards that exist for children who find themselves before the court. If you are arrested and in police custody, the Judges’ Rules already provide that you cannot be interrogated in the absence of a parent. There are already existing safeguards. *[Interruption]* Whilst my friend is saying the Judges’ Rules would not be legislation, in essence, over the passage of time, has the force of law and it is applied and there are many cases which make the point that it has, in essence, the force of law. So that, I agree it is a good step but, in essence, it already exists that if a child is going to find himself or herself before the court, it is necessary to seek the intervention of the Children’s Authority.

But I want to say it is not in the legislation what I am about to say—and this is not to take away from the force of the legislation because there is no perfect legislation—but I think, because of where we are, we need to start looking at processes which would see a proliferation of psychologists, as opposed to a proliferation of lawyers. We have a proliferation of law schools and we are complaining that every year 400 or 500 persons are admitted to practise in Trinidad and Tobago. And that is not helping anyone but the practitioner himself. Maybe it is not 400, but maybe 300 to 400. The short point is, in my view we have too many lawyers.

I think what—*[Desk thumping]* I see Sen. Maharaj is knocking—we need to do to stem the tide and to break the cycle as it is, we need to look at a process where we have more persons interested in studying psychology and becoming psychologists and you can identify a miscreant from very early or anyone who has

this proclivity. So what I would ask the Government to do, looking forward, is to see if we can make it easier to have more psychologists being admitted to practise, as opposed to more lawyers. Lawyers come after the fact and they profit from the misery of others. Psychologists usually would—yes, I see Sen. Al-Rawi is looking on. That is the truth, we do profit. Well, Sen. Young does not profit from the misery of others. I see he does commercial law.

But, imagine if we had psychologists in schools who can, very early, identify the problem children—those who, for some reason, have an attention deficit. An attention deficit is a cue. It is not the be-all and end-all, and you have to ask yourself why he has this attention deficit, why he is disruptive, why he is fighting why he is this, why he is that. When you look behind, when you have a psychologist in school and you identify the reason, then at that stage you can streamline things in such a way. Maybe this child does not have food. He does not have breakfast in the morning. Maybe mummy and daddy are fighting at night. Maybe daddy is no more, daddy does not exist and there are two or three different daddies visiting and the child is not comfortable with it. But once we ascertain what the problems are from very early, from five or six years old, when they get into the system, then right away we are better positioned to treat with this child, to see if it requires the intervention of social services and to see what more can be done to prevent this child from coming into the system.

What I would like to see also would be an overhaul of the criminal law, the substantive criminal law, as it relates to children. So that only in the most serious cases and cases concerning violent crime should we have children coming before the court. I think we should, at all costs, try to prevent children coming before a court with the formality of lawyer, the formality of trial and the possible formality of sentence. That is not the most appropriate way. That might be the old way but it quite clearly has not worked and I commend the Government for taking the step to change it, so that new procedures, in essence, would see a process where the aim is not simply to convict someone or try someone, but the aim is, in essence, to seek rehabilitation to see if this person can re-enter society in a meaningful way.

I have a complaint to make when I raise that because I am talking about the overhauling of the criminal law. Quite recently, a nine-year-old boy was charged with taking a joyride. Apparently he stole a vehicle and went on a joyride and he is charged and he is before the court. So he had the ignominy of being in a police station overnight. He has to get bail. Yes, he walked out. That shows a certain type of behaviour. He walked out. They had to bring him back. He is charged. He is before the court. He is on bail. He has to keep going to court and he is now part

of the system and it churned up in the legal profession, a debate as to what is the true age requirement for mens rea in a child, and most persons thought it was 10.

We now learn that, along with Israel—when they target the Palestinian children—we have the lowest age of criminal responsibility in the world. That is not good. That might be appropriate for Israel and they want to lock up Palestinian children for throwing stones and lock them up for 10 years. Maybe that is good for them. That is not good for us. It says something about us. What I have to lament, and this is just one example, we have a DPP who, quite apart from trying to ascertain whether there is mens rea and actus reus, he has a separate power—public interest—and he can decide to prosecute or not prosecute this little boy because it might not be in the public interest. So I have to ask now loudly: what interest does the public have in prosecuting a nine-year-old? This is the same DPP who failed to prosecute a certain person because he was too old, he was too sick, and the person who is to give evidence against him is not credible and so on.

Sen. Prescott SC: Madam President. Senator, may I?

Sen. W. Sturge: Who whilst some people—I am not calling names.

Sen. Prescott SC: I am probably totally out of place but I thought the Senator should avoid appearing to be challenging the decisions of the DPP.

Sen. W. Sturge: Let me make it clear, I am simply lamenting. No one, apparently, can challenge the decision of the DPP, our hands are tied; we all have to take it; to take that and cool it. But what I am saying, is it really in the public interest? If you can exempt an old man from three criminal prosecutions—radio licence, Guanapo, Jamaat land deal—because of age or illness or whatever, on what basis do you not use the public interest and prevent a nine-year-old from coming to court? What is the public interest in having a nine-year-old before the courts? That is the question I have to understand. So I am simply asking, Sen. Prescott.

There were questions raised about Judiciary funding. I believe, Sen. Young, I am told that the Judiciary is not starved of funds when it is they say so, and from my understanding the funding has increased from year to year and they are always given what they know to be adequate funding and they have never disputed that.

So that is not necessarily a consideration. But, in any event, because we have reached where we have reached, then we should not simply say it may cost too much and we should simply stay with the old system. I think when we need to find money to do things like this, we need to find money. However we find it, we find it.

Now there is a point made by Sen. Young and taken up by Sen. Prescott—on the face of it, it is a seemingly valid point, the issue of the Deputy Registrar. Whilst I agree, in the classic system, the Deputy Registrar or all registrars must be legally trained, when one looks at the role that the Deputy Registrar and other registrars may have to play in this division, it is quite clear that when you compare it with the roles actually played by registrars in the system as it is, it does not necessarily require legal training to perform those roles.

In fact, most of the functions to be carried out can be, and in some instances, are carried out by persons who are not legally trained. In fact, in the criminal justice system you generally need a registrar when you are going to empanel a jury. I have seen on occasions, where the head of the section, who is not a registrar, carried out the function. So there are some functions and maybe it is, and we will hear a little later, because of the role and functions of these registrars it may not be necessary that they are legally trained. The wealth of experience in the court system may equip them to deal with it.

2.15 p.m.

Another point raised by Sen. Young, he said we had to be careful about this—putting this in legislation, because it may give rise to a legitimate expectation. Again, I understand he is a commercial lawyer, so that if I can correct it in terms of—through you, Madam President, so that the public—there is no misinformation in the public domain. A legitimate expectation cannot arise from a Bill, a statute. A legitimate expectation, which is developed in public law, arises by a course of conduct, by a public official, not by legislation. The legislation either give rights or it does not give rights. You do not get a legitimate expectation from a piece of legislation. So that is for Sen. Young and for others, so that we are not misinformed. *[Interruption]*

Sen. Al-Rawi: So all of us are wrong?

Sen. Young: We do not understand—*[Interruption]*

Sen. W. Sturge: Now, I want give another anecdote, and it is a tie-in to what my friend, my senior, Sen. Prescott, was referring to.

Hon. Senator: He is not a commercial lawyer.

Sen. W. Sturge: Well, no, but he—*[Laughter]* Yes.

Sen. Young: “All dem judicial review is commercial law? Da’ is what your understanding of judicial review is?”

Sen. W. Sturge: No, well, Senator, the more you open your mouth, the more we know you are not a judicial review lawyer, but anyway, that is not the point. A point was made, and I have to use a little anecdote again, because quite recently a mother came to chambers, and she is interested in dealing with St. Michael's and bringing action against St. Michael's. What happened was, her son was unruly or out of control as the legislation says, and she took him to the court to take him to St. Michael's to see if they can control him. Well, they did. He is now dead. So he is under control, apparently, and she has to sue the system.

One can imagine the pain of a mother who is single, and trying to do her best in such a situation coming before a court, and having to face a situation such as what I described. It again, drives home the point that the existing system has failed. It has fallen into desuetude, and perhaps it is time and it is necessary given the divisions we are advocating, that we take a very different approach.

Now, two or three more issues raised by Sen. Young. Sen. Young raised an issue about the point of there being no appeal to the Privy Council, which I find very—

Sen. Al-Rawi: He did not say that.

Sen. W. Sturge:—the lack of appeal, [*Interruption*] the lack of provision for—[*Interruption*] yes, right, right. I understand, but the short point is, that already exists in the system. There are cases which say, even though the Legislature does not make a specific right of appeal, it is an existing right, and you can appeal. And quite apart from that, the Court of Appeal already reserves for itself, the power to give leave, a discretion whether to give leave or not, and the only appeal one has as a right, would be in capital matters as we all know.

Hon. Senators: Judicial review.

Sen. W. Sturge: Hold on, I did not finish. [*Interruption*] All right, whatever. Yes, so what we are saying is, there is in the Court of Appeal, the power, a discretion in certain circumstances, and I just made a reference in criminal cases, it is reserved only in murder cases for good reason, and there are other subsets, of course, they just referred to judicial review, because it is the nature of the right, that one is going to pursue.

Sen. Al-Rawi: JR is a subset of criminal law?

Sen. W. Sturge: No, I did not say JR is a subset of criminal law. You obviously do not understand. [*Interruption*]

Now, yes, the point about getting a lawyer and so on, that Sen. Young raised, that is already in the legislation. There is provision for legal aid and so on, but at the end of the day, I simply raise these issues to correct Sen. Young on some of these issues. It is not that I am attacking Sen. Young, but at the end of the day, I am very grateful that—[*Interruption*]

Sen. Maharaj: He needs correcting.

Sen. W. Sturge:—yeah, he needs correction, okay. I am very grateful that the other side has seen it fit to support this bit of legislation. I look forward in essence to when we come to committee stage, if there are improvements, because definitely two heads are better than one. So in essence, if we can perhaps put our heads together, and see how best we can make this new system work I believe it would go a long way to taking us all forward, and breaking the cycle that already exists in this country, regrettably.

So, Madam President, through you, that is all I have to contribute on this Bill. [*Desk thumping*]

Sen. Diane Baldeo-Chadeesingh: [*Desk thumping*] Thank you very much, Madam President. I listened very attentively to all speakers before me, and particularly to Sen. Sturge.

Sen. Sturge: Ah Lord!

Sen. D. Baldeo-Chadeesingh: Yes, oh Lord, is right. [*Laughter*] He spoke about the revolutionary new process. He spoke of the naughtiness and naughtiness manifests itself.

Sen. Sturge: I love it.

Sen. D. Baldeo-Chadeesingh: You like that?

Sen. Sturge: I love you.

Hon. Senator: Oh Lord!

Sen. D. Baldeo-Chadeesingh: But you know, it is interesting that naughtiness should, in fact, manifest itself. You have no building, staffing is an issue, even the psychologists you talk about, how many would be required, even the judges—number of judges that Sen. Prescott spoke of—[*Interruption*]

Sen. Sturge: I still enjoy being scolded by you. [*Laughter*]

Sen. D. Baldeo-Chadeesingh:—and the consultation of which the AG spoke about, local and international discussions, he said; wide consultation, specialists

discussions, and from some of the contributions here today, there are some sectors and associations in Trinidad and Tobago that did not even hear about this Bill prior to. So I am not sure, when he says this is a revolutionary new process, if this is what he terms it to be.

Madam President, we on this Bench, are for keeping families away from negative effects of battles and delays in the court system, and make sure when cases do go to the court, we hope they happen in the least damaging way, and in the quickest time possible. We on this side are for children in difficult family situations, we are for them getting the support that they need, to allow them to move forward with their lives, and to build positive futures. We are for the better welfare of children. We are for cutting down the delays in the court process, and to reduce the excessive delays.

The Family and Children Division Bill, 2015 is being debated today, and is one, Madam President, which is not only long overdue, but it is a Bill which is critical to the future stability of the family, when a court ordered intervention remains the only option, when dysfunction arises in the lives of families and children.

We all recognize that the welfare of children is of the highest priority, and that it is the responsibility of everyone in this nation to ensure that they are protected. The future of the nation has always been our children. I recall in 2012 somewhere around April, that time, there was “Break the Silence: End Child Sexual Abuse” jerseys, children took part in the justice for children march. The march began at King George V Park and made its way around the Queen’s Park Savannah, attracting thousands of people, both young and old. There was an article written by Timothy Affonso, titled: “Protection of children’s welfare” and in a two-part article dealing with the welfare of children, the columnist focused on child cruelty and other offences relating to young children. A second article focused on sexual offences involving children. Now:

“The responsibilities of those who care for children and young people are wide and seek to guarantee the best interest of the child.”

And regarding “Child cruelty”:

“While internationally and under the Status of Children Act, a child is anyone under the age of 18 years, according to the Children Act”—No. 12 of 2012—“a child is anyone under the age of 14.

People who are older than 16 years and who are responsible for the care, custody or charge of a child are under a duty to protect the child. Those in

charge of children, must not wilfully assault, ill-treat, neglect, abandon or cause unnecessary suffering or injury to the health of the child. These offences are known as offences of cruelty.

Some of these offences are further explained in the Children Act. The offence of ‘neglecting a child’ relates to occasions when an adult is responsible for the health of the child, yet fails to provide adequate food, clothing, medical aid or lodging for the child. Additionally, ‘injuring a child’s health’ includes causing injury to or loss of sight, hearing, limb or organ of the body, or any mental”— issues.

“A person convicted of committing any act of child cruelty may be fined between \$5,000 and \$10,000 and is liable to two years and six months and two years’ imprisonment. Where the injury inflicted on a child leads to serious injury or death, the person alleged to have caused the injury or death may be charged with more serious criminal offences, ranging from assault to manslaughter or even murder.”

Madam President, these offences are crimes, and there must be consequences, because it is only by robust legislation and compliance, will we responsibly protect our children and their future. The avenues for justice for children that the Bill, this Bill will offer, is a development which is tardy, but presents a hope of justice.

When one reviews the list of interrelated legislation, and there are so many, we see a wide range of laws which, if effectively integrated and supported by robust implementation with strong monitoring institutions, will add to the protection of our children, and also ensure effective legal consequences for those who breach our laws.

What is also required is an awareness of the caregivers of our young people, and there is a duty of care, with legal consequences for any such breach. For example, the duty of care of those under whose care young people are placed, or in a family and even in an institution of care, where young people are placed, legal consequences must follow for any breach.

In all of these instances, where breaches against our children have been identified, legal consequences must be swift and they must be effective. These examples of relationships of trust must offer safety and must offer protection. Failure to comply will result in legal prosecution for the abusers, but for the young who are drawn into such legal battles, psychological scars remain, and these create even lifelong challenges from which some never fully recover. This is

the reason why such legislation as the one we debate today, must have the widest awareness and outreach to ensure inclusion of all involved in giving care, and a heightened sense of responsibility to protect our children; all children of the nation.

Madam President, it is the breaches many times that create the triggers that engage public opinion. So a proactive approach is required in the implementation phase when a Bill such as this is passed or is attempting to be passed into law. A law is effective when there is an awareness—like Sen. Sturge said—of its intent, and how the requisite protection and benefit can be assessed by all. We are all equal under the law.

2.30 p.m.

A drawn-out implementation phase with little public awareness creates impediments in successful compliance with the law. Everyone—organizations, persons of the Judiciary—needs to be fully updated with regard to the Family and Children Division of the High Court.

Those who care for young people, Madam President, are under a duty to ensure that young people are not forced to beg or receive alms on the streets. We see this happening. They are not exposed or should not be exposed to the risk of being burnt. We read and we listen to these things taking place in Trinidad and Tobago. They are not exposed or should not be exposed to the practice of prostitution or work in brothels. We see in many instances in reports in the news and media that these things do happen in Trinidad and Tobago. The penalty for these offences range from a three-month term of imprisonment to a five-year term.

Children and young people are protected from publications which depict the commission of crimes, acts of violence or cruelty or incidents of a repulsive or horrible nature. Anyone who exposes a child or a young person to any publication in any of these categories can be charged and if found guilty is liable to a fine of \$2,000 and four months' imprisonment. Madam President, this country has been actively engaging its legal minds to seek the best for our children. Many of our legal minds, social workers and health care professionals have been working to develop additional legal protection.

Today, we focus on ensuring protection for our children and legal infrastructure. Clauses 4 and 5 of the Bill speak to the establishment and operations of the court, but while my legal colleagues focus on the analysis of the court, I would prefer to look at the risks of the child when decisions of the court

involve separation of the child from parent and the child is put into care with an individual approved by the court. So, as we seek to resolve the issue the child faces and a court order is made, the child is now in a very fragile state psychologically. Placement in a new environment only adds to the emotional challenge and both the Family and Children Court, very little mention is made of the supportive allied health care involvement in the process to address social dislocation.

Madam President, the separation from familiar, although abusive caregivers and placement in a new environment with new caregivers is a critical area where long-term damage to our children can occur. More robust support for the child as they transition from abuse through the court to the new environment is required. In the models reviewed in the Bill Essentials, a comparative assessment and inclusion of systems for child and family services can be reviewed and can be incorporated in this legislation.

Madam President, we have witnessed such abuse with our children in homes and in institutions. The St. Michael's Home for Boys and the St. Jude's Home for Girls are examples of quality of care breaches in institutions funded by the Ministry of Gender, Youth and Child Development, yet we have had front page images which clearly revealed the abuse at these very institutions.

The legal redress in these instances was in the open criminal courts. So, I applaud the effort to establish separate courts, the Family and Children Division of the High Court, to effectively deal with such breaches and facilitate a family court which takes into account the challenges that arise in families with children under their care and seniors who take on the role of primary caregiver at a time in their lives when their reaction time to incidents and memory lapses present a risk to the child's safety.

The examples of these increasing high-risk instances of child care breaches in Trinidad and Tobago require more robust monitoring and compliance with a public awareness of appropriate education programme which is accessible publicly. A nation can only develop if all aspects of implementation of a law are effectively rolled out.

The hon. Attorney General spoke this morning of 2016 being the year of delivery. What is outlined in this Bill, it seems to me that it will require more than six months, more than a year and a half [*Crosstalk*]*—to start from a building, through you, Madam President—to start from a physical infrastructure. There was even an issue that Sen. Prescott brought up today regarding the number of judges: this could be rectified in six months to a year? The psychologists that Sen. Wayne*

Sturge so aptly spoke about, I mean, are these things possible in six months? And consultation, this would be done in six months with all key stakeholders? You went far and wide and abroad, but a lot of the associations in Trinidad and Tobago you did not go to. Was it the Law Association Sen. Prescott was speaking about? Yes, the Law Association. [*Crosstalk*]

Sen. Nicholas: Are you sure?

Sen. D. Baldeo-Chadeesingh: The Law Association.

Sen. Nicholas: Are you sure we did not consult the Law Association?

Sen. Al-Rawi: You consulted with members of the Law Association?

Sen. D. Baldeo-Chadeesingh: Members of the Law Association, not the Law Association.

Sen. Al-Rawi: I will clarify it for you. Do not worry.

Sen. D. Baldeo-Chadeesingh: And also—[*Laughter*—you know, the thing about it is that, you know, the persons who are going to find themselves in situations whether at the Family Court or the Children Court, the subdivision of the High Court which is being proposed, I mean, you have to look and see how this would affect them and to make it as comfortable a transition even for the children that might be involved. So, you have to have simple—well, it might be simple, but the issue of staff and trained personnel and so on, that is what would make it—a new building will not make this thing work good. It is the staffing and the personnel and everything else that would be required to make this thing a success.

Madam President, there are examples as well on the pages in the Bill Essentials about Australia, the United Kingdom and even India and there are similar Bills which are listed in the list of comparative legislation which I went through, but the cultural dynamic of these countries has not presented a major legislative challenge. The traditions of these countries vary and the effective development of laws and a system for child protection is priority.

In traditional societies—even in my reading and in my research—child labour practices are often in breach of the child protection laws, but the will to eradicate such practices would take time, and with public education over time there is hope with public education there is time for the reduction of child abuse.

Madam President, the Bill today is one which must keep the focus on the risks and challenges that children face at a time when they can hardly analyze the

challenging environments created by adults, because the fact is a child is not a small adult. They are developing mentally, they are developing physically and they are developing socially and need guidance and trust from caregivers. The parent, teacher, coach, music teacher even, the family, their world is networked by adults.

It is the adults who are the ones in 80 per cent of the cases of abuse globally who are found guilty of child abuse, abuse which ranges across all types of abuse, from physical abuse, mental abuse, psychological abuse, environmental abuse. These breaches if left unaccounted for can continue and totally destroy the child and with scars that are forced to navigate a world that is harsh and around them the guilty escape accountability.

So we must ensure that enforcement becomes robust and there must be continuous periods of affirmation about our commitment to child protection and reinforce our aims to promote good practice in providing children with appropriate safety, with appropriate protection while in care and allowing all volunteers and staff and other personnel to make informed and confident responses to specific child protection issues.

Madam President, also in my research I read a paper by Hazel Thompson-Ahye. Well, first of all, in line with the UN Convention on the Rights of the Child and I quote:

“As a Caribbean people we have come together and formulated the Belize commitment to Action for the Rights of the Child, the Kingston Accord, the Lima Accord. Commitment, accord, all very positive words, a prelude, no doubt to positive actions to fulfil our covenant to ‘review and revise our laws, policies and programmes to fully comply with the letter and spirit of the CRC.’”

And the paper by Hazel Thompson-Ahye, in that paper she questioned it and she says:

“How have we done these past fifteen years?”—regarding that—“What do we still need to do? In the context of Child Rights and the Caribbean, what are the prospects and challenges for the 21st Century?”

So, who is Hazel Thompson-Ahye? She is an advocate for the rights of the child and a very hard-working lawyer in the area of legal protection for children.

Sen. Al-Rawi: She taught all of us at Hugh Wooding.

Sen. D. Baldeo-Chadeesingh: Yes. She taught many of the attorneys in legal

aid at the Hugh Wooding Law School, I am advised by Sen. Faris Al-Rawi, himself being a student of hers. An area of legal protection for children when she addressed a conference on the rights of the child and she says in her paper:

“A challenge for us in the 21st century is to expunge all these limitations from the Act, which make the removal of discrimination more illusory, than real.

Maintenance rights

Article 27 of the CRC enjoins States Parties to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Thus, States are urged to ‘take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having responsibility for the child...’

Many children who are born out of wedlock”—for instance, she says—“are discriminated against in the area of recovery of maintenance. In all of the jurisdictions, save Trinidad and Tobago and Barbados, there is a time limit in the relevant legislation for bringing an application for maintenance.”

She goes on:

“Limitations also occur in the legislation in terms of the amount of maintenance that the court will grant in favour of a child born out of wedlock...Trinidad and Tobago...in its Miscellaneous Provisions (Children) Act 2000, abolished the disparity by including in the criteria two provisions which obtained for the child born in wedlock, but which were previously omitted from the criteria that the court must be guided by, when deciding the quantum of maintenance...

1. the manner in which the minor was educated or trained and the manner in which the parents expected him to be so educated or trained; and
2. the standard of living enjoyed by the family while the members of the family resided together.”

2.45 p.m.

“The out of wedlock child is also disadvantaged in the choice of court that has jurisdiction to make the order and the types of orders that can be made.”

Then, you know, it is very interesting for those of us who are non-attorneys on the Bench. She goes on to give a nice clarification that made my research a whole lot easier:

“These courts”—she says—“are generally under-resourced, the facilities are crowded and the applicants for maintenance have to encounter petty criminals and sometimes hardened criminals on their way to court. The type of order that can be awarded may be limited to a small weekly sum and the method of enforcement may be frustrating with warrants to be served that are sometimes given little attention by the police.

This may be contrasted with the situation in the High Court where the facilities are generally cleaner, there are more human resources, fewer cases, and the Court, in most jurisdictions, is empowered to make a variety of orders, such as lump sum orders and secured payments and secured lump sum payments, in respect of children born in wedlock.”

It goes on to talk about the various—she dealt with the various jurisdictions in the Caribbean as well, and having the division for the children as a subdivision for the Children Court in Trinidad and Tobago, I think it would only add value to the entire effort, the family and children subdivision for the High Court. Like I said, again, we on this Bench are for children, are for the protection of children; we seek, on this Bench, of course, the welfare of all children in Trinidad and Tobago.

So, Madam President, and, finally, I want to mention the issue of disability and the disabled child in the context of what is being debated today. Article 23 of the Convention on the Rights of the Child enjoins all:

“States Parties”—it says—to “recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.”

Madam President, while the Bill seeks to ensure compliance and protection, all these examples of real issues that children face which present a challenge with underlying stress and exclusion must be included in ensuring an all-encompassing policy and law to protect all our children, including those with challenges and special health care, and educational needs. Again, the Children Division, subdivision of the High Court, the Children Court, I think it is laudable. It is just that there are so many things that need to be done to make this thing practical, because when you put yourself in the context of those who will be—I do not know—the consumers of these courts, then you have to make it something different to what already exists right now, and that is why the staffing and personnel and place and so on, are extremely important.

So, Madam President, finally, are we ready to implement effective legislation that leaves no child behind? This question has not been answered, nor has there

been any additional document to ensure the Bill has support to include all citizens and leave no child or family behind. Can this Bill, when implemented, ensure the safety and protection of the environment in which the quality of protection must be offered? As the debate continues, I hope to get the answer. We, on this side, hope to get the answer for that, because when you look at a pilot project in 2004, now trying to be implemented, passing of legislation is one thing, but, again, the physical infrastructure yet to come.

Issues of staffing and personnel, there is a whole list of staff that is required to pull this thing through, do we have that resource available to engage in 2016? The consultation needs to be more widespread, and, I think, nationally, the consultation and education as to where this thing is going and the benefits that would come out of it in terms of time being spent at the courts, and so on, is extremely important. So, with those few words, Madam President, I think this is a laudable piece of legislation, but, again, making legislation without having other things to support the legislation, that part of it is not laudable. So there are a lot of things to be fixed before we actually see the benefits that, I am sure, the Government intends to get out of these Family Court and children subdivision of the High Court. Thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Dr. Mahabir. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President, for granting me this opportunity to contribute to this particular Bill. Madam President, I rise to support this Bill, [*Desk thumping*] and I will give my reasons naturally for supporting. However, at the outset, let me say that I have some concerns with clauses 39, 40 and 41. During my contribution this afternoon, Madam President, I would seek to beg your indulgence. It may appear at sometimes that I am perhaps not relevant. I know Sen. Maharaj would be very focused on relevance, but I wish to assure this honourable Senate—[*Interruption*]

Sen. Maharaj: Not for you.

Sen. Dr. D. Mahabir: Not for me. [*Laughter*] Thank you very much, Sen. Maharaj. [*Laughter*] I wish to assure this honourable Senate that I shall tie what I have to say, the disparate strands to where I want to go.

Madam President, I support this Bill not because I know much law, I know absolutely no law. I know nothing in judicial process. [*Interruption*]

Sen. Maharaj: “Dat is ah good thing.”

Sen. Dr. D. Mahabir: I realise it is a good thing and I hope it remains that way. I have never been in the High Court for any reason, either as a spectator or as a participant, and I hope that too remains as it is. I understand it is a nice building, but I hope I do not have much business to transact there. So that the concerns expressed by the distinguished attorneys before with respect to legal procedure, I trust the attorneys and the legal practitioners will sort those out. But, Madam President, I support this Bill because once upon a time, a long time ago, I too was a child. I know it may be a little bit surprising. My children may sometimes find that a little bit strange to accept, but it did occur a while back. And from that experience, Madam President, I know one thing, children commit crime.

There are children who do things which are unacceptable. They commit crime against the wider society. Children engage in theft, children engage in the participation in the narcotics trade, children have murdered; we have had children engaging in a number of illegal activities, but what is of concern to me is the fact that there is also child on child crime, and this, Madam President, we need to bring forward for national discussion. I did, of course, refer to the law, and where I want to go has taken me to the Children Act, 46:01, and I will mention these only because of what the law says with respect to the “Rights of the Child”. Under the Children Act, 46:01, and I am quoting section 15(11), it says:

“For the purposes of this section—

‘harm’ includes”

—and I go down to (d):

“physical, sexual or mental abuse;”

This is this Children Act which specifically recognizes physical, sexual or mental abuse as harm that we would want to identify, eliminate, punish, and ensure does not reoccur.

Madam President, I refer again to the existing law, and this is Act No. 68 of 2000, and here, under the Second Schedule, Part B, I read Part B, and I want to refer to B 7, Part B says:

“Every person in Trinidad and Tobago who is a parent of a child, or who acts in loco parentis, has responsibilities under the law in respect of the parenting function including but not limited to—”

—and I go to 7: “the responsibility to protect the child from unlawful physical violence and all forms of physical or emotional abuse, neglect or negligent

treatment, maltreatment or exploitation, including sexual abuse, while in the parent's care;"

The law specifically identifies emotional abuse as an abuse that we would want to ensure does not reoccur, and it is punishable. Let me go, finally, in the area of the law—and this is as much law as I will refer to—and I want to go under Act No. 68, C 10, under Schedule Part C 10, it says:

"Every person under the age of 18"—years—" , born in Trinidad and Tobago, or born to, or adopted by, parents who are citizens of Trinidad and Tobago is a child and is subject to care and protection under the law including but not limited to—"

—and under 10 it says:

"the right not to be treated with violence by"—a—"family member, a teacher, a public officer or by any other person;"

Now, I think the law, as currently exists, certainly outlines, Madam President, the rights of the child. I support this legislation because it is tending towards changing our views with respect to how we treat with child offenders, and my position is this, and, hence, I will come back and link my contribution to clauses 39, 40 and 41, in whether we are focusing on the child perpetrators or whether we are focusing on the victims of child crime. I want to argue that we pay more attention to the victims of child crime, and it was interesting to hear Sen. Sturge as he made his contribution, outline to us the fracas he saw in St. James with a group of a couple dozen students, that was child-on-child violence.

Madam President, what have we been seeing on YouTube and on national TV—on seven o'clock news? We are seeing Cunupia Government High as a school in which it is not safe to be a child. There is a great deal of child-on-child violence. We are seeing a phenomenon—Sen. Prescott alluded to it—where we formerly thought that child-on-child violence involved "big boy-little boy"; we are seeing more and more "girl-on-girl" violence. We are seeing the young females in our society engaging in physical fights. What is the reality?

3.00 p.m.

The reality is that while we have children who are no doubt peddling narcotics, or hiding firearms, or engaging as unwitting pawns in the adult world of criminal activity, by far and away, the biggest problem in our society seems to be what occurs in our schools, when children go to school and they find themselves the victims of being bullied.

[SEN. HELEN DRAYTON *in the Chair*]

Madam Presiding Officer, please indulge me while I read an excerpt on this phenomenon of bullying. I would want to read it because what the authors say has been said much more eloquently than I could put it across. It comes from a book called *Dear Bully* edited by Megan Kelley Hall and Carrie Jones, published in 2011, recent publication, HarperCollins. Let me indicate what the author says about bullying. This is the first article by Ellen Hopkins:

“My oldest son, Jason, is gay. He knew it before I did, and so when the bullying began, he knew why. But I didn’t...At the time, bullying wasn’t new...”

I spoke on the law on emotional abuse, but I will speak about all the types of bullying which go on in the schools in the United States. Now I see the police service—the much battered Police Service of Trinidad and Tobago—has actually recognized the problem. I want the entire nation to understand that this is where the current law must ultimately go because this is the problem.

We are dealing with child on child violence and we are dealing with 15-year-olds, 16, 17, whatever age, and they feel they can get away with it. But the authors go on, and this is about the United States. Of course, we do not have the data for Trinidad and Tobago, but, you know, whatever happens there because of the ease of communication also happens here, given our globalized world.

The author continues:

“At the time, bullying wasn’t new, but confronting it was. School counselors told me to leave it alone. Things would get better. They didn’t. To escape the torment in California, Jason chose to live with his father...in New Mexico.”

She continues:

“My youngest child, Orion, is almost fourteen.”—that is the age we are talking about—“He isn’t gay, but he is chubby. He was teased some in elementary school, but the real bullying began last year, in seventh grade. One kid was largely at the heart of it. I started hearing his name in September, when he began calling Orion gay. Why does that term, accurate or not, jumpstart abusive behavior? Over the course of the year, this kid and his friends volleyed relentless verbal attacks that eventually became physical. Orion was shoved...”

Do we all remember, Madam Presiding Officer, when we were young, the bully we had to deal with? I remember; his name was Manuel, Cunupia Government

Primary. Manuel became a vagrant afterwards. Bullies do not go very far, but you see now, they are getting Ph.Ds in subjects like economics and so on, and they go on to become white-collar criminals. But we all remember the bullies in our earlier days.

“Orion was shoved, pushed to the ground, hit, and once had his head slammed into a locker.

This time the school had no choice but to get involved. Suspending the bully for a day or five didn’t really faze him, however. I tried calling his parents...”

Try calling the parents. What would the parents say? The parents would say, like a typical Trinidadian mother would say:

His mother’s reaction was, ‘My child would never do such a thing.’”

You see the mother on the news. Child committed murder, child “dead” lying in the ground, “My son was a good boy”.

“His mother’s reaction was, ‘My child would never do such a thing,’ But he did, and it continued until one afternoon when Orion was followed off the school bus by a friend of the bully’s—a high school senior—who grabbed Orion by the throat with both hands. Fortunately, a passerby prevented what might have been an even worse incident. I’d had enough. I called the sheriff, who sent a deputy to address the issue.”

It became a criminal matter. The school was unable to do anything. You see, “boys will be boys”. The parent of the bully could not acknowledge that his child was breaking the law, and so the law had to intervene. There is a need for a Children Court. I am focusing only on the Children Court. Family Court is not of much concern to me this afternoon.

Let me continue again. I must say, Madam Presiding Officer, you must indulge me, today I will read. I do not normally read, but today I am going to read. There are many things here which need to be told. There is an untold story. I want to let everybody in this Senate know that if your child is going to a prestige school, do not think that your child is going to be exempt. I know of that which I speak.

“Orion is not alone. The statistics, in fact, are staggering. From 2009 surveys we find: More than seventy-five percent of our students are subjected to harassment by a bully or cyberbully.”

I am coming to cyberbullying. I raised the issue of cyberbullying when we were discussing the Bill on libel, and at that time I was assured that cyberbullying was going to come in the Cybercrime Bill, but I will not go on that just yet.

“More than seventy-five percent of our students are subjected to harassment by a bully or cyberbully and experience physical, psychological, and/or emotional abuse.”

Our law says that our children must be protected from physical, psychological and emotional abuse:

“More than twenty percent of our kids admit to being a bully...”

Here is the statistic: 75 of a sample of 100 children under 18; 75 of them, random sample, would say that they have been a victim of bullying; 20 per cent would say they have been the bullies. So it is 75/25, and you have 5 per cent—the 75 per cent who have been bullied go on to make adjustments, try to live as normally as they can. The 25 per cent, as I said, either go into the jails or they become white-collar criminals—because no one can do them anything—and there is a 5 per cent who sit on the sidelines. Do not think for a moment—and I will come to the 5 per cent—that the 5 per cent are not deeply affected emotionally by this phenomenon of child on child violence, which warrants this children’s court.

Again, Sen. Sturge made a valuable point. We need to identify clearly how we are going to rehabilitate children who are bullies—we need to get the code right—and how we are going to compensate the victims of the bully. You see, the law focuses on punishing the wrongdoer, but the victim of sexual abuse, the victim of incest and the victim of bullying, seem to be silent in all of this. So we need to look carefully at a profile of students that we have, three-quarters of them, 75 per cent, find that they are on the receiving end; 25 per cent inflicting the damage and 5 per cent on the sidelines. The 5 per cent on the sidelines, I imagine, experience the worst type of trauma.

The author continues:

“On a daily average, 160,000 children...”—on a daily average in the United States—“miss school because they fear they will be bullied if they attend classes.”

Madam Presiding Officer, 160,000 children miss school on a daily basis in the United States. We need to do the scientific work in Trinidad and Tobago. Those children, Sen. Sturge, that you saw fighting, it is only one group fighting. We do

not know how many of them were fighting and causing mayhem for other weaker children across the board. This is a national crisis. This is the pandemic. This is where we need really to get the institutions right, in the area of solving child on child violence:

“On a monthly average 282,000 students are physically attacked by a bully.”

These are chilling statistics.

Let me continue with what the author says again with respect to the statistics, as to why we need to address this issue in a meaningful way. It does take a village to raise a child, who embraces all people regardless of their differences, which means we must take action whenever we suspect bullying. Consider these statistics: every seven minutes a child is bullied on a school playground:

“Every seven minutes a child is bullied on a school playground,...”

The law does not mention bullying by title, but it certainly says that emotional, physical abuse is illegal. Now:

“Every seven minutes a child is bullied on a school playground, with more than eighty-five percent of those instances occurring without any intervention.”

So the children are off to fight for themselves; no one intervenes. Those acting in loco parentis are failing in their duties.

“Surveys from 2009 show that more than 100,000 children carry guns to school as a result of being bullied.”

When we hear about children in schools in Trinidad and Tobago carrying knives, carrying guns, being armed, we have to understand they are not deviant, they are not delinquent, they are in large measure protecting themselves, because the institutions we have so far have not focused on protecting the child. We have the laws, but we have not been enforcing the laws. This Children Court is where we need to go.

I applaud the legislation again, and I want to see it operational, and I want to see what Sen. Sturge has recommended, that we identify and clearly write down what are some of the things that are going to be punishable by what. I do not want children going to “big people court” and “big people jail”, but what I do want is to ensure that our five to 18 age group is made up of people who can live free of fear, as the adult population are also living free of fear.

It says that “100,000 children carry guns to school as a result of being

bullied”. An interesting statistic:

Forty-six percent of males...”—let us say half the males—“and twenty-six percent of females...”—quarter of the females—“admit to having been involved in physical fights as a result of being bullied.”

So bullying occurs, physical shoving, pushing, hitting, and kicking. Half of the boys who reported being bullied reported that they were physically assaulted. And a quarter of the girls—do not think that girls are exempt from this.

“More than eighty-five percent of our teenagers say that revenge as an aftermath of being bullied is the leading cause of school shootings and homicide.” So it leads to anger and revenge. Finally, Madam Presiding Officer, the most chilling statistic of all:

“A child commits suicide as a direct result of being bullied once every half hour, with 19,000 bullied children attempting to commit suicide over the course of one year.”

Well, it is once every half hour, so that in a day—check this: I myself was surprised, so I went to check US statistics on suicide, and it confirms. Once every half hour to an hour, 48 a day—48 a day multiplied by—that is the amount of children who are committing suicide.

Bullying is the kicking and the shoving, and the kicking and the fighting, that is it—half of the boys. But, you see, the emotional—when you read this book you find out every which way a person can be bullied. We are dealing with a child usually 10 to 17, during that critical period of time when your standing in the community is so important, that once you lose face, you are emotionally destroyed.

3.15 p.m.

You tell someone they are fat, they are thin, they are black, they are white, they are short—[*Interruption*]

Sen. Prescott SC: Emmanuel.

Sen. Dr. D. Mahabir: Emmanuel was just a bad boy. That boy, fortunately Emmanuel was a fella who did not select me alone to be bullied. He bullied everybody.

Hon. Senator: Equal opportunity.

Sen. Dr. D. Mahabir: Yeah, yeah. He was an equal opportunity bully. That was one in primary school, Madam Presiding Officer. It is no joking matter, you

know. This thing has become an epidemic. Despite the sobering stats, more than half of all bullying events are never reported at all. And we need to really focus on this particular type of crime. Let us focus a little bit—before I go on, exactly why bullying is such a serious phenomenon in the country. I identified 5 per cent of the people, in the hundreds, just stand by and they do nothing when they know bullying occurs. And I recalled, and I went back to check it.

We all know of the author, Stephen King. Stephen King is the world's most established author on horror. He wrote this book, *Madam Presiding Officer*, called "*It*", some of us have read it. This is what "*It*" is. If you are afraid of spiders and if spiders terrify you the most, the jumbie called "*It*" will manifest himself into a big, ugly, hairy spider, and just as you hit the pillow in the night he comes and he tickles your face and when you flick on the light you see the spider crawling all over you. "*It*" takes exactly the form that terrifies you the most. And let us see how Stephen King became such a good writer of horror.

In 1999 he reissued this book called *Carrie*. *Carrie* is his first novel. And it was published in 1974. First published, he was a struggling author, started to write, and he said:

"Before..."—this is his introduction. This is not fiction, you know—"...I had completed two pages..."

I am quoting from the introduction of Stephen King's *Carrie*, newly introduced by the author.

"Before I had completed two pages, ghosts of my own began to intrude; the ghosts of two girls, both dead, who eventually combined to become Carrie White. I will not call either by her true name here; they were unfortunates in life and do not deserve to be chewed over, even in such a humble introduction as this, in death. I will call one of them Tina White and the other Sandra Irving."

Let me focus on Tina.

"Tina went to Durham Elementary School with me..."

So it is school age, they were both 14.

"This was a bucolic four-room county school with perhaps sixty pupils in all. Tina was pudgy and quiet, so backroad you could cry. There is a goat in every class, the kid who is always left without a chair in musical chairs, the one who always winds up wearing the KICK ME HARD sign, the one who stands at the end of the pecking order. This was Tina."

This is the one who everybody makes fun of, right.

“Not because she was stupid (she wasn’t), and not because her family was peculiar (it was), but because she wore the same clothes to school every single day. I can still see that outfit; I don’t even need to close my eyes.”

She happened to be poor.

“After Christmas one year, Tina came in wearing an entirely new outfit. I can’t remember that one, only how happy she was to be wearing it. I think she might even have been wearing nylons. And I can clearly remember how her hopeful vivacity changed—first into surprise, then into anger, and finally into dull acceptance—as the teasing and the insults and the sarcastic comments rained down on her. Instead of abating, the kids’ rejection of Tina became even fiercer. I did not take part in this behavior, which can only be termed as hazing, but I didn’t speak against it. Hell, I was only fourteen years old. It’s hard to stand up when you’re fourteen.”

What became of Tina? Well:

“Tina committed suicide, hanging herself in her cellar.

These were the ghosts which kept trying to come between me and what I was writing...”

His novel, *Carrie* is based on:

“What could have happened if the world was as fair to young girls as it is hard. In short, they wanted me to write a novel.

I was frightened...both of the world of girls I would have to inhabit (it was a world I knew almost nothing about)...”

Girls have their own code of bullying. Those who do not know or those of us like me who went to an all-boy school who do not know, Madam Presiding Officer, there is a movie called *Mean Girls*. Buy that movie, rent that movie, you will see how nasty girls could be to each other at that age.

We hear a lot of talk in feminist movement about the nurturing instincts, you know, rubbish, “dottishness”, dishonesty. When you read about how girls can really be mean and horrible to other girls you understand why some of them are driven to suicide. We will come to cyberbullying. This is where cyberbullying takes its most effective meaningful way in destroying people. This will have to be charged in the court. We have to stop it, because it is leading to death, and there are some things here in the law that I will like to see changed, a few words, and

the Attorney General is amenable to change so I will see if I could persuade him.

“I was frightened...both of the world of girls I would have to inhabit (it was a world I knew almost nothing about), and the level of cruelty I would have to describe.”

This is Stephen King talking about the cruelty. He writes fiction but truth is stranger than fiction. This is what caused him to write horror. He has seen the cruelty to this Tina child.

“I was also frightened to revisit what I’d not had the wit or moral courage to stop...”

The book:

“...was published by Doubleday in 1974 and has remained in print ever since...”

Madam Presiding Officer: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes. [*Hon. G. Singh*]

Question put and agreed to.

Sen. Dr. D. Mahabir: Thank you very much, Madam Presiding Officer, thank you colleagues. I did not realize that time was going so quickly. I thought in the new Standing Orders we have less time, but we are still supposed to be on the old Standing Orders.

Sen. Al-Rawi: We will begin in September.

Sen. Dr. D. Mahabir: We will be getting new Standing Orders. Madam Presiding Officer, I will just conclude the Stephen King quote. He said the book *Carrie*:

“...was published by Doubleday in 1974 and has remained in print ever since. Sometimes—quite often, in fact—I wish that Tina and Sandy were alive to read it.

Or their daughters.”

The phenomenon of bullying cuts across gender. The phenomenon of bullying cuts across class. Bullying takes all form. What constitutes bullying? Any action perpetrated by he or she who has power to demean or belittle an individual so that the social status of the weaker individual is somehow removed or reduced. The bully is an individual who exercises his greatest power by embarrassing, by shaming, by smearing characters, by indicating in a number of ways that this person is different.

People are deemed to be different because of their height, because of their colour, because of their religion. The same book, “*Dear Bully*” speaks about the horrors Muslim children face in the United States in schools.

Madam Presiding Officer: Senator, just a minute. You have in fact 20 more minutes.

Sen. Dr. D. Mahabir: Thank you very much, Madam Presiding Officer, for granting me—I do not know if that is extra time based upon the fact that the talk is going so good. [Laughter] I thank you for granting me leeway. Let it not be said, that as a Member of my Bench you are giving concession to your colleagues, [Laughter] but the extra time is very much appreciated.

Sen. Al-Rawi: Correct.

Sen. Dr. D. Mahabir: Yes, the extra time, well the time is appreciated. Madam Presiding Officer, the phenomenon of bullying causes tremendous agony. It causes tremendous abuse. It goes unreported, like crimes of incest and sexual abuse. These particular actions which cause our teenagers so much emotional harm, boys and girls, are either unreported and it goes unpunished. You see two things, it is not reported, it is underreported. Your children will not tell you that they are being bullied. They are embarrassed to even report to their parents. If it is reported, the school administration, those acting in loco parentis, will not be able to discharge their functions. Parents are going to be non-compliant. You cannot report to parents. This will have to be a matter that will be dealt with by the police. It will have to be—and I really commend the Government for this Peer Resolution dispute mechanism, because what we are recognizing is this.

We are saying that the 20 per cent of the population of students, call children, who are engaged in acts of aggression, either physical or emotional are individuals who ought to be punished, because they must know what they are doing is wrong. And second, they must change their ways. You see if we do not correct this bullying tendency on the part of children who feel they have power, they tax little ones, if you cannot pay you are, of course, beaten. You are ashamed. In one of the stories, a famous author indicated that when she was 11 no one spoke to her because they said she had “lights”, l-i-g-h-t-s. She did not know, being brilliant was something to be shunned. And then she later realized she did not have “lights”, they said she had “lice”. She said the bullies could not even spell. [Laughter] She had “lice”, l-i-c-e. They said she had lights. One of them had bad breath, anything, and ethnicities. You could be of a different ethnic group, we will exclude you, we will say things about you.

And this particular technique, when used in the adult world is something the adults could handle. People are excluded all the time. They do not want you in their clubs, well fine, but unfortunately it was Sen. Baldeo-Chadeesingh who said, we are not dealing with young adults or old children, we are dealing with members of our species at the most vulnerable time in their life where they are finding their way. And they take their abuse and they keep it bottled up. It sometimes results in suicide, where they kill themselves or it results in mass vexation where they take a gun and shoot everybody else. When you see school killings in the United States, go back to the root of it. When you see somebody walk in there with a gun and he kills everybody, from “captain to cook”, ask whether this fella was not seriously, seriously bullied in his school, or the girl.

3.30 p.m.

So we now must confront the problem. The Ministry of National Security is confronting it. They are the leaders. All of us must recognize the gravity of the problem. It is something that we need to recognize and correct. And the question before us is this: in the acts of bullying, in an act of taking advantage of a weaker individual, which is what civil society does not, under any situation, tolerate—

[MADAM PRESIDENT *in the Chair*]

The law of the jungle says the strong can exploit the weak, but we in this Senate are morally obliged to look after those who cannot fight for themselves and to pass laws so that those who cannot fight for themselves, we will fight for them. We will use the apparatus of the State to ensure that there is redress in this particular area. And how do we do it? We ask ourselves: Is there any act of bullying which is minor? It is minor for the bully because he has a laugh, but these acts are major for the child who is bullied.

And so, I see the law talk about minor acts and so on. Tell me something. Is taking a Form 1 student and trying to take off his pants for fun—called “pants-ing” in my time—is that a minor act? You get four fellas from Form 4, Sen. Prescott—

Sen. Prescott SC: Small.

Sen. Dr. D. Mahabir: It is a small act for the fellas who have their pants on, but you see, for the little fella who they try to take off, that is a major act, and you could understand how that little fella would want to cause major harm at some time to the fellas who perpetrated that injustice.

So let me come to clause 39. It says:

“In any children matter in which a child who is a first time offender is charged with a minor offence and admits guilt, the Children Court may with the agreement of the child...”

Let me read this again, you know, because this does not sound right to me. Wait! Wait! Wait! And it appears on three separate occasions? Clause 39:

“In any children matter in which a child who is a first time offender is charged with a minor offence and admits guilt, the Children Court may, with the agreement of the child...”

It is their bully! “Please bully, kind bully, you know, will you go to this thing?” Let me go down to clause 40:

“Notwithstanding section 39, if the parents, guardians or person with responsibility for the child withholds consent to referral to court-annexed Peer Resolution but the child...”

Madam President, let us get this thing clear. Here we have someone who is engaging in an act that could drive a child to suicide and you are asking me to approve a Bill which says, “I am going to ask this little bully if, kindly, will you go to peer resolution counselling and guidance?” No! The priority is all wrong. I will not support these positions which say, with the agreement of the bully.

I am focused on the victim. Nowhere here are we focused on the victim. I would not mind if you say, “Victim, this bully has caused tremendous harm to you. He has made your life miserable. You missed school; you are in fear; you cannot write exams; you are contemplating suicide; you are suffering mental anguish. Do you have it in your heart that before we send this bully to jail, that we send him to peer resolution counselling?” And if the victim says, yes, I would say, fine. [*Desk thumping*] But do not ask me to approve a Bill which says I must ask a bully.

You see, this is where we get to the root of the problem. The priorities are wrong. These are the bullies. As I say, they grow up and if they are uneducated like Manuel, they end up like vagrants, or in the jail down in Port of Spain—Royal Jail. And if they are educated—and I have seen some of them—if they get PhDs in Economics and so on—I have supervised a few of them—they are going to become—and I know they were bullies. They are going to become white collar criminals, the kind that Sen. Small always says we need to punish. And because we have been calling them: “Dear bully”, and we have been treating them with kid gloves, they are going to pillage the country and get away with it, as in the Clico, HCU, the major AIG. They are the ones who will get bolder and bolder

because we are not looking at victims. We are not looking at what—and, again, Sen. Sturge made a valuable point. When we come to look at the law concerning young children and how we deal with the offenders, we will have to look at the victims as well, foremost in our minds. Hence your call for the psychologist.

We need to ensure that those who have been traumatized by child on child violence are going to be rehabilitated and compensated. I would like, certainly, to review further law to this when we come to implement, on how the bullies are going to compensate the victims whose lives they have made miserable. And I think since the law already mentions that there are people acting in loco parentis and parents and so on, I think that when there is child on child violence, restitution will have to be some fine paid by the parents or those acting on behalf of the parents, to compensate the victim for his trauma and for his distress.

Then, when we come now to punish and to rehabilitate, we need to do that. We need to get them early. And I do not want to see them in jail. They do not belong there. They need to do one thing, to understand that what they are doing cannot continue. We, in the Senate, would not tolerate. We, the lawmakers, will not put up with it. We remember what it was like as children when we could not fight on our own. Now it is our duty to fight for those who cannot fight for their own.

I recommend things such as the following: we will indicate to the bully, “Yes, you need to be guided and counselled to recognize—to show contrition—that what you are doing is wrong, but also you must understand ‘feel’; what it is like to be embarrassed. You must know what it is like not to have power; you must know what it is like to have power dumped on you.” And I think, you know, when we are looking at getting back compensation, not only are we compensating the victims, I would like to see every person charged with bullying, on a Saturday morning—there was a movie in 1984 called the *Breakfast Club*. I would like to see some Breakfast Clubs, and all charged with bullying should be given, what is called, toilet duties.

You see, the toilets in every single school—and we need the Ministry of Education—should be cleaned. And I want to address Sen. Stuart Young’s position on resources. You see, that is the kind of way we are going to punish, not via the penal systems that we have. Let us use the school systems. Crimes occur in schools. Let them be used to clean the toilets. On Monday morning, it should have a sign: “Toilets cleaned, courtesy the bullies.” Continue to bully. The cleaner toilets—

Sen. Vieira: Community service.

Sen. Dr. D. Mahabir: Sen. Vieira says, community service. The same school in which you are causing mayhem, paint it. And who will supervise? Retired teachers, retired police officers.

Sen. Prescott SC: Let the victim supervise too.

Sen. Dr. D. Mahabir: And let the victim supervise, according to Sen. Prescott. Let the victim come and supervise too. It would be nice, Madam President, to put all those bullies who are causing suicide in the United States and here, all of them who are excluding, making sure children feel as if they are nothing—my own position is this, if I had the power, and if I “doh” have the power, I will influence those who have the power. You see, this peer resolution is a brilliant insight. This is where we need to go, Attorney General.

We need the bullies to come with their peers and for their peers to assess what they must do: toilet duties in the morning; paint the school. In fact, the Minister of Finance and the Economy may have less release of funds for school maintenance. And if, in fact, we are dealing with an intractable bully, send him to the Mount Hope Hospital to clean bed pans on a Sunday—on a weekend. In that way, you see that kind of punishment? It will hit hard. It will tell the bully: “You know, bully, do not think you have power. You see, we, the country, we have more power than you. We know how to humiliate and we will shame you.”

The bully’s strength is that he can shame somebody. You see, if the statistics are correct, 75 per cent of us were bullied, you know. Twenty-five percent—in this House, no one bullied. There may have been some of us who stood by like Stephen King and who were torn up for the rest of our lives.

So peer resolution, Madam President, is where we need to go. You have injured your peer. But you know something? That is not a new form of justice. In Trinidad and Tobago in the days of old, there was a system where no one went to court to get justice. If your cow escaped its tether and ate a neighbour’s crop, or if you set fire to a neighbour’s cane field, or if you stole water from a neighbour’s rice paddy, you were taken before something known as the panchayat, the village panchayat, an old form of justice—you did not pay any lawyer—made up of five people and they would rule.

The panchayat would say, “Well, you know, you really should be more careful with your cows. Look at how much damage you did to the man’s corn and peas. We will punish you. You will have to do a number of things to retribute.” And if the fella says, “I will not do it”, what happens to the fella? Well, you know, at some time when his cane is burnt, nobody will help him cut it; when his

rice has to be reaped, he gets no help. He is ostracized. We are going back there where it is not only the courts of the land can give justice, the peers can do that.

Madam President, we absolutely need to recognize when we are dealing with children that the bullies know that they are dealing with a grey area. They know that they can perpetrate their actions, all of which are illegal, according to the laws of Trinidad and Tobago. You cannot cause emotional distress. When you engage in cyber bullying in front of that iPad or computer and you smear someone's character, for girls it is, you question their virtue. You say unkind things about them. In fact, cyber bullying would hurt girls much more because they are so self-conscious. And we will have to consider cyber bullying as part of the criminal law. You see, it is causing tremendous emotional abuse.

Once an act can be deemed to be an act of bullying—and I will tell you what is an act of bullying. The moment the victim says, “they taking advantage of me”; the moment the victim says, “they are harassing me. I am afraid to go to school. They are making my life miserable. I have low self-esteem. I am emotionally unbalanced.” You know, the act, however small—the bully never considers his act to be big. They would say, “I was just playing a joke”. It is a joke for the bully, Attorney General; it is not a joke for the little fella or the little girl; not for someone who is driven to suicide. This is where the law becomes so important.

And so, all I would say, as I support this law, Madam President, let us, as a nation, take a stand on absolutely zero tolerance on bullying. Let us hold our teachers, those acting in loco parentis, responsible for identifying. If they fail to report to the authorities, cases of bullying coming from the children in their class, then we need to have some punishments for that.

Parents of the bullies must be held liable. The bullies must be punished. We need to stamp this out. We need to support the police service. The police service is proactive. I know they have taken some heat. I myself would like to join them, go around school to school to say, “Look, people, we no longer can—school is a place to learn. School is a place to understand physics, algebra, chemistry and sociology. School is not a place to make life miserable for other people. School is not a place to create or to burn. No, no, no. A school is a place to learn, because if we do not get that, our society is imperilled, and this is a great jeopardy.

This particular law is a step in the right direction. I do hope that the concerns of my legal colleagues will be addressed and we get the institutions right. I hear talk of resources. I have not mentioned one word of resources, though that is my forte. We will have to find the money. So important, we have to find the money because, you see, when you are dealing with the future generation, we want to

ensure a more just and equitable society, a kind and gentle society. We want to say that what we see abroad does not happen here. We have a zero tolerance.

There was talk, Madam President, that there should be no corporal punishment in school. I do not know if the law was assented to or not. But what we said was that teachers cannot beat but, at the same time, children are beating other children. So the whip of the teacher is being replaced by the whip of the bully. We need to stop that—firm stop!

So I would urge the hon. Attorney General, as I close, to consider clause 39, clause 40 and clause 41, and wherever you see “the children caught may with the agreement of the child” strike it out; “the child agrees to the matter being so referred”, strike it out.

3.45 p.m.

We cannot give credibility to the bully and say nothing to the victim. Clause 41:

“Before seeking the agreement of the”—“hear nah man”, clause 41:

“Before seeking the agreement of the child”—this is a child and he says it is a minor thing. “I just, you know, smeared somebody character on the Internet and girl gone and she kill she self. I ain’t no she was going to kill she self, but it is a minor thing.” You are talking about minor laws. In bullying there is no law that is minor. I want any psychologist to tell me different. There is no law that is minor. There is no offence that is minor. In fact, before seeking the agreement of the child and the consent of the parents, what about the parents of the victim, what about the victim herself.

This is where now, having gone, Madam President, in the area of Peer Resolution looking to see how community service, looking to see how you can ensure restitution as adjudged by your peers, let us place more attention on the rights of the victim, and if we do that this law when it finally is implemented will go, I tell you, a long way towards ensuring that we in Trinidad and Tobago, we are aware—we have not forgotten although we are now geriatric people. We remember what it was like to fend for ourselves when we were under 18, and we are saying to the next generation, we want to ensure that you do not experience the kind of harrowing trauma that former generations have experienced, and if we do that they will be kind to us when we become immobile and helpless.

I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Newallo.

The Minister of the People and Social Development (Sen. The Hon. Christine Newallo-Hosein): Madam President, thank you for this opportunity to contribute in this august House. I want to start by stating quite clearly that we are not a reactive Government, but a very proactive one. The Bill before us, the Family and Children Division, 2015, is designed to bridge the gap between the family and children where there can be a concentration of the necessary support services.

As the Minister of the People and Social Development, I have a great interest in this Bill. Maybe it is because my Ministry's motto is helping, empowering, transforming lives. And as our programmes and services of the people are designed to do, they are designed one, to help citizens cope with the economic and social challenges of a daily living in holistic manner, so as to positively contribute to the development of society, as well as to empower clients through rehabilitative and skills enhancement programmes which enable them to play an active role in transforming their own lives and that of their families and communities.

Madam President, you may have realized that I said in the first one that is to help citizens cope with the economic and social challenges, and you may ask why do we have social challenges. Well I just want to go back to a paper, if you may allow me to read, it is from the Unit for Social Problem Analysis and Policy, USPAP, which was launched by the Department of Behavioural Sciences in September 2006, and it says:

“It was found that there is a poverty complex involving low levels of material resources, parents’ flirting with illicit drugs, parental neglect, and physical, verbal and sexual abuse of children in the home, resulting in strong, negative, emotional responses from children, which gave rise to a hidden school curriculum. In these circumstances, and in the context of an increasingly robust market economy, youth violence becomes rampant.”

And I want to highlight here the “hidden school curriculum”.

Madam President, in the mid-70s a significant change was made to our education system. Under the former administration there was the introduction of junior and senior secondary schools. The emphasis was placed on buildings and structures, as opposed to the quality of education provided. This created a vacuum in the home for where parents and children left the home together and returned together, the child was now at home alone because of a shift system and television became the parent without parental supervision. Many factors eventually led to

the breakdown in family life, in values, in morals, and when the hon. Sen. Prescott said, when he was reading the Bill, he did not see a structure and a function and that the foundation was lacking, I asked myself, maybe that is the family he was speaking about and not the Bill because they are so closely related.

There is a serious disconnect in the family today which is globally described as a dysfunctional family, and it is as a result of this breakdown that there are so many social issues that affect our nation, and studies show family structure being an indicator of social class, and I quote from the same USPAP:

“Judith Martin (1997) found that the family structure of the student was an indicator of social class in that students from nuclear family backgrounds were more likely to be also in the higher income groups, where single parent families were poorer. She found that JSS students”—which is the Junior Sec—“were more likely to be from single parent households.”

Then you have Dr. Deosaran (2007) stating:

“...also noted that 75% of the students in the JSS were from poor and single parent backgrounds and that the JSS accumulates children of poor parentage and experiences. Thompson-Ahye (1999) observed an increased involvement of children in crime, both as perpetrators and victims, while Deosaran noted that JSS students committed crimes of violence as against property crimes, the latter with higher rates among the non-poor. He also noted that there were such widespread concern with youth violence that governments were adopting new social policies to address this problem.”

He states that “governments” and he was referring to Governments worldwide, and I want to say that this Government joins with the rest of the Governments around the world in addressing this problem and is being very proactive.

But you know what, Madam President, regrettably 40-odd years later, under the former administration, there is still the emphasis on buildings, however that is not the case under the astute leadership of our Prime Minister Kamla Persad-Bissessar [*Desk thumping*] who in her first Cabinet brought a Note for the Children’s Life Fund. Why? Because children are so dear to her and to us by extension. In addition, she also established the Children’s Authority. Why? Because there is a need for it. We have recognized that there is a need for the children to have a different treatment in terms of a type of support services that was lacking in the past, hence the reason for this Bill. In addition, there has been much focus on the curriculum in our schools.

Madam President, this Government, therefore, must be applauded for the many firm decisions and the initiatives that have been taken with regard to children and family, such as being done with this Bill. I could not help but resonate with some of the things that both Senators Prescott and Mahabir had spoken about earlier. During my earlier years, when I was attending UWI, I did my paper on crime and youth for some strange reason. Actually I wanted to do it on the adults, but I did not get permission to go into the jails and instead I did it on the youth. I visited both St. Michael's and St. Jude's, and interestingly enough I was appalled at the condition of both—well, St. Jude's was by far better run, but St. Michael's, the appearance, everything else, I was in total horror at how it was, and I said to myself if any day I was able to make a difference I would do it. Madam President, I thank God that today I can be a part of this Bill that will make a difference. [*Desk thumping*]

When I was there I had prepared a questionnaire as part of the paper, and Sen. Prescott brought everything so clearly back to me when he spoke about parents losing control of a child, maybe it was because of a lack of experience, or finances, or et cetera, and he is so right. Parents have lost control and the last question on that questionnaire dealt with that. It asked the child specifically: if you could have done something differently what would it have been? And he said this—and it was not so much for him. The young man, I asked him what it is he was there for and he indicated that he had violated his rules at home. And I said to him, “Well, what did your mother do?” He said, “My mother told me I better be back home by nine o'clock. If not, she will lock me out.” I said, “What did you do?” He said, “I came home ten o'clock.” I said, “What did she do?” He said, “She threatened and she said if I come home again at ten o'clock she would lock me out.” So I said, “What did you do?” He said, “I came home at eleven o'clock.” It is not funny because I asked him, I said, “Why did you do it?” He said, “Because I wanted to see if she would follow through on her threat.” And I said, “If she had done it what would you have thought?” And he said, “If she had done it I would have known she meant it and she loved me.” And I was totally taken aback by that.

It helped me with my parenting, Madam President, I could tell you that, because when I give an instruction it is carried out. And as such, I know that Sen. Mahabir was speaking about legislation and speaking about what is in the Bill and how it protects, and I thought to myself, you know, if there was ever a handbook printed for parenting—I am not talking about the fluffy stuff. I am talking about real stuff—I would want to read parenting first, friendship after because so many times parents think that if they were a friend to the child that maybe it would have

a better impact. Today, I have known many parents who have taken that approach and have regretted it. So I hope that in the legislation that we have today, and in their peer counselling, and in the sessions that will follow, that someone will tell parents or teach parents how to be parents.

Madam President, I take great pride in being a part of this Government and the reason being is that there are a number of issues that have been left before that are being addressed now. Earlier, I had mentioned that it was in the early 70s or mid-70s that we had the change in the education system that brought about a lot of social distress, and you are looking at 40-plus years.

Forty-plus years of social issues trying to be fixed in five years and that is impossible. It is impossible for anybody to expect that. But you know what? We are addressing it. I know that they are speaking about finances, I know Sen. Young had indicated we have no money, recall—"we cyah pay for ship, we cyah pay for this, we cyah pay for the other". But you know what? It first takes political will which this Government has demonstrated. [*Desk thumping*]

4.00 p.m.

Our Prime Minister, Madam President, has made clear directions for us. The bullying was addressed, Sen. Mahabir, and a committee was, in fact, formed to present a paper on this matter. If I can recall and it is from the *Trinidad Express* newspaper, Dr. Tim Gopeesingh who was, in fact, the chair—I was a member of that committee—and which the issue of bullying and other disruptive behaviours had been highlighted through videos and, of course, Dr. Gopeesingh had addressed. He said this:

"I want to take this opportunity to indicate to the student population that very serious measures, disciplinary measures, will be taken against these students..."—He further "...appealed to parents and guardians to help the Education Ministry in the quest to rid schools of bullying."

It is a serious situation.

But in addition to that, we have where consultation has taken place. Prime Minister had gone throughout the country on a national consultation discourse with various stakeholders, and all of this to come about to provide what avenues should the Government take to go forward. Not that we lack ideas, not that we lack a vision, but there must be buy-in from the stakeholders in order for us to move forward as a society. So it is not mere words on our behalf, it is a very proactive role.

I want to say that the family breakdown is as a result of what we have with street dwellers. When you look at the street dwellers, it is a serious problem.

People look and they wonder why. But if you go back and you look into the homes, you will see that there are serious issues at home which we need to address. Because we could remove the street dwellers off the street, that is one, but we must find the root cause and also solve those problems.

It is so important, this Bill, that I do agree with Dr. Mahabir, that we do not just deal with that issue there, it goes right back. And it is because of this very reason that our Prime Minister, in her budget debate last year, initiated the baby grant and, Madam President, I cannot tell you, it was disheartening to say the least when the Opposition Leader felt that this was more of a—well, according to him, Government had overpriced the programme and was using it in its election campaign. And this is no election campaign, this is dealing with the root problem and trying to find a way from young, how can we build a society that is caring, that is functional, that the social ills will be eradicated. And all of this, Madam President, is the initiative of this Government, from cradle to elderly.

As Dr. Mahabir said, interestingly enough, very soon we will be celebrating world elderly abuse and the ad came to me to sign off on, not to vet, and I read it because I do not sign anything before reading, and when I read it, it ended with protect our elders, they protected us, and I said how assuming is that. Why would you do something like that? Who came up with that? I said, you know why? It is perceived that we should take care of our elders because they protected us.

But when you are in a society where there is so much abuse—not just in Trinidad and Tobago, you know, but worldwide, globally—the person coming up does not consider that you protected us. And so I said change it to reflect something that we want to come to and that is to honour, to respect, because Sen. Mahabir made mention of it. When he spoke of, you know, “we”, we were young, “we reaching that age” and we should look back, because we have to care for those because we will want to be cared for, and that is a thought of a reasonable, logical person which he is. But some persons in society are not like that and we come here to put legislation in place to ensure that those who do not know it, will, in fact, be taught it.

And so, Madam President, I just want to give my colleague in the Lower House, Mr. De Coteau, MP, my fullest support for this Bill. I know today, it is being brought by the AG, but it is really from the Ministry of Gender, Youth and Child Development. So I want to thank my colleagues for agreeing and sitting and going through this Bill, and considering that at the end of the day, we have a responsibility to the citizens of this country, to ensure the well-being of every citizen of Trinidad and Tobago. And I want to commend the other side and thank

them for their support. I know that when we come to committee stage, we will work out whatever it is because that is the type of Government we are. We listen, we serve and we respect.

With that, Madam President, I want to conclude by saying that I believe the intent of this Bill will allow for us to maintain our social conscience in society and that we are headed for, by far, better days. I thank you. [*Desk thumping*]

Sen. Avinash Singh: Thank you, Madam President, for this opportunity to join this debate at this point in time to contribute to the Family and Children Division Bill, 2015. But before I start, I would like to personally commend and congratulate the hon. Minister in her contribution because I do not know if this is her maiden contribution—

Hon. Senators: No.

Sen. A. Singh:—or not. But this is certainly the first time I have been in the Senate in presence and having heard her contribution. So I would like to personally congratulate her in her discourse. [*Desk thumping*] Very, very well done and certainly better than I would have done in my first and few contributions in terms of quality but not certainly content. [*Laughter*]

Madam President, before I get into the few concerns of my contribution, I would like to respond to some of the statements made by the speakers that went before me. Let me start by commenting on some of the statements made by the hon. Attorney General. In fact, for the record and for the correction that is, the hon. Attorney General indicated that this present Government constructed the Couva children's hospital, and it is the only one of its kind that never existed before and it is only now available.

But looking back at the Wendy Fitzwilliam Paediatric Hospital, I do not know if that facility is invisible to those on the opposite side, because when you look at the functions and duties that the Wendy Fitzwilliam Paediatric Hospital offers, it is similar to those being offered by this new children's hospital that is being constructed in Couva, and that is laudable. We support any and all mechanisms [*Desk thumping*] and facilities and structures in place.

But he also indicated that—in fact, he boasted about the 90,000 laptops given. Only last week, I was walking through the villages of Caroni Central, Carlsen Field to be exact, and we call this community “The Base” for those of you who know, and these children, there are so many people there that have received those laptops with no electricity. Absolutely none. You know, they have to go by their

neighbours to charge these laptops and so on. So yes, it is good to give laptops but you all could give some electricity too to serve these laptops in areas like this.

I would now turn to some of the comments made by hon. Minister Newallo-Hosein in her contribution and she said under the hon. Prime Minister, Kamla Persad-Bissessar, they are not placing emphasis on buildings. This is a direct contradiction to the boast by the hon. Attorney General that they constructed the Couva children's hospital. I mean, that is a building at present. So if they are not placing emphasis on buildings, then what is that when you drive down the highway? It is a bit confusing to the listening public where the UNC policy is really concerned. [*Desk thumping*]

She also spoke to the political will, but I am telling you, Madam President, it must take political will to pay "ah guy" by the name of Adolphus Daniell \$34 million for absolutely nothing. [*Desk thumping*] It must take political will to pay \$6.8 million to take out "ah firetruck". [*Desk thumping*] It must take political will to pay \$6.6 million to fix "ah three-metre sink hole" in the Beetham. [*Desk thumping*] And I am no expert in that area but moving on, I will try to identify because all these speakers before me would have mentioned the strain of resources in the Judiciary and the judicial system.

But if you were to calculate \$6.6 million, Madam President, that is 6,000 metres of concrete, that is 750 truckloads of concrete to fill "ah three-metre sink hole". Think about it. But I will not delve in too much of that, I will get into the contribution—[*Crosstalk*] I know, the truth offends. But that is the political will that this Government is banking on. That is their track record. But let us not get into that, let me concentrate in terms of the Bill itself.

4.15 p.m.

Madam President, the intention of this Bill is really, in my opinion, to make the judicial process efficient and effective. It somewhat would speed up the litigation processes involving the backbone of any society and that is the family and our children.

When one looks at the Preamble, when you go through the Preamble, it is evident and it is clear that we have problems in our society that would lead to legislation of this nature and that is not confined to just Trinidad and Tobago. This is confined to almost every single country in the world.

Let me try to raise some examples here. Madam President, my opinion is that the court should always be the last resort for any matter. When you look at the Preamble here:

“And whereas the Family Court pilot project heard family matters including matters in which a parent or guardian sought the order of the court to have his child deemed beyond control:”

What does that tell you; to have your child deemed beyond control? Two paragraphs down, the resolution of family problems.

Now, this pilot project was started in 2004, and it resulted in information and data that we could use here now to guide us in shaping this Bill in the direction that we would like it to go. Before all of that, I would stick a pin here and pause for a cause and let us look at this legislation prior to these problems here, what causes the problems in society that would lead to expensive litigation and time-consuming processes that are associated with litigation.

Madam President, before we even go to the court, in fact, families and society, in my opinion, should be guided, in terms of their moral, their social, their psychological, spiritual, physical, ethical and economic ramifications that lead to problems in families. If we take into consideration these attributes I have just mentioned and take it into context and put it to use, as a nation we must take charge of this breakdown of the family, because these are some of the agenda items that cause families to break away, that cause families—when you identify the family matter under the interpretation you would see them there: dissolution of marriages, judicial separation, maintenance, guardianship, wardship, access custody, care matter, adoption.

And the list goes on. But we need to, as a country, as a Parliament, concentrate specifically on the upbringing of a family-type society, where counselling, family planning and sexual education, we need to target the minds of persons at the right time, at the home. We need to target parenting, early childhood centres, pre-schools, primary schools, and so on. We need to have that level of education at these facilities. We need to have that readily available education and knowledge so that we would not have to turn to the courts and deem your child beyond control.

So we need to have proper policies, proper programmes and proper institutional arrangements to prevent even going to the court because we are here to spend a lot of money, millions I presume, to put the infrastructural work in place, to do this separation and have the Family Court separate. We have to have the Children Court separate and then the whole employment of personnel, judicial, administrative; all these personnel, it costs a lot of money. This same money, Madam President, could also be channelled through the education system

and have that level of understanding, so that persons would know the right way to bring about a family and not resort to all these problems, separation, and so on.

Madam President, another issue I would like to identify, with respect to the Bill is in relation to the administration and staff of the Family Court, clause 19, and it deals with the oath of secrecy. It is also repeated in the administration and staff of the Children's Court, clause 35 oath of secrecy.

Madam President, I raise these two clauses to identify and I would just read into the record Schedule 2, the oath. It says:

"I, (A.B.), do swear by

(solemnly affirm) that I will not, without due authority in that behalf, in any manner whatsoever, publish or communicate any facts or information being facts or expressions of opinion based on such facts that came to my knowledge by reason of such employment."

These two clauses deal with the oath of secrecy and I would really like to know—I stand to be corrected, because nowhere in this Bill I see a provision for the penalty or breach in this particular clause. I raise this in the context of recent allegations of official judicial documents being found in public/private chambers and persons in public premises, and so on. But I raise this in context because if we really want to have that level of secrecy, in terms of information and documentation, somewhere in this Bill there must be a provision if you breach this clause. As I said, I stand to be corrected. So, perhaps, when the Attorney General is wrapping up, he could probably identify it because I know in the Integrity in Public Life Act there is the clause and the provision of \$250,000 for breaches, and so on.

Then in the Civil Service Act, there is also a clause and ramification for breaches in the oath of secrecy that deals with the civil service. With respect to this Bill, I would really want to see it install that provision so people will know that the information, the data, the documentation and all the evidence that goes towards dealing with family issues and issues relating to children be identified clearly so that we do not have repeats in public where persons can claim or allege that information from High Court or whatever court is found in the possession of persons other than the authority.

Madam President, generally, this Bill would introduce additional employment of judicial, administrative professional, and support staff and my concern is similar to that after of all the hon. Senators who spoke before, as well as the hon. Chief Justice.

I would like to refer to an article dated September 18, 2014. This article in the *Trinidad and Tobago Guardian* identified the statements made by the hon. Chief Justice in the opening of the new Law Term. I will not go too much in depth. I would just like to raise two issues out of the article. Because in that article, he is quoted as saying:

“...you might be wondering how the Judiciary has managed to accomplish anything at all if key positions remained unfilled because the pay is so unattractive. The truth is that we still operate far below our potential because progress and innovation is being stifled by the fact that, historically, we are consistently under-resourced.”

These are the words of none other than the hon. Chief Justice in the opening of the law term just a few months ago.

When you flash back to now present day, we are here to try to implement a good piece of legislation with good ramification, with good intention and principles. But how is it we are really going to implement this piece of legislation when our current facilities and institutions are starved of resources? [*Desk thumping*] The headline is:

Judiciary starved of funding, Chief Justice

Madam President, I would also like to indicate another issue, another point I would like to raise. He goes on to say under the heading:

“Our Fair Share

...To put it into stark perspective, just looking at overall capital expenditure on our Development Programme, we requested \$237million for fiscal 2015, we are being granted just over 1/6 of that sum, \$42million, which is roughly 1/6 of 1 % of the \$8.2 billion set aside nationally on the Development Programme in the national budget.”

Now put that into context. This is the Judiciary you are talking about here. These are the people, these are the institutions that are there to facilitate law and order, to facilitate litigation, to facilitate legal aid and all these sorts of things and they are starved of resources in the past.

He goes on to say:

“United Nations guidelines on best practice suggest that 3 % to 4 % of the national budget should be spent on developing and maintaining the judiciary

to a sufficient standard. On the recurrent side, our figure of \$401 million is a little more than ½ of 1 % of the total.

Right now we have shortlisted judges for recruitment but we can't take them on board because we have nowhere to put them."

This is in context with the buildings part of it.

"Between 2010 and 2015 the country would have spent something in the order of \$300 billion and we have not gotten any of the judicial complexes off the ground."

These are not the words of Sen. Avinash Singh. These are the words of the hon. Chief Justice identifying to this population where we are as a nation, what has taken place from 2010 to 2015 under the UNC Government—not a blade of grass cut, no foundation block laid, absolutely nothing, with respect to a facility to house legal institutions to carry this Bill forward.

We have heard the hon. Attorney General mentioned today, we expect it sometime in 2016. The quick question there, it leaves you to wonder, you could not do it in five years but you can do it in one. I would like to hear how and what financial arrangements we have in place to fund that.

Madam President, in moving forward, in fact, I forgot to mention one statement my good friend, Sen. Sturge, mentioned in his contribution. He indicated that the Judiciary is receiving adequate funding year after year. I think, honestly, unfortunate as it is, I do not think he was referring to Trinidad and Tobago. You just heard me speak to some of the information brought to light by the Chief Justice about our present legal system. [*Desk thumping*] So it leaves you to wonder. As I said, we here in the Opposition are here to support, as we have done in the past, some 95 per cent of legislation brought to the table.

It is unfortunate that the Government would go out and beat their chests and say they have brought good legislation and that they did it on their own, and all these things. They have absolutely no respect when they make statements like that, to the Independent Bench, as well as the Opposition Bench because, night after night, we are here and you are here chairing the committee stages, chairing this honourable Senate, trying to fix, word for word in some cases, the clauses brought by this Government, in terms of legislation.

As I have said, I intended to be very short but I am here to support this legislation. I just tried to identify a few of the items not mentioned previously, in terms of this Bill getting off the ground. So this Bill will see support from us. But

as I said, we have reservations, in terms of the ability of this Government to implement and the real benefit of this legislation is the stake of those in office right now.

In 2016, we look forward to good things happening, good changes taking place. In fact, the legislation that is brought before this august Chamber that is here today really identifies and moves this development forward with our children. Having been one of the younger Senators in this august Chamber, it has definitely been a privilege for me to comment and issue my own personal remarks, in terms of how this Bill is going to affect the young people, the children, our parents and our family at the end of the day. So, with those few words, Madam President, I thank you for the opportunity.

Madam President: Hon. Senators, it is 4.31 p.m. We will take the tea break and resume at 5.01 p.m. The sitting is now suspended until 5.01 p.m.

4.31 p.m.: *Sitting suspended.*

5.01 p.m.: *Sitting resumed.*

Sen. Anthony Vieira: [*Desk thumping*] Thank you, Madam President. I am pleased to support this forward looking, enlightened and innovative legislation. [*Desk thumping*] As you will hear, it is long overdue. This is legislation treating with the establishment of a special court and jurisdictions. So, by necessity, it involves the input of lawyers, and an understanding of the norms and practices that would obtain in that particular type of court and jurisdiction.

Family law used to be looked down upon by some practitioners at the civil and criminal bar, almost like a stepbrother in the profession. It was too touchy-feely for most of the hardened civil gladiators and the criminal gladiators, too many emotions to handle. And yet, trying to practise family disputes in the civil court and in the criminal courts, are not a good fit. Those jurisdictions often did not readily accommodate the nuanced approach, which is necessary and appropriate.

I remember going in the juvenile court recently, I was prosecuting a juvenile, but I did not want a criminal conviction against him. I basically wanted an order where he would be asked to keep the peace, and behave himself, but the court is a creature of the Magistracy, and its options were very limited. In the end, rather than have a conviction recorded against a young offender, we decided to take another course; the same thing.

I remember years ago practising—doing divorces under the Civil Proceedings Rules, and it was awkward, clumsy, did not really fit the circumstances where you had families in crisis. So, I think this is a very good thing in terms of meeting and addressing the needs of contemporary society.

In any event, I think it is now recognized by most of us that family law is a substantive area of practice in its own right. It comprises the entire range of statutes, regulations and precedents that govern the relationship between spouses and between parents and children. It covers matrimonial law, divorce, separation, annulment, matters pertaining to children, custody, access, maintenance, paternity, abuse, neglect, adoption, cohabitation—the rights of those who are in common-law relationships; domestic violence of all types, property rights, the adjustment orders and civil relief, financial claims, succession and inheritance, the rights of parties to inherit on the death of a spouse or a parent, a child or other relative. These are all weighty, complex, important matters that affect all of us. It is a vast and complex field of law, touching all of us and I think deserving of its own division.

Now, as I said, prior to the pilot project, family disputes were handled in the same court environment as regular civil and criminal matters, and the atmosphere was certainly not conducive to navigating through the raft of emotions. In fact, the adversarial system often encouraged combativeness and aggression, not helpful at all in resolving family disputes or dealing with sensitive issues. So when this pilot project was launched in 2004, it came as a breath of fresh air and it was really a pleasure, I have to say, operating in that early Family Court system.

It was the precursor to the new rules. We were having scheduled hearings in that jurisdictions, whereas in the civil courts it was still like a marketplace lining up and waiting for your case to come up for hearing. It was really wonderful to be able to sit informally around the table with the judge on the same level, and everybody allowed to participate and talk most civilly. These were really innovative, wonderful things that were happening for practitioners.

If I may, let me read from the Saturday, May 15th, 2004 *Guardian*, page 23, an:

“Address by Chief Justice Satnarine Sharma at the inauguration of the Family Court at Nipdec House, Port of Spain, on May 12”

I quote this because it puts it in context. He said:

“I am honoured to address you at the launch of this pilot of the Family Court. The inauguration of this court is a significant milestone in our jurisprudence,

for it establishes a unique institution in our legal system.

In terms of our jurisprudence, this may be said to be our finest hour, for this court signals a radical departure from the way we have practised law and administered justice that was left to us as part of our colonial inheritance.”

Lower down he says;

“The Family Court was conceived out of the urgent need to begin our ascent to civility which carries with it a sense of collective responsibility, rather than a pointing of fingers and the attributing of blame. It represents a coming together rather than a dividing of ourselves in the interest of our own preservation.

It marks the beginning of the end to the exploiting of our fragile human relationships for individual gain.

What was demanded here was a bold and imaginative approach to a situation about which we are all seriously concerned—the disintegration of family life. While the law of itself cannot give sacredness to life, it must be in practical human contact with, and of service to, the national community especially at this time.

The Family Court will now apply the overriding objective—”

—and I will speak about the overriding objective in due course, because it is an important compass guidepost.

“The Family Court will now apply the overriding objective of dealing with family matters justly and in a way which gives first and paramount consideration to the welfare of children (if any).

This unique legal institution is designed to deal with the individual as a member of a living, dynamic unit, which is what the family is. The approach to be adopted would be conciliatory rather than adversarial. The new”—Family Proceedings Rules—“and their implementation in a more holistic environment should ensure that matters are resolved and hopefully this will help to ease the societal fallout generated by litigation.

The judges and magistrates who are to preside in this court, have undergone special training conducted by a distinguished and highly experienced Family Court judge.

I have no doubt that the Family Court, even in this period of gestation, will accomplish its purpose. Upon birth it will be an enduring monument to the

commitment of this judiciary to its people. The age of administering law without sensitivity and without regard to the impact it has on our families is coming to an end.

Our noble objective is to restore the family to pre-eminence in our judicial and legal system. With the success of this project, which heralds our coming of age, we will have undergone a paradigm shift in our legal and judicial thinking.

The judiciary and the Executive arms of state have shown that they can come together in this joint venture in the interest of our people, mindful of the fact that our nation's greatest resource is its people and that the responsibility of law in society is to give the individual a sense of the value of human life and his dignified place within the framework of our nation's development."

That was May 2004.

So this Bill that we have before us today, comes in the wake of, many years' experience. That pilot project being continuously monitored by the Family Court Committee, and what are the objects of the Family Court? What are the objects of—well, before I go to the objects, let me give a little bit of the history, because it is interesting. I have a "Family Court Fact Sheet" that was put out in 2004. And it gave a little bit of the background to the Family Court:

"Discussions on the setting up of a family court in Trinidad and Tobago date back to 1979.

As far back as 1986 a Bill, which sought to establish a Family Court, was drafted and published for public comment. In 1997 the government promised that a Family Court would be established within a year. Another Bill was drafted in 1999, but lapsed. The focus now is on the creation of a sympathetic environment for resolving family disputes in the way that the Pilot Project contemplates.

In 2002 the then Attorney General appointed a Family Court Committee mandated to:

- (i) Identify measures to enhance the jurisdiction of the family courts in Trinidad and Tobago; and
- (ii) To design a family court system for Trinidad and Tobago

The Committee found the Draft Family Court Bill inappropriate and recommended the current two-year Family Court Pilot Project with a Monitoring Committee."

So it goes back to 1979, and there has been several attempts to get this up and going. And what were the court's powers? Well, the court is going to have expanded powers—oh, the purposes of the court. So the purpose of the Family Court was:

- To give parties access to social services that could help them resolve problems.
- To provide an atmosphere that is less stressful to all parties.
- To offer mediation at any stage of the proceeding - and even before it begins.
- To give the parties an opportunity to come to a solution that works for them.
- To enhance the functioning of the present family jurisdiction of the Courts.
- To enable families to access the justice system more readily and more speedily.
- To promote the best interests of children.
- To facilitate the appropriate and prompt determination of family issues.”

These are very important purposes, and they really inform this legislation which is before us, because it gives a court with expanded powers and a variety of available remedies, things like mediation, peer review, rehabilitation. The court will have critical support through the Children's Authority, through the Rights of the Child Convention, and practitioners are guided by the overriding objective.

5.15 p.m.

The overriding objective in the Family Proceedings Rules, this says:

- “(1) The overriding objective...is to enable the court to deal with family matters—
- (a) justly; and
 - (b) in a way which, in proceedings affecting any child of the family, gives first and paramount consideration to the welfare of that child.
- (2) Dealing justly with the case includes—
- (a) ensuring so far as is practicable, that the parties are on an equal footing and are not prejudiced by their financial position; and

- (b) encouraging settlement of any disputes by negotiation or mediation or other means; and
- (c) saving expense; and
- (d) dealing with cases in ways which are proportionate
 - (i) to the complexity of the issues; and
 - (ii) to the financial position of each party; and
- (e) ensuring that it is dealt with expeditiously; and
- (f) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases..."

These are remarkable, helpful and very forward-looking objectives in terms of courts meeting the needs of its customers and moving our society forward. It really took a long time, I think, for practitioners to start buying in to the overriding objective, because for far too long the role of the lawyer was to win, and to win meant for the other side to lose, and a lot of injustice was created in the previous system.

This is not really my area of general practice but, from time to time, I do get pulled into the Family Court either because a particular client insists that I act for him or her or because there is a special area of law that they want me to address. But one of the things I am beginning to recognize more and more is that the Family Court is becoming a specialized area of practise. It is becoming less and less an arena where you can just go in there and try to dabble. I think it is one of our more interesting courts. On that note, I would also like to suggest to the hon. Attorney General, there are a number of practitioners in that court who are highly deserving of silk [*Desk thumping*] but we do not award silk in that jurisdiction for some reason.

So, this is a culmination of a journey that started since the 1970s and that court is forward looking because it seeks to be customer friendly, client friendly. As I said, the procedures changed to make it more accessible, but even the courtroom design—the colours in the court, having a playroom in the court, having special rooms for children with toys and things to occupy them when their parents are engaged in litigation, all very revolutionary, yet all very pragmatic and helpful. They do not even talk about litigants in the court, you are customers of the court.

So, I see this as a very important division in its own right. It is interesting to note that we are talking about two sub-divisions: the Family Court Division, which will deal with all the things I described earlier: matrimonial, ancillary relief, succession; and then a Children Division, and the Children Division treats with all matters pertaining to children: child offenders, children care matters, any matter in which a child is required to appear in the court. Now, the Children Court, that special sub-division, will comprise judges, masters and magistrates, all able to hear and determine the matters involving children across the entire legal spectrum.

There was some question about the jurisdictions; well, within the Family Court Division, you now have all the ranks. You have matters that are summary offences being dealt with by trained magistrates or masters. The court can appoint a guardian ad litem to represent and safeguard the voice of the child. A very important step. How often have we had situations where a child may be in need of an operation, for example, but the parents subscribe to a particular faith or belief which would not allow for blood transfusions, things like that, sometimes the child is at odds with his parents. This court will allow for that child to have independent, separate representation.

The court is supported with a wide array of services, intake service. So when you come to the Family Court, if you do not have a lawyer you could see an intake lawyer, and he would guide you to the appropriate place to go. There are children services; there is probation service; mediation service and family counselling services. These are wonderful things and, again, putting the focus on families.

So, what we have before us here today is we are moving from this very successful pilot project which applied only to the magisterial district of St. George West and the High Court jurisdiction of Port of Spain to a truly nationwide Family Court, an institution unlike any other in Trinidad and Tobago.

I heard talk about consultation and whether there was consultation. My understanding is that this legislation could not have been presented without the active support of the Judiciary. This is about a court. My understanding is that the Judiciary and members of the Judiciary like Justice Gregory Smith, Justice Joseph Tam and others have all been very instrumental in the drafting of this legislation, also Senior Counsel Stephanie Daly—somebody mentioned her earlier—and other members of the Family Court Committee. This pilot project, as I said, was inaugurated since 2004 and has been monitored continuously since. We have had the family proceedings rules and practice direction since 1998. I am aware that

over the years we have had several training sessions with the rules and seminars. Most recently, there was a seminar on peer resolution. The problem is that they have these seminars at the Convocation Hall in the Hall of Justice but they are very poorly attended.

We were hearing about bullies today. I attended that peer resolution seminar and, again, very innovative and we are being assisted by some of the top people in the area. Peer resolution, let me assure Sen. Mahabir, factors in the views of the victims. It is problem solving by youth with youth. It is about peers making peace. It is regarded as being at the cutting edge of conflict resolution today and Trinidad and Tobago is going to be at the vanguard. [*Desk thumping*] What we are going to be teaching our children with peer resolution is, we are teaching them conflict management skills on how to resolve their own problems, their own conflicts and it has proven very effective in treating with bullying and gossiping.

What is the philosophy of the court? The philosophy of the court, it:

“...is designed to provide a welcoming environment that offers efficient, competent and complete determination of family issues with special emphasis on the needs of children.”

It is a new approach to assist families in crisis and to provide them with:

“...support as they seek solutions to conflict and in some cases, chaos.

The philosophy of the...Court is ‘to encourage the parties to resolve their family disputes themselves, with specialist assistance and support where ever necessary’. It is the intent of the Court to administer justice in family matters in a manner that is less adversarial and more conciliatory. The purpose is to provide families with support while they seek solutions...The focus is placed on finding solutions rather than on conflict.”

And I quote from a walk through the Family Court of Trinidad and Tobago, which was put out when the pilot project was also launched.

Family law is a changing and dynamic field, and in the 21st Century families face challenges that they have never faced before. We have higher divorce rates, almost as high as marriage. We have cohabitational relationships becoming the norm; we have both parents working as a norm; we have children that are getting “forced ripe”. So this legislation recognizes all of these changing situations and is flexible enough and malleable enough to adjust and adapt as necessary.

This legislation recognizes the devastating impact that family breakdown can have on individuals and on children in particular. It is not about winning, it is

about solving; it is about restoring and it is about healing. This legislation offers an enlightened and compassionate approach towards the relationships of dysfunctional families and helping families to resolve their problems. It offers the use of innovative processes, peer resolution, mediation and the like. It provides a sophisticated framework which would enable our society to better deal with family disputes.

On this point, I would like to recognize all the dedication, hard work and effort that has been put in over these years by the family committee and by the Judiciary in bringing us to where we are today. [*Desk thumping*]

So, Madam President, in conclusion, I would just like to say this is inspired and enlightened legislation based not on theory but on positive experience emanating out of the pilot family law project. In a time of accelerated change and uncertainty, we are bringing legislation that can offer stability and genuine support and assistance. I believe this law would have profound and wide-ranging emotional, social and economic benefits in asserting the family's place in our social order. It will promote the resolution of family disputes in a comprehensive, expeditious and less confrontational way. It is in keeping with the movement towards family courts internationally, and it is long overdue. Madam President, I thank you. [*Desk thumping*]

Sen. Faris Al-Rawi: Thank you, Madam President and thank you to my learned colleagues all. Madam President, it gives me great pleasure to rise to join in contribution to this particular debate before us. Madam President, we are exactly two weeks away from the end of the life of the Tenth Parliament of the Republic of Trinidad and Tobago. We are in the Fifth Session and it is, perhaps, quite fitting that we as a Senate now sit to discuss laws of Trinidad and Tobago which I think have their origin in a joint enterprise.

Suffice it to say, it is a matter of public record that the pilot project, which is the Family Court, began on May 17, 2004 and was born out of the whole consideration of the reformation of justice and access to justice, as my learned colleague, Sen. Vieira, has just reflected upon—the whole move by Lord Woolf in terms of getting to where we want to; accessing justice and making it palatable for those who are the users of the system so that justice has some sense of meaning and not only abstraction.

5.30 p.m.

The Family Court, Madam President, is one which I have had quite an amount of practice in. I beg to differ with my colleague, Sen. Sturge; I do not think that

there are too many lawyers, not just because I practise in law, and I do not think that lawyers are there to profit on the misery of people. That is for people that practise in only one area of the law. I have been very fortunate, as some of my colleagues are, to practise in multiple areas of the law. Indeed, the corporate commercial environment, the contract side of law, the happy side of law, the creative side of law, as I call it, is very, very interesting, and, I dare say, that legislative drafting and sitting as we do now as a Legislature is perhaps the greatest gift that I certainly, personally, have had in the last five years as a legislator. I wish to thank my honourable political leader, Dr. Rowley and the PNM, for providing me with the opportunity to not only have on my record the practice of law but also the making of law. [*Desk thumping*]

I say that, Madam President, because I genuinely take this job very seriously, as do we all, I am sure. I think as Senators it is not lost upon us that we have a privilege of legislative making, and, therefore, there is an extra duty upon us to be prepared, to make sure that we are representing the interest of those whom we serve, and to make sure that we get it right. After all, even though this Bill requires only a simple majority, Madam President, the fact is it must still pass constitutional muster. It must still be proportionate and democratic in a society such as Trinidad and Tobago which has value for laws. That proportionality is one which we must consider in a number of ways. First of all, there is the legislative aim that we consider. I think it an absolute agreed common purpose that we all agreed that the legislative aim in this Bill before us today is an excellent one, and one which we all support.

Secondly, we must look to the manner in which the laws that we draft intrude upon the people that we put it onto. Whether it is a simple majority or special majority, the fact is that it must be balanced and proportionate in terms of the mixing of rights. The other thing that we do is to make sure that we do not go so far as beyond what is necessary, and, again, I am drawing this example even though it is most usually used in three-fifths majority legislation examples, I am drawing it in a simple majority context. I wish to say, our Parliament has had some serious experience. This Tenth Republican Parliament, Madam President, is one where I have learnt to say on the record everything that is required to be said, lest it comes back to haunt you, and it haunts you not only in whether you have had adequate consideration to reflect upon the laws but also whether you have made sure to put onto the record all the material that users who ask for interpretation of legislation are going to need.

This is not the first time that we in this Tenth Republican Parliament have come together to try to adjust critical elements of the Judiciary and the judicial

system. The Judiciary is the third arm of the State which articulates together with the Executive and the Legislature, which articulates with the Judiciary and the Legislature, and which must function in an independent fashion to serve the purpose of guarding the rule of law and democracy which we so cherish as a nation. As a Parliament we have tried at the hands of this Government, in particular, to make a major adjustment to the criminal justice system. Madam President, it is noteworthy that this Bill is one which articulates, firstly, with the Constitution of the Republic of Trinidad and Tobago; secondly, with the Supreme Court of Judicature Act, Chap. 4:01; thirdly, with the Summary Courts Act, Chap. 4:20; fourthly, with the Petty Civil Courts Act, Chap. 4:21, and then, Madam President, excluding three in number with a total of 30 other pieces of laws of the Republic of Trinidad and Tobago, which are all in fact set out in Schedule I to the Bill.

This is a cog in the system, and, much like the criminal justice system, we have heard this Government come before and tell us that there has been wide consultation, that the legislative aim is good, that we are required to do this, that international lenders have told us that we must do this, that international experts have dealt with it, and we had that experience, in particular, in dealing with the Administration of Justice (Indictable Proceedings) Bill, 2011. That is what I call the first Bill.

We then dealt with it in the repeal of a certain part of that Bill, the infamous section 34, which was brought to life by way of a proclamation on August 31, 2012. And we dealt with Act No. 15 of 2012, which was to amend the Administration of Justice (Indictable Proceedings) Act, 2011—that was number two. Number three was when we came and we dealt with the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2012, where we amended the 2011 Bill to deal with the shortcomings that we had pointed out as a Parliament.

The third version was when we dealt with the Indictable Offences (Committal Proceedings) Bill, 2014, when the then Attorney General came and said, “Hold on, this thing which we told you we had all this consultation on, the need to have Masters of the Court, the need to have buildings of the court, all of that was wrong, and instead we should have a system of committal proceedings where we use Clerks of the Peace, et cetera”. So, as a Parliament we have learnt our lesson. You may be guided by international lenders, you may have expert consultants, but as a Parliament we have got to get it right.

Permit me for a moment to explain, in a more expanded version, what Sen. Young started, and that is this: I have personally checked with several members

who sit on the Law Association of Trinidad and Tobago and I can certify, as a member of the Law Association of Trinidad and Tobago, that there has been no consultation of the membership of the Law Association on this Bill. I can certify that everyone is aware that there is a good legislative aim to be looked at in respect of, one, the Family Court adjustment and vesting that; and, two, what was once called the Juvenile Court system now called the Children Court. Everyone is aware of that, but we have not seen as a Law Association, despite what anybody else says, the Law Association membership has not had an email or a consultation session on the text of this law, and that is a fact.

Now, are we aware that very excellent persons have had a hand in drafting this law? Yes. Are we aware that Mr. Justice of Appeal Smith, that Mr. Justice Tam, the patriarch of the Family Court himself, that Master Morris-Alleyne, herself, engaged in excellent work—has done excellent work? Yes. Are we aware that a family monitoring committee has had some investigation into this? Yes. Have we seen the text of the law prior to one week ago? No. So, notwithstanding the fact that the Legislature is being invited to accept the fact that the Judiciary has, for all intent and purpose, paraphrasing, drafted this law, we must still do our job as a Legislature, and as lawmakers.

Madam President, when I look at that, I see that there are some issues to be had inside of the Bill. There are architectural issues of law, there are conceptual issues of law, and then there is the nitty-gritty ironing out which we would like to lend support to, and which we intend, certainly in the committee stage, to give our very best effort at addressing the issues so that we can arrive at some degree of consensus in making good law, Madam President.

But permit me, Madam President, to set for the record the context within which we are making this law, and it is to be had by way of an appreciation of the report of the Judiciary into its affairs, which was put out by the Chief Justice. The library—this is the court library—has it listed as a publication of the Supreme Court of Judicature, and it is for the last financial year of it.

Madam President, it is important to note that what we are dealing with here is the system which we are pouring this into. Now, I want to say that we are very blessed to have a Judiciary that is being pioneered in the right direction because it is statistics driven. I want to say that the Chief Justice's report into the public domain tells us how many cases, what type, what caseload, what disposition rates look like inside of the court. It tells us what the financial arrangements look like, but the report also tells us, Madam President, when we are looking at it, that we are dealing with 13 senior magistrates, 42 magistrates; a total of 55. We are

dealing with a Judiciary comprised in the Supreme Court, the High Court, and the Court of Appeal, being two courts that operate as the Supreme Court; the Magistracy operating as the subsidiary court to that.

Madam President, what we do know is that we only have three Masters of Court and we have 12 Clerks of the Peace, 12 Assistant Clerks of the Peace in the Magistrates' Court, we have 55 magistrates, we have a limited number of judges sitting, 36 puisne judges sitting in accordance with section 5(1) of the Supreme Court of Judicature Act, and 13 Justices of Appeal, including the Chief Justice, sitting in the Court of Appeal, pursuant to section 6(1) of the Supreme Court of Judicature Act. So, we are dealing with very limited resources.

And what this Bill suggests, Madam President, is that, if we accept the words of the hon. Attorney General, in 2016, we are going to see the outfitting of buildings which would be populated by bodies. And so, Madam President, it is critical for me to ask very seriously of the hon. Attorney General that he put on *Hansard* today what the markers for proclamation of this Bill will involve, how many courts, how many Masters, what time frame, so that we as a nation can hold this Government to account as it relates to proclamation, and I do not say so idly.

I say so, Madam President, because—let me identify an elephant in the room: the Bill conceptually deals with the Family Court and the Children Court as subdivisions of the courts. The Bill has never been seen by the profession at large. We are now 14 days from the end of the life of this Parliament before it automatically dissolves at midnight when it becomes June 17. So why are we here? We are here, it is reputed, because international lenders under the United Nations programme, and as funded by the United States of America, are insistent that they must see results for us to hold on to loans. That is the story that has been given to me.

Is it true, hon. Attorney General? Is it that this is the case and, therefore, we are doing something to achieve international lending? If so, will the proclamation of this Bill be staggered so as to allow the Bill to catch up in obvious areas of deficit? And I will come to those in detail in just a moment—because, Madam President, we must be careful not to be looking a gift horse in the mouth and saying, no. Obviously, international lending is very valuable and much appreciated, and we must accept when we are being given assistance, because the Judiciary is on record as having said, through the hon. Chief Justice of Trinidad and Tobago, that our state of affairs is in a very difficult way.

Sen. Avinash Singh put on record an exact contradiction to that put forward by Sen. Sturge. Sen. Sturge said that there was no issue of funding in the

Judiciary, and the fact is that is just not correct. The Chief Justice of the Republic of Trinidad and Tobago has specifically put forward for the people of Trinidad and Tobago an understanding that we are far from in a financial healthy position, and he says, for instance, in his address to the nation on the opening of law term 2014/2015 on September 16, 2014, he says, under the heading, “Challenges”:

“If you have been listening attentively, you might be wondering how the judiciary has managed to accomplish anything at all if key positions remain unfilled because the pay is so unattractive. The truth is that we are still operating far below our potential because progress and innovation is being stifled by the fact that, historically, we are consistently under-resourced.”

5.45 p.m.

Madam President, the Chief Justice then goes on to deal with the dilemma and the fight for budgetary allocations. He goes on to speak to the Constitution establishing the Supreme Court to uphold the rule of law, and that:

“The availability and effective operation of the Courts is the unspoken assumption on which the provisions of our Constitution and laws are predicated,...Adequate funding, as well as the flexibility to manage these funds effectively and efficiently therefore seems to be a logical extension of the Judiciary’s mandate.”

The hon. Chief Justice says:

“It would be...ironic and tragic if capacity building took place in our stakeholder agencies without concurrent and commensurate advances in the Judiciary.”

He goes on to talk about “the Development and Implementation of a Facilities Master Plan” was stymied. He talks about a 50 per cent cut in the Judiciary’s allocation. He talks about being in a catch-22 position. He talks about how the effective execution of the “mandate and mission without real control of plant and human resources or finances” is nearly an impossibility. And he says, as Sen. A. Singh quoted, that we need our fair share.

So, Madam President, while we are looking at a gift horse in the mouth, and being conscious of this, we must now balance the demands, the rules, the signposts of international lending agencies by what is appropriate. My first question inside of this is: Where we are spending according to the Judiciary report, the vast majority of our money in the financial allocation expenditure

cycle of the Judiciary, where we are doing that, how can we possibly survive, where 96 per cent almost of it is lost inside of pure expenditure? How does the country survive that?

We are looking now to the Government needing to explain to us if it is ready, if there has been such wide consultation. If everything was right because of the Government's say-so on the basis of who told it so, how come the Judiciary report points out to us that the Judiciary of Trinidad and Tobago spent by way of implementation on the Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011, now repealed—the famous section 34 Act—by way of requests, why did we spend several million dollars, nearly \$4 million, on rolling out that programme? Why did that programme come crashing and burning to a screeching halt?

How do we look at this Bill's proposal to take magistrates, to take registrars of existing courts, registrars of the High Court, magistrates sitting in the Summary Courts, to take clerks of the peace sitting in those courts, and migrate them up into the system, when the Chief Justice is on record as saying the human resource is incapable of meeting its quota, because the salaries are unattractive, because we cannot hold the content? How does the Government tell us that 2016 will be an achievable marker, when the Ministry of Justice has spent several billion dollars, by way of expenditure, and not one judicial complex has been built?

How does the Government look us straight in the face and tell us, "We are doing everything. We are supporting everything. It takes political will to correct 40 years of previous management"? Sen. Newallo-Hosein is reminded that she should not forget that the NAR was in power, or that the UNC was in power, and that 15 years of our cycle in the last 25 years were occupied by those who now sit in Government, and that our cyclical nature has seen in the last five years, the Ministry of Justice alone has spent—not looking at supplementary budgets, looking only at basic appropriations year to year, \$3 billion, \$50 million, \$698,621; Ministry of Legal Affairs, \$773 million-odd; Attorney General's Office, without supplementary appropriations for both Legal Affairs and AG's Office, has spent \$1.39 billion. The Judiciary, as an entire third arm of the State, upon which our whole architecture of governance is pivoted, has spent \$2 billion-odd, where 95 per cent is on recurrent expenditure. How, pray tell, are we going to get to the judicial complexes and to the bodies to occupy those complexes, in a stand-alone system where this Bill tells us that we must have separate courts to function the two subdivisions that we are creating?

Madam President, when you look to the preamble of this Bill alone, it is very clear in stating that the Children Act, No. 20 of 2012, that that requires—it is at page 3 of the Bill:

“And whereas section 81 of the...Children Act No. 12 of 2012 has provided that a Juvenile Court—”—now to mean Children Court—

“(a) when hearing charges against children; or

(b) when hearing applications...”—et cetera—

“shall sit—

(i) in a different building;

(ii) in a different room;

(iii) on different days; or

(iii) at different times,...”

This Bill proposes by way of architecture, that we have two entirely different systems, and I have checked the laws of Trinidad and Tobago. I have looked at the Supreme Court of Judicature Act, Chap. 4:01; I have looked at the Summary Courts Act, Chap. 4:20 and I have looked at the Petty Civil Courts Act, Chap. 4:21. None of them adopt this form of architecture. We are legislating into law an organizational chart of the Judiciary, and I wonder why.

When we created the Supreme Court of Judicature Act in 1962, and we set it up the way we did, with original jurisdiction in the civil courts, with the Appellate Court supervising both the Magistracy and the High Court and now, by way of a later piece of legislation, to deal with the Industrial Court, also appeals from the Industrial Court, when we set that up, we then went on to deal with the Summary Courts Act and Petty Civil Courts Act. But nowhere in there have we sought to legislate, by way of primary legislation, the organizational chart of the Judiciary.

Therefore, when we come in later years to decide, well hold on, these provisions which deal with the executive people that run both court subdivisions, the Family and Children Division Court and the staff that has to deal with that, the administration under Part III of the Family Court, the Deputy Registrar, Marshals, the Court Administration in clauses 7 and 8; when we then flip over to the other limb which we are dealing with, administration of staff for the Family Court, why on earth would we want as a Parliament to legislate a current organizational chart

of the Judiciary? And then when we decide to change it, come back and say, “Well hold on, let us go back and amend the whole Act to change that”.

Are we dealing with framework legislation yes or no? If we are, it can be desiccated. It can be driven down to bare tacks. It can be dealt with for instance—I do not know why, we are not dealing with this by an amendment to the Supreme Court of Judicature Act? Why is that not being done? We are amending sections 5 and 6 of the Supreme Court of Judicature Act, but why are we adopting two different standards?

So we say in section 5 or section 6 of the Supreme Court of Judicature Act that you may have a certain maximum number of judges, but in the same Supreme Court of Judicature Act, which this Bill treats, we say you can have a minimum of two Masters, but we do not state a maximum. Why are we putting a maximum for the judges in the subdivision? Does it make sense to do that? Why not put a minimum standard, as we have in section 65B of the Supreme Court of Judicature Act? Let us look at it, section 65A and 65B of the Supreme Court of Judicature Act. Look at this, 65A:

“There shall be attached to the High Court not less than two Masters who shall respectively exercise such authority and jurisdiction of a Judge in Chambers as may from time to time be assigned to a Master by Rules of Court.”

There is no maximum number. Why are we contemplating in this Bill, causing an amendment as we do, to put a maximum number?

When we realize we have run out of Masters, what are we going to do, move the Parliament to appoint more? When we realize that the number of puisne judges under the Supreme Court of Judicature Act is insufficient, are we going to move Parliament to hire more? When the Chief Justice realizes, in the beautiful expression used by Sen. Prescott SC—I want to remember it, “super-optimistic challenge” was the expression he put forward—when the super-optimistic challenge comes about and we realize—*[Interruption]* “super-optimistic execution challenge”, even better yet, thank you, learned Senior—when that becomes a reality, how does the Chief Justice now realize, “Well hold on, I have just legislated my entire organizational chart, which was good in 2014, but Oh shucks, it does not work in 2022”. Why put it in the law? It is not in the Supreme Court of Judicature Act. It is not in the Summary Courts Act. It is not in the Petty Civil Courts Act. Why? Because the law is always speaking.

The Chief Justice should have the prerogative and discretion to manage the Judiciary, under section 99 of the Constitution, where the Supreme Court is dealt

with, where the courts of Trinidad and Tobago are born constitutionally. Let us give the Chief Justice the discretion and flexibility to do what he must. I do not think it is sensible to put it this way. I do not want to be pejorative to those who I must go before and practise law. I am saying, most respectfully, that I do not think that this fit is right and I say so only from the perspective of a legislator at work. I agree the legislative aim is good, but the Bill, if I deal with it architecturally, why am I treating the sections to deal with the Family Court different from the sections that deal with the Children Court.

I want to deal with an anomaly of language, which is rather irksome. I want to point out, when we look to what has been proclaimed in the laws of Trinidad and Tobago: we proclaimed the Children Act. We proclaimed the Children Act, which was a Bill, it is now Act No. 12 of 2012. We have not proclaimed all of it. In particular we have not proclaimed the rehabilitation centre clauses, but we have also proclaimed the Children's Authority Act. We have proclaimed the Adoption of Children Act. We have proclaimed the Children's Community Residences, Foster Homes and Nurseries Act, not fully either. Why are we using "Children Court, Children's Authority, Children Court again, versus Children's Residences? Let us have some conformity in the language as well. It is a little bit bothersome when we get down to the definition sections as well.

But architecturally, in terms of legislative purpose, why are we duplicating sections of the Bill? Let us look at clauses 26 and 27 versus clauses 16 and 17 of the Bill. Do we really want to repeat the Oath of Secrecy requirements twice? It is one piece of law where we are creating the Family Court and the Children Court—I would prefer to call it Children's Court with an apostrophe "s"—why are we duplicating 26 and 27, as against 16 and 17 of the Act, where we deal with the Oath of Secrecy and other aspects? Why are we duplicating clause 33 versus clause 14 of the Bill, where the language for the power of Masters is dealt with in similar tones to section 65B of the Supreme Court of Judicature Act?

Would it not be much more appropriate for us to introduce that later down in the Bill—I think it is around clause 38 of the Bill—where we can take that, what I call the "duplication point marker"? We could strip out some of the earlier duplications in the Bill and deal with the powers of Masters and other officers of the court and employees of the court.

Madam President, if we are not going to have framework legislation, and we are going to go prescriptively into the people who are organizational chart employees, why are we then not doing the usual thing of dealing with transfer of employees, pension requirements, superannuation pension requirements,

secondment of services, tenure? Were the trade unions consulted in relation to this? This law does not have the usual hallmarks associated, when you identify who the persons to populate offices are, when we now seek to legislate an organizational structure as we do now in this Bill. It falls short of the mark, most respectfully. Certainly another duplication point can be seen between clause 25 and clause 43. Why are we treating with appeals in two different sections?

6.00 p.m.

There is merit in Sen. Young's position that the appeals to be considered by way of how we use the language in the Judicial Review Act is of more useful purpose than putting in the leave to appeal to Privy Council step requirement because it is costly. And contrary to Sen. Sturge, I have never heard of judicial review being a subset of the criminal law. [*Laughter*] Where he got that from, God alone knows. Really. So I do not know who he is trying to correct in the Parliament today, but it certainly cannot be anybody else in this Chamber that practises in the areas of law across the board in Trinidad and Tobago, most respectfully.

Madam President, how about the harmonization in clause 5(3) and (4) of the Bill? Let us look at clause 5(3) and (4). Clause 5(3) and (4) of the Bill talks about—clause 5 of the Bill deals with sittings of the Family Court and Children Court and matters in progress. Clause 5(3):

“Sittings of the Children Court shall be held at such locations and at such times as the Chief Justice, in consultation with a Children Court Judge, may appoint, in accordance with the Supreme Court of Judicature Act and the Children Act.

(4) Notwithstanding subsection (3) and subject to any written law or any rules made hereunder, the Children Court may, when required and appropriate, sit at any time, and may conduct hearings by telephone...”

But, Madam President, should we not also have it subject to rules made hereunder in the other subclause, subclause (3)? Let us look at subclause (5), which is the Magisterial District of St. George West.

“Without prejudice to the foregoing, upon commencement of this Act the jurisdiction in family matters previously exercised in Courts of Summary Jurisdiction, save the Magisterial District of St George West, shall continue to be exercised in these Courts until the Chief Justice directs otherwise.”

I understand that from the perspective of the Family Court only, but, Madam

President, that is not what we are doing now. St. George West in this formulation, if this Bill is made law, takes all of the magisterial criminal work which deals with any child, including committal proceedings, preliminary enquiries, all of those go now to the Family Court. So putting in the St. George West exception is not thought out fully, most respectfully, Madam President. There is a bomb waiting to explode in that clause.

Madam President, let us look at the Magisterial Throughput, just a caution on what we are doing. The Magisterial Throughput for 2013/2014: 125, 166 new matters. For 2012, 2011, 2010, 2009, 2008: 130,000, 116,000, 104,000, 89,000, 90,000, so we have risen from 90,000 in 2008 and we have gone up in 2013/2014 to 125,000, but what is the disposition rate? We are barely scratching a two-thirds disposition rate. One-third of it goes to the year following, and how pray tell are 12 magisterial districts with the limited number of magistrates that we have going to achieve this purpose when we do not have the buildings and we do not have the body human power to populate those buildings? We will want the Attorney General to give us an undertaking on the record as to what is required to be put in place prior to proclamation. But clause 5 of the Bill has a serious problem in it.

Madam President, let us look to the limitations on Masters and the jurisdiction in family matters, clause 4 of the Bill, 4(2) and 4(3). That, Madam President, when compared with the Supreme Court of Judicature Acts, section 65A, there seems to be an incongruity in the very language used between the two sections of two competing pieces of law. Let us look to clause 6 of the Bill, the Deputy Registrar, the Assistant Registrar.

Madam President, when we look at clause 6(1) of the Bill:

“There shall be assigned to the Family and Children Division—

(a) a complement of up to three Deputy Registrars...”

Why would I want to put a de maximis limit? Why would I not want to do like section 65A of the Supreme Court of Judicature Act and put a de minimis? So when I realized that I needed more registrars I did not have to bother to move Parliament to get them. Clause 6(1)(a) and (b), up to ten Assistant Registrars. Why prescribe the maximum limit? Why? Ten is going to be insufficient when that volume continues year-on-year, and the backlog—Madam President, we are going to have to deal with a backlog issue in Trinidad and Tobago at some point. Be it by way of one strike, two strike or three strike and you are out. That is why the preliminary enquiries famous section 34 Bill saw light, subject to certain undertakings given and breached by the Government.

Let us look now, again, clauses 7 and 8. Why legislate the court administrative staff? Compare that with the Summary Courts Act and the Petty Civil Courts Act.

Let us look, Madam President, to clause 14 of the Bill. The language used for the powers of Masters and compare that against 65B of the Supreme Court of Judicature Act; again, an incongruity. How about clause 15? In clause 15 of the Bill, do we need to broaden the language to include the Children Act orders? Here we are dealing only with:

“...maintenance...under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act...”

Again, the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, splitting it between the jurisdictions of the High Court and the summary court. But, Madam President, I know that the Children Act contemplates pecuniary orders that ought to be included in clause 15.

Madam President, let us look at clauses 16, 17 and 18. Clause 16, again if you are going to put administrative and staff requirements in the Bill, where are the concomitant regulations—or not regulations—rules in the primary legislation to treat with pensions, secondment, superannuation, transfer out of service. Where are they? And when we give these kinds of trust arrangements, identification of posts, where is the usual qualification requirement? What happens if these positions change over time? Are we going to move Parliament to amend these clauses, Madam President? Clause 14 which has a similar brother in clause 33 of the Bill. Forgive me for saying sections when I mean clause.

Madam President, let us look to clause 20. Clause 20:

“In any family matter before the Family Court, the Family Proceedings Rules, 1998 and all other”—capital—“Rules of”—capital—“Court shall apply.”

Where is that defined? What are “Rules of Court”? I know what they ought to mean. It is not in the definition section and it does not appear under the power to make rules of court. It must be a defined term, Madam President.

Madam President, clause 21. This language is a little bit odd and I wondered whether we could find a better phrase—“oh”, by the way, I would wish to point out to the drafters under 21, you have 21 subclauses (1), (2), (3), (2), (3) and (5). You need to do the renumbering appropriately and to get that right. Including whether there ought to be a penalty or breach inside of subclause (5), and do we want to broaden the language of what is labelled as subclause (2) but should be subclause (4)? Do you want to include the reasons of the judge as well for redaction inside of that clause?

Clause 22. When we look to the phraseology here:

“...to represent and safeguard the voice of a child...”

Compare that, Madam President, to section 88(5) of the Children Act. The Children Act in section 88(5) said to secure:

“...the interest of the child...”

Perhaps, we could lean towards a consistency of language between the legislation that we used in 2012 and the one which we are now using in 2015. I am not quite sure that the voice of the child is in keeping with where we ought to be.

Madam President, I also wonder, at the tail end of 22(1) when we talk about:

“...or any other relevant legislation.”

Did we want to speak to any other law as opposed to legislation? Because there is a difference between the two.

Madam President, let us look to clause 23. Should we be adding “Legal Aid”? The Children’s Authority to this.

“In any family matter the Court may, where necessary, adjourn the matter for an application to be made under the Legal Aid and Advice Act.”

But do we want to have a possibility to adjourn for an application under the Children Act. Because the Children Act is broader than the persons who may appear to have direct interest in the child situation. It involves other parties and even NGOs to operate there.

Madam President, let us look to clause 24.

“Where in proceedings before any other court, the Court”—look at the two words, court vs court—“is of the view that the elements of the matter make it desirable that the matter should be dealt with by the Family Court, it may transfer...”

If this implies that parties may make an application to the court to so consider, well then that would be good, or do we want to add the fact that the parties themselves may make an application for the transfer of the matter? Because when you look at the committal proceedings that we now have assented to but not yet proclaimed, to replace preliminary enquiries, we wonder whether there is going to be collision in the operationality of the committal proceedings legislation vs this.

Madam President, again, clauses 25 and 43, I humbly suggest that Sen. Young has some merit in the proposition that we ought to look to the language of the

judicial review legislation so that we have an appeal as of right to the Privy Council as opposed to with leave of the court. As and until we were to change our position it would certainly lend for some simplicity in the approach.

Madam President, again, clauses 26 and 27 versus 16 and 17. There is, dare I say, a duplication of resources. I wonder if we could not look at this and try to harmonize clauses 26 and 27 with clauses 16 and 17 of the Bill.

Clause 30, I think, has some linguistic challenge. Clause 30, again, we are using this term in the first paragraph:

“...shall have all the powers of a Magistrate in children matters as those conferred under the Summary Courts Act and any other legislation including the power—”

Do we want to say, “or any other law”? Do we want to allow for the common law and judicial prescription to equally bite as well as legislate to prescription, Madam President?

Let us look next, Madam President, to clause 32. Again, we are looking here at whether there is a definitional issue in the use of common “j” for judge, and common “r” for rules, and if you compare the language—[*Interruption*]

Madam President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes. [*Hon. D. Maharaj*]

Question put and agreed to.

Sen. F. Al-Rawi: [*Desk thumping*] Thank you, Madam President. Madam President, I know that this kind of law is a little thick and that practitioners tend to bring out the thickness. So it is not a very exciting law, but it is necessary to reflect upon it the way we do now. Thank you to my learned colleague, Sen. Maharaj, for moving my extension and to my colleagues for agreeing.

Madam President, I am looking now at clause 32, I think that is the clause I just mentioned. When you compare that with the language of clause 11 of the Bill I think that there is some difficulty in how the language is used there. Clause 33, again, compare that with clause 14 of the Bill. The language with respect to the powers of masters, there appears to be a duplication, could we not have harmonized all of this in one section which deals with powers and harmony, as opposed to treating with them separately in the two streams that they now appear?

Madam President, when we look to 33(3), in particular. Clause 33(3) is different from clause 14. So clause 14 deals with the family matters; 33 deals with the children's matters. Family matters are civil essentially if I may use that expression and the children's matters deal with things which can be criminal in nature.

6.15 p.m.

So 33(3)(c) is an exception. It is not the same in terms of harmony with clause 14.

“In any hearing of a charge against a child charged with the criminal offence, the child shall be represented by an attorney-at-law.”

Again, how does this match with the Committal Proceedings Bill, which is now the Committal Proceedings Act which we have passed? That is something that we must look at. The Legal Aid and Advice Act prescribes that we must have child advocates. The Children Act also provides that. The Children Act says that you can ask for the children's advocate to be appointed by way of an application, but when we deal with the children who come in charge matters before the courts, they “shall” be appointed. This law does not go so far. It says—in fact, not in this section but in another section it deals with the fact that you “may” make an application. It is either we are going to insist that children have the benefit of child advocates always present, not only in circumstances where they are giving a statement as the Committal Proceedings Act contemplates, but also as a matter of right.

You see, we are dealing with under 18. We are dealing with a non-reformation of the Dangerous Drugs Act. We are dealing with the fact that possession of marijuana is an offence in this country and that the Remand Yard is overpopulated with drug offences of a small quantity possession nature. We are dealing with a situation where the Chief Justice of Trinidad and Tobago is on record as saying, time to talk about decriminalizing marijuana. So we need to ensure that our children are protected on a consistent standard basis, Madam President, and I am saying that it should always be that the child is afforded with a child advocate.

Madam President, let us look now to clause 36 versus clause 21 of the Bill. Thirty-six again appears to be a duplication of clause 21. And, again, in clause 37, we see the use of the word “voice” of a child as opposed to the language which we use in section 88(5) of the Children Act which speaks to securing the best interest of the child. Again, we have the collision with the

Committal Proceedings Act. Look here, Madam President, at clause 37(2). If I could ask hon. Senators to look at 37(2) at page 20, and look to after subclause (c):

“the Children’s Authority, the Police or the Duty Counsel may apply to the Court to have a Children’s Attorney appointed for the child..”

Are we satisfied that “may” is appropriate? Is it that the child, when dealing with protection of children, should be afforded the benefit of an attorney so appointed as a matter of law all the time? Because we are dealing with the age of discretion. We heard Sen. Sturge speak with Trinidad having a very low age of discretion for non-sexual offences, but we are dealing now with a higher standard. The entire concept of whether 18 and being a child is not so a child, in fact, is still a question for us and I wonder whether “may” should be “shall” in this particular clause.

Clause 38 of the Bill, one wonders whether minor offences—sorry, that is 39. Clause 38:

“In any family matter or children matter, the Court may, where necessary, adjourn the matter for an application to be made under the Legal Aid and Advice Act.”

Well, this is exactly like the previous clause. Again, a duplication of language. The question is why? Should this be the point where we wanted to harmonize all things to do with staff, oath of secrecy, pension requirements? They could easily fall here, once we have set up the framework for the two streams, following after clause 38. We could eliminate a lot of the duplication in the Bill and from clause 38 treat with both streams: the Children Court and the Family Court by way of one set of provisions only.

PROCEDURAL MOTION

The Minister of Food Production (Sen. The Hon. Devant Maharaj): Madam President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of the business at hand.

Question put and agreed to.

FAMILY AND CHILDREN DIVISION BILL, 2015

Madam President: You may continue, Senator.

Sen. F. Al-Rawi: Thank you, Madam President. Thank you, hon. Sen. Maharaj.

Clause 39, what is a minor offence? Is it in need of description? Is it good that

we have it subject to judicial determination only? I would be happy with the latter, to allow for the breadth of the law to expand. But why only on first offence? Would there not be certain circumstances where a second offence might invite similar treatment? I, too, believe that the court-annexed peer resolution technique is a very good one. I think that it is laudable for it to be considered. But I wondered whether this needed to be prescribed in the parent law. Should not these kinds of devices be left for operationalization via rules or practice directions, or methods of ADR (Alternative Dispute Resolution) prescribed by the Chief Justice? It would allow us to abandon certain techniques that do not work later on and invent new ones.

So I am not quite sure if legislating a current trend of peer resolution is such a good idea in primary legislation. I am not so sure about that. I think a lot of the material inside of this Bill could come out of this Bill so that the law is desiccated into a framework-type of structure as opposed to a halfway, prescriptive version which, in my respectful view, may not have gone far enough.

Madam President, what about the transitional clauses? How do we treat with transfer of matters? Should clause 42 include an application by the parties to have matters transferred, where the court itself may not deem so, but the party may do so? Where, in proceedings before any other court, that court is of the view that the elements of the matter make it desirable that the matter should be dealt with by the children? If the Attorney General says, on record, that this allows for the parties to make the application and the court to so consider, well then, it would have satisfied my concern, but for the record, I wish to have put it.

Clause 44 is where we deal with the rules committee established under section 77 of the Supreme Court of Judicature Act. And this is where, respectfully, I think we need to tie in the reference to rules of court in the earlier section that I flagged.

Madam President, may I, before we get to committee stage, point out that the Law Association of Trinidad and Tobago has written to the hon. Attorney General in January—this Attorney General now, his predecessor—inviting him to consider the serious problem which the Law Association has with the raising of the limit of the petty courts' jurisdiction, from \$15,000 to \$50,000. That is a matter which deserves urgent consideration insofar as clause 47 of this Bill seeks in the Third Schedule to amend certain laws—33 pieces of law, in particular. It would, perhaps, be an opportunity for the hon. Attorney General to listen to the Law Association's concerns expressed by way of its President's letter in January of this year, saying that there had been a reneging on the request of the Law Association and that the Law Association has now requested that the

jurisdictional limit of \$50,000 for the petty civil courts matter is an inappropriate limit because the Law Association holds the view that the Magistrates' Court just cannot handle the caseload.

And, again, we come back to the crux of this, the operationalization issue. Are we being optimistic? Are we being realistic? Are we all today going to say, well, the Judiciary wants this? The legislative aim is good. The international financiers—if the story is true, I am not sure. I would like the hon. Attorney General to speak to it. The international financiers want us to pass this thing so they will continue to fund the project, but the hon. Attorney General must do so after he has laid out the parameters before the proclamation of this Bill will become real.

When will the courts be built? How will they be financed? How many bodies are going to be hired? What are the terms and conditions? How is the trade union aspect for secondment and contract labour going to be treated? Is the Judiciary going to be treated by way of separate financing in accordance with the plea and cry of the hon. Chief Justice?

Perhaps it is about time that we do that. Because the Chief Justice is correct when he says that the Judiciary requires its fair share. It must have the resources to deal with it. If LifeSport could get, together with the Sports Company of Trinidad and Tobago, close to \$1 billion, then the Chief Justice should get the fair share as well.

Is the hon. Attorney General going to start prosecution by way of recommendation through what he has inherited as an A-team of lawyers of the people that broke the public procurement legislation in the judicial court complexes? We know it as a matter of fact that the public procurement was bad and that there was a breach of the legislation, but this Government has done nothing about it. It cannot be one rule for you and one rule for somebody else.

So, Madam President, we support the legislative aim of this Bill. I think, most respectfully, that the law needs to be looked at again. I think that there are a number of duplications inside of the Bill that could be harmonized. I think the Attorney General needs to put on record the answers to the concerns that we have raised. I think that the offices of the Chief Justice, the Judiciary, the drafters of the legislation, the good persons, including Mrs. Stephanie Daly, Master Morris-Alleyne, all of those many persons who participated in overseeing—Justice Tam as a patriarch of the Family Court for the years of excellent service—I think that they all deserve a very hearty congratulation and, certainly, this is the work of joint enterprise. It was started in a previous administration. We would like to see it become light—see the light of day. We want to see it birthed so that there is at

least some development in the laws of Trinidad and Tobago. But all of this is for naught if we do not have the financial structures set out clearly.

I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Drayton. [*Desk thumping*]

Sen. Helen Drayton: Madam President, it is my pleasure to say a few words on this proposed law to vest jurisdiction for all family and children matters in a division of the High Court called the Family and Children Division. I support the Bill fully. We have waited for 15 years for the law governing the Children's Authority to be fully proclaimed, and that happened only recently. A remarkable amount of work was done by Stephanie Daly and her management team of that Authority, to resource it, to bring it to a status where it can operate more efficiently and they certainly must be commended for their efforts. [*Desk thumping*]

Now, it is necessary that the conscientious work continue to advance solutions to the care and protection of children so that they can grow up to become productive adults and realize their potential. The issues of child abuse, child marriages, lack of safe places, modern children centres that are conducive to their rehabilitation, have been well articulated in previous sessions, and I think that this Bill, together with the proclamation of the Children's Authority, the passage recently of the child adoption legislation, and the efforts that I am aware that are under way to establish child assessment centres, are significant developments. I think those developments give tangible recognition to the pressing needs of children after 50 years of neglect.

Now, family and children matters have traditionally taken a back seat over other matters, although I have heard that the Family Court has done excellent work, and those involved in establishing and also keeping that court at the forefront of family matters must be commended as well. It did not really take over the role of the Children Court. It is a limited facility.

So I am particularly pleased with this legislation.

6.30 p.m.

In reviewing it, I observed the section with respect to peaceful resolutions of conflict as against revengeful solutions. I think that is absolutely the way to go and it is one of the things that makes this Bill a very progressive piece of legislation. The creation of specialist positions, I think that is also worthy of comment. It will provide an opportunity for new career paths and specialization in

family and children's matters, and certainly I think that that would contribute in building institutional capacity in the Judiciary.

The Bill also provides for sittings of the Family and Children Division of the Court to be held at any time and at any location as the Chief Justice may appoint, and that too is progressive and it should assist in handling more efficiently, the thousands of matters that are generated with respect to family and children annually.

I heard the Attorney General mention giving children a voice, and certainly this piece of legislation mentions that in several areas and it speaks to the safety and freedom. I endorse that. In whatever context their safety and freedom is mentioned, it is my fervent hope that child marriages in Trinidad and Tobago will eventually be abolished. [*Desk thumping*] To speak of children's freedom, to speak of children having a voice and to praise this proposed legislation to establish a family and children division and yet have laws in our books in the 21st Century in Trinidad and Tobago sanctioning child marriages is a huge contradiction.

Now the proposed law nevertheless is welcomed. I recognize tremendous administrative challenges in the implementation of this law especially with regard to the availability of human and financial resources, and that has been commented upon a lot and it is worthy of repeating, and it is useful to reflect on what the Chief Justice said at the opening of the law term. Others have mentioned aspects of that presentation, but there are issues, serious burning issues in the Judiciary, which go to the heart of its ability to become a more efficient and effective institution. He said:

"Innovation does not mean doing what we have always done, faster. It includes doing something differently, either because it is more effective (as opposed to" doing it more efficiently)

He said that:

"In...2014...the Judiciary's allocation...was cut by...50%"—that was mentioned previously, but—"no allocation, apparently for technical reasons, was provided for the operation of the Family Court resulting in a \$25-Mn shortfall."

Now I know that for the 2015 budget that was to be addressed. So I am hoping that with respect to matters pertaining to the Judiciary, when we are dealing with the budget, their needs, 100 per cent, will be provided for. And it is necessary to

ask why must interdependent or independent institutions of the people such as the Judiciary, the President's Office, the Industrial Court, Parliament, operate on the basis of cap in hand to the Central Government. [*Desk thumping*]

We are in a time that calls for transformational changes in order to build the capacity of public institutions, and here is what we are in effect doing. We are implementing or trying to implement new and good laws on archaic infrastructure, hence resourcing this court and implementing its regulations is likely to be an administrative headache not just an everyday challenge. As said, it is not only financial resources, but human resources, specifically masters, psychologists, probation officers, administrators and others and, of course, attracting good talent, and to attract good talent there must be enlightened and progressive compensation laws. However, a journey begins and progresses step by step, and this legislation, I think it will take us forward towards the goal of greater safety and the well-being of our children.

In the committee stage we may wish to look at the definition of “family matter” and “children matter”, and also I have to agree with Sen. Al-Rawi that we need to be consistent across all children legislation as far as it is practical to do so.

With that, Madam President, I thank you. [*Desk thumping*]

Madam President: Rev.—sorry, Sen. Small.

Sen. David Small: Thank you very much, Madam President. You wish to elevate me to higher operations. I am humbled. I am here to make a short intervention into this Bill that I believe that this is an important piece of legislation. When I looked at it, the first two times I read it, I felt it was the cleanest piece of legislation I have seen in my short time here and that I have no major issues. I think that the issue of protecting the next generation is very important and is something that we should take seriously. Certainly in terms of the content of my contribution this evening, I am going to focus a lot on the steps before, what really should be happening before we get to the Family Court.

Madam President, earlier in today's debate we had a sterling contribution as usual by my distinguished colleague, Sen. Mahabir, where he spoke about the issue of bullying and I want to share with him that bullying does not stop after you finish school. I am being bullied today, up to now. I hope I do not end up in the Family Court to be brought up for maintenance because the local banks have pauperized me through their vulgar charges and fees. Vulgar!

Madam President, as an example with a little latitude on your behalf, this is a statement from one of the banks and this is amazing, this is crime. [*Senator shows*

statement] I had an account in this bank that had money in it, cash, and every month they took charges out. It went down to negative and now they have started charging me \$30 a month overdraft fees. I have no money in the bank. I never applied for an overdraft and they are charging me fees every month. So I am waiting for them to take me to court because I had money in the account, cash positive, they took all in charges, then it went into negative and then start charging me fees for overdraft \$30 a month. This is crime.

They are taking money away from my children. [*Desk thumping*] The hon. Minister of Finance and the Economy is not here, but when, when, when, when, when, when, when, when will someone take action to bring some sanity to these outrageous, bandit like, thuggery like charges by these banks. I do not know when—what do I have to do? I have to come on my knees and beg the hon. Minister. Something is wrong. Something is fundamentally wrong, but forgive me, Madam President, I digress.

I am scared of this, because of this action my wife could divorce me and my children might need someone else's help to support them. I might turn up in the wonderful Family Court. I want to make sure I bring a linkage back to the Bill. [*Laughter*] I hope I am not forced to throw myself upon the mercy of the court because of the banditry and thuggery of the local banks. This is outrageous. You are charging me fees for an overdraft that I never asked for, certainly never was approved, and you are charging me monthly. Something has to be wrong fundamentally with that. It is dishonest. It is the same bank that my colleague Sen.—[*Interruption*]

Sen. Dr. Mahabir: It is Republic Bank

Sen. D. Small: It is Republic Bank. Something is wrong. Why are banks doing people this.

As I tell people, I am a normal regular citizen of Trinidad. As soon as I walk out the front door and I go to the car park and the police drops us off, I am on my own. So I go to these places and this is what you get as a citizen of Trinidad and Tobago. Then, Madam President, it gets worse. Last time I spoke I mentioned how my annuity plan with Clico has now run into negative value, and then I am seeing the people who caused that are going to get paid, \$48.5 million. Well, I am going to launch a one man protest. Absolutely no way, nohow, no time, no way, nohow. The people who sat and presided over this banditry and thuggery went to Monaco and had fun. I have no problem with that. I would love to go to Monaco and hang out with the blonds. My wife would not let me, but if I had the money I would go. Why? What is that about? Again—[*Interruption*] You will send you?

Madam President, I do not wish to be characterized as I saw today, as a citizen who is a disgruntled malcontent, but I stand here simply to say that I am flabbergasted that no action has been taken by the Government to bring some sanity to this process, and the scale and range of banditry that is going on with banks and their fees has to brought to heel because they are literally pauperizing people and then people cannot pay their children's school fees, cannot buy groceries and then what? They are in Family Court.

Madam President, I believe that where we are as a country, I thought that the contribution earlier today by learned Sen. Christine Newallo-Hosein was particularly insightful. I think that she touched on some issues that are really, really relevant to the issue we are dealing with here today, and I want to run quickly to a document that I found in my short research, a document entitled "Youth Violence". A report of Surgeon General by the Department of Health and Human Services of the United States of America, and hear what are some of the reasons for youth violence. They categorized them and listen to see if this sounds familiar, what they call "Individual Risk Factors":

- History of violent victimization, bullying
- Low IQ...
- Antisocial disbeliefs
- Exposure to violence and conflict in the household" and Learning disorders

The other category that they looked at is something called "Family Risk Factors":

- "Low parental involvement"—often income related
- Parental substance abuse or criminality
- Poor monitoring and supervision"—by parents and
- "Low parental education and income"

Interestingly, one of the things that they found contributed significantly was something called "Community Risk Factors". Under that they listed:

- "Diminished economic opportunities
 - High level of family disruption"
- and this one is really interesting—
- "Socially ostracized neighbourhoods."

This report was done in 2001 in the USA and is relevant to several parts of the USA, but a lot of these things apply here and this is not rocket science. So here is what they do.

There are a range of services that they provide, what they call promoting safe and stable families. Some of the things they do include family preservation services; adoption promotion and support services; support and grants for children affected by substance abuse; court improvement programmes, which is exactly why we are here today; and research and education for new strategies. The ideals that they are looking to achieve is one, protecting and promoting the welfare of all children; preventing the neglect, abuse or exploitation of children and supporting at-risk families through services that allow children to be able to optimize the opportunities in life; and most importantly providing training, professional development and support to ensure all of the persons who provide these services are properly trained to be able to provide those services.

6.45 p.m.

Madam President, we operate in a space where lawlessness is glorified. I think earlier today, someone said that the word “convict” was “ah pips”. Yeah, being called “convict” is something that everybody felt was a positive thing because that means “yuh ah tough guy, yuh ah bad boy, yuh ah convict”. Crazy, but the things that the youths are thinking do not always line up with what we would call rationality.

I have an interesting quote. They said a survey was done in the United States and found that 95 per cent of the households possess a working television. What this meant is that the remaining 5 per cent had to go out to create their own sex and violence. It is a humorous quote but it is a serious quote that it speaks to that there is a small portion of the society who really need this attention and because they do not get that attention, they go out and they create their own.

Madam President, I also—no more bank statements. [*Laughter*] I have several. [*Crosstalk*] Anyone who has interest, I have no problem with anyone being—I have an interest, I have accounts with every single bank in the country so that I am in a position to compare. I can compare services and I can call—rank them, who provides the best services to who provides the worst, but I would not go there. I think that when we are talking about youth violence, we are talking about children who do not have the best opportunities, so they become engaged in lawlessness, because we as a society have failed them. We have a powerful potential in our young people and we must have the courage to throw out old practices, embrace new approaches and take our children to our breast, so that we may direct their power toward good ends.

Madam President, at-risk youths face complex challenges as a result of difficult family situations or their environment. As a country, more needs to be done to help at-risk youths who are faced with such challenges so that they can enjoy their childhood and reach their fullest potential.

But also, sometimes the issues—you see, one of the key themes that keeps on is what is happening in your household. I had an unfortunate incident, and I keep relating this, but this is real life for me, I am a regular person. My son was going to a particular primary school in Port of Spain and there was an incident, and accidentally or otherwise, he was pushed down a flight of stairs by another student. So normal thing, the principal calls in the parents. So, fine, we are all concerned, he got a few bumps and bruises, but he was okay.

Then the other parent came and the mother was like, “So, yuh child cyah watch where he going? So, he stupid ah what, he cyah see.” So the next day, I took my child out of the school, “dah was it”. Because these are issues that I do not expect the parent—I do not expect that response. That type of response tells me that you are empowering your child to do something that is wrong. And even if it was an accident, you could have approached the thing more level-headed than that, but the lady was belligerent, that my child “cyah see”, like he needs glasses. So I said fine. And these are the things that as a parent, I experience, and you wonder why some of the children act out in the way in which they act out. Sometimes you just have to turn the microscope to look inwards at the household. A lot of these things happen in the household in the way in which these children are properly associated or not associated.

Madam President, I think that this Bill would implement reforms that ensure a modern, accessible and sustainable family justice system, a system that supports children and vulnerable persons who most need the Family Court’s protection. The current slow pace of resolving family court applications has created additional pressure on children and families, an unneeded pressure. I am hopeful that the provisions of this Bill will result in a reorientation of priorities to a court system that protects vulnerable people, provide fast and efficient resolution of the disputes and put the needs of children first.

Madam President, when I focus on the Family Court issues and while it may not necessarily be a direct core element of the issues to do with the court, I think some of the things that we have to think about going forward is the fact that we have outgrown what is called the nuclear family. We have different types of family arrangements. We have households, whether we believe it or not, headed by same-sex couples or grandparents or other relatives, and importantly, we have

to recognize that assisted human reproduction has created a new scientific reality where children can be born to couples using donors of eggs and the other item. This is a reality and I am not too sure where, if a custody issue comes up in family court, are we ready to deal with that?

I believe that the structure—Madam President, I want to run back to one other issue that I think everybody else touched on, and that is the reality of—I have looked at the structure and just like everyone else, we have the same information. We have been through this process several times, we have passed Bills to create institutions, but there is an institutional shortage of the amount of professionals needed to fully staff them up. And I looked at the several positions created and these are highly specialized skills that are required to run this institution. I was expecting to see inside of the Bill, which for me is something that was missing, a proposal clause to say words to the effect that it is going to be part of the activities of the Judiciary to conduct a holistic review of the terms and conditions of judicial staff with a view to implementing a more competitive salary and wage system that allows for the attraction and retention of the appropriate staff needed to operationalize this Bill. Words to that effect.

Because if we think that we are going to starve this institution with the current system, it is not going to work. It is not going to happen. It is not about throwing money at the resources, the entire system needs a review. I fully support Sen. Al-Rawi that the time has come to make sure that the Judiciary is self-sufficient. If they take the money that is allocated to them and they do nonsense with it, they cannot blame anyone. But I think that the Judiciary is such a critical arm of the way in which life functions in our country that the time has come for us to support the Government in saying, listen, the Judiciary needs to be able to manage its own affairs. And I believe that as laudable as this Bill is with the creation of the institutions with the family and the children court, I see it as being a great, great difficulty to staff it out with the current staffing, with the current arrangements around salaries and wages. I am not going to say it is impossible—you should never say never—but it is going to be very difficult.

Because as it is now, the Judiciary is struggling to attract and retain persons as it is in the current system. So if you want to expand that system, one has to just understand and accept that that is almost an impossibility. What needs to happen is that someone has to go in there and say, “listen, give the autonomy to the Judiciary or the JLSC, or whoever, to come up with a compensation schedule that is real, that allows them to attract and maintain”. I think someone said earlier there were too many lawyers and then someone said there are not enough lawyers. I do not know what to believe. [*Laughter*] I am not in the legal fraternity so I

cannot—I just heard one person say there were too many and then someone said there are not enough. But I think there are a lot of attorneys, and I think that where we are, we need to make sure that we have—and it is not only attorneys are needed, of course, it is social workers, it is all types of professionals at all levels and a proper administrative system.

Madam President, as I start to wind up my short contribution today, protecting our at-risk youths is one of the most important challenges we have as a country. I think we need to remember that today's youths are supposed to be the ones taking care of us when we get older. Just now, as an adult, I think about how many times I have been able to lean on my parents for advice, for support and for a lot of times, money. How high is your confidence now in this current batch of young people to be able to do this for us? How high is that confidence?

In this vein, I take the opportunity to applaud the excellent, superlative work being done by Sen. The Hon. Fazal Karim in providing an unprecedented amount of skills, training, opportunities, for our young people. [*Desk thumping*] Every time I run into people and I—the sheer range of skills, opportunities—I would love to be a young person at this age now to have these opportunities. Like my good Sen. Sturge, I did not go to prestige school, I went to government school. I went to Tranquillity Government Secondary so I went to regular school. And coming out of school, there were two choices: you either go to UWI or you go to John D. That was pretty much it.

And for me, at that stage, my family could not afford to send me to UWI. I went to work. I could not even afford to go to John D. Okay? There was no GATE and this is a reality. I went to university, paying—going to university night classes, working an eight-to-four job and paying my school fees. I paid my way. My parents were not in the fortunate position of being able to afford to send me, to pay for me to go to university and every year I paid. In those days, I borrowed \$3,500 from Royal Bank to pay my school fees; that was a small fortune and I paid it back in instalments every month. It was just tight. [*Crosstalk*]

But I would share with you. When I started working in the civil service, the salary was \$1,293 a month before tax. My take-home pay was 800-and-something dollars and I paid school fees, bought my books, travelled and I was still able to go Upper Level every now and again depending on how things go. [*Laughter*] But it was not the lap of luxury. It was not and I make no knock on parents who could afford to send their—that is fine, that is what their circumstance is. My circumstances were completely different.

But I think that the youths now have unprecedented opportunities. First to begin with, there is GATE—there was no GATE—and then the sheer range and volume. I think I saw in the newspaper earlier today, I think NESC graduates receive 90 per cent placement, it is absolutely fabulous and should be applauded. [Desk thumping] I think that the Minister is really, really giving our youths a chance. Any youth now who says that there is nothing for them to do, bring them close by, I would take out my belt and “cut dey tail” and ask them what they say [Laughter] because there is opportunity. It is either “they lazy or they lazy” or they just do not want to work or “they lazy” again. You can go out there and you can skill yourself up in a range of things to make a positive contribution to our society.

[SEN. HELEN DRAYTON *in the Chair*]

So, Madam President, also I want to commend Methanol Holdings Trinidad and Tobago. Oh, forgive me, Madam Presiding Officer, please accept my humblest apologies. I was privileged to attend a function last Thursday where Methanol Holdings essentially sponsored a function regarding the St. Margaret’s School Steel Orchestra, essentially saying that they are going to sponsor them to take them on a tour. They are going to the Carnegie Hall in New York to do a performance. And it is to see the vibrancy of that generation, to see them enthused about getting that type of opportunity to see the world, and while someone brought me down to earth later on in the function after everything was finished and saying, “Well, listen, after you have finished with school steel band, what do you do? You still need to be able to do something”. But I am saying, “Okay, at least, at this stage, they are off the street, they are doing something positive and once you start to do something positive, positive things tend to flow”. The reverse also works. Once you start to do negative things, negative things tend to follow you.

So that I believe that this is something that should be applauded. Corporate Trinidad and Tobago is not doing its job in that respect. Handing out cheques and then rocking back is not working. I would challenge Methanol Holdings to take it further. Take some of these children who are finished playing the steel band and get them into one of the NESC programmes, mentor them through the programme and then try to bring them in. We have to find innovative ways to handle our at-risk youths. Sitting back every few months and announcing hundreds of millions of dollars in quarterly profits on the back of fees that you are bleeding from me. [Laughter] They are bleeding fees from me. Attorney General, I say it, Minister of Finance and the Economy is here, when will the Government do something about

it? Call in the bankers association and tell them they have to stop robbing the citizens of Trinidad and Tobago. [*Crosstalk*] They have to stop robbing people.

7.00 p.m.

This statement here is robbery. It is robbery and I want Republic Bank to take me to court because I am not paying any fees for something I never asked for. [*Crosstalk*] I am sure someone will tell me inside of the details of the contract it will say that you get an automatic—they will find something that I signed to say that they can do it, but morally it is wrong. It is wrong.

Madam Presiding Officer, as I start to conclude, I fully support this legislation. I believe that this legislation is needed. I think I have no major issues with the content of the Bill but I continue to say more has to be done to protect our at-risk youth. The Family Court should really be a last resort.

We need corporate Trinidad to step up and come to the plate and work hand-in-hand with the Government and go into the at-risk areas. Get the at-risk youths engaged in some positive activity, and rather than doing what they are doing now—shopping the money and taking the money and doing whatever they are doing with it—try to make a positive reinvestment back in Trinidad and Tobago. For when you invest in the people the people will remember you invested in them and they will make a meaningful contribution to our country. What we have now is a mill where people generate millions and hundreds of millions of dollars in profit, have annual awards, pat themselves on the back and say: “we have done a great job” but the great job is because they have been robbing us. I do not support it at all.

We have a situation where our country, things could be a lot worse but I do not want it to get worse and this is my issue. I would like it for us to be able to say that this generation, we have a role in taking care of them. We can all do different things and I believe that this is something that we should all be striving for.

So, Madam Presiding Officer, in concluding, I wish to thank everyone for their patience in allowing me to say these few words and I thank you very much for allowing me to speak.

Sen. Rev. Joy Abdul-Mohan: Thank you very much, Madam Presiding Officer and Members of this very esteemed Senate. I am very thankful that I have a few minutes to make a brief contribution to this very needed piece of legislation entitled the Family and Children Division Bill, 2015 and I stand to support the Bill this evening.

From the onset, I want to preface my brief contribution by saying that working with children and young people is very, very demanding but very, very rewarding as well. Young people and children are the most vulnerable in our society. No wonder this work with young people and children is fraught with more acceptance of responsibility, confusion, intrusion, potential ambiguity among the various stakeholders in the system than with other clinical population, and, therefore, we have to accept taking risks with young people and children without being reckless.

We can never assume that a community and country or court will provide prompt, highly competent, compassionate and well-orchestrated services. We cannot even rely on our own professional associations to have legislation and other information that can deliver clear guidance as to how we should proceed in any given circumstance related to children involved in crime or those who are affected by crime in one way or the other. It is a very, very sensitive issue.

Albeit, Madam Presiding Officer, there is a growing recognition of the autonomy of children and respect for their input to matters affecting them. There still remains a general lack of consensus as to when and how children's input should be considered even in everyday matters, and I believe this Bill has the potential to address the rights and the needs of children and young people, whether as victims or offenders, and children and young people can be both at the same time, offenders and victims, and we have seen that. Thus, we must acknowledge, and we cannot deny, that the majority of children involved in the justice system have experienced family dysfunction, conflict or abuse. They are both victims and perpetrators. And these presenting problems should be addressed by legislative and government agencies, and I do believe that this particular piece of legislation can do this.

How can we ever forget the Sean Luke horror and tragedy? How can we? I do not think we can ever forget that. The victim, indeed, such a sad situation, but the perpetrators, it is also sad. As a prison chaplain, we have the opportunity, some of us, my colleagues, to visit with and share conversations with young perpetrators. And when you sit and you talk with them and share life with them, sometimes they do not even understand what they have done. And it is a sensitive issue.

Thus, when dealing with children regarding law, we must keep in mind that society's laws are generally framed with adults in mind. As such, the law often treats children as exceptions to the rule, which may be either beneficial or, perhaps, insidious, so to speak, depending on the precise context. And that is why I believe this piece of legislation, like my colleague, Sen. Vieira said, will serve as

transformative, rehabilitative and restorative. It will be a structure that will help to transform the mind, as it were, a system that can focus on educating the mind of the child and the youth to choose life and not death through the Peer Resolution process as seen in clause 39. I am sure that process can be tweaked in such a way that it can really affect the person's psyche, helping to transform his or her character, as it were.

It was interesting for me to read an article written by Gerald Koocher and Patricia Spiegel as they wrote on the topic of *Children, Ethics and the Law: Professional Issues and Cases*. Madam Presiding Officer, in attempting to analyze the behaviour of children and youth involved in violent crimes, the writers used an analogy entitled:

“The Law Versus Ethics: Rambo Meets Bambi”

Those of us who watch movies and stuff and those who have children, they will tell you about Rambo and Bambi if you do not know. They demonstrated the differences between legal and ethical standards as applied to interventions with children and families, and I quote:

“Although morals and laws often have the same goals and suggest similar underlying social values, the vigour with which they are enforced and the adequacy of the protection they afford society is highly variable. Despite its failings, government through the legal system has a complex array of personnel and procedures available to enforce laws (e.g., Rambo, the well-armed enforcer) by comparison with the more limited and relatively toothless resources available to those who attempt to enforce professional ethical codes, (e.g., Bambi being guided chiefly by conscience or fear of embarrassment).”

I believe, therefore, Madam Presiding Officer, this piece of legislation can become a lived reality if, together with all the stakeholders as listed in clause 27 and additional personnel can achieve an approach that integrates these aspects of Rambo and Bambi as reflected in the history of the rehabilitation of children and youths in trouble with the law over the years in Trinidad and Tobago.

And so with these few words, I do believe this piece of legislation can truly reflect the Rambo and Bambi concept. While enforcing the law, the child's voice is protected even as a witness, and the child's rights and interests are also protected whether as victim or offender. And in the long run, the legislation, I believe, aims to rehabilitate the child and the youths and to keep the family together. Thank you very much. [*Desk thumping*].

The Attorney General (Sen. The Hon. Garvin Nicholas): Thank you very much, Madam Presiding Officer. Let me first thank the Senators who would have spoken to this Bill and also especially those who would have supported this Bill inclusive of Sen. Young, Sen. A. Singh, Sen. Vieira, Sen. Abdul-Mohan, Sen. Small, Sen. Prescott and even Sen. Al-Rawi, Sen. Mahabir and well, of course, my colleagues on this side of the Senate.

I think what is extremely—[*Interruption*—of course, how could we forget, Sen. Baldeo-Chadeesingh. What is quite clear, Madam Presiding Officer, is that this legislation is not only timely but it is also widely supported. And it is supported for good reason, because the Family Court, which was a pilot project, has shown itself to be worthy of expansion.

If you would allow me to quote from a newspaper article on Sunday August 17, 2014. It was an interview by Julian Neaves, I think, of the *Newsday* and he was speaking with Justice of Appeal, Gregory Smith and it goes like this:

“A decade ago, all family matters in Trinidad and Tobago were dealt with in the same adversarial Court system as all other matters and caseloads were continually piling up. But then there was an idea to launch a pilot Family Court that would be better than before. Better, conciliatory and faster.”

[MADAM PRESIDENT *in the Chair*]

“It is now 2014, and the Family Court, located at the NIPDEC building, Cipriani Boulevard, Port of Spain, has been utilised by more than 75,000 persons.” [*Desk thumping*]

“There have been determinations in 90 percent of cases in the Magistrates’ Court and the High Court levels. The Court has also been recognised as a model, both regionally and internationally.

Chairman of the Court’s monitoring committee, Justice of Appeal Gregory Smith, spoke about the past, present and future of the Court during an interview in his chambers at the Hall of Justice in Port-of-Spain.

He said the genesis of the Family Court was the recognition by all stakeholders of three issues: prominence of family matters in modern society; the adversarial system of justice in which we operate was inappropriate for family matters; and finally, that the rules and operational systems adopted in the courts were outdated and needed changing.”

I would repeat that.

“...the rules and operational systems adopted in the courts were outdated and needed changing.”

7.15 p.m.

“We were acutely aware of the repercussions of a family matter and unfortunately by the time we get it into Court it is upon the breakdown of a family’, he said.

He noted that, with a breakdown, issues of maintenance, custody and nurturing of children would arise and if appropriate arrangements are not made and there is no extended family ‘the children go to the streets for their nurturing and upbringing’.

‘And we know where that ends up. They end up in gangs, they end up in shootings. (They) look for (their) nurturing in the streets’, he said.

He noted that family matters pervade all levels of society, and there is also breakdown for the middle and upper classes. For the affected children who cannot cope they can become antisocial, start drug use, become less productive or unproductive to society ‘and create problems themselves’.

On the adversarial system he explained it is as being ‘wholly inappropriate for family matters’.

‘(For) family matters generally, although we are fighting, the parties have to ‘live together’ after they fight. So they might be fighting like cat and dog but they have children, they have property, they have a business. When the fight goes on and it’s so bitter what happens to the children, what happens after the fight is over’, he said.

He noted that when there is a fight the husband may try to hide his assets and ‘squeeze the wife’, and the wife in return may try to get as much as she could out of the husband. He said in this scenario they forget there should be a holistic approach and it was really about having a fair settlement.

‘And an adversarial system of justice does not encourage that’, he pointed out.”

Now, he goes on, but I just want to make one more point. So when a judge—

“He noted that previously in the High Court, there would be two courts dealing with family matters and a judge would be assigned for a month or two for all the courts to be replaced by another. He explained family matters take time because they involve social workers, cross examinations, et cetera.”

The average list was 15 to 20 matters a day.

“So when a judge comes in with 15 to 20 matters, you’re beaten (already). If you do one, maybe two matters”—for that day, well done. “You leave back 13 others that have to be adjourned. So the list was only getting larger and larger with the master calendar...System,”

Now, we have moved considerably from that kind of legal practice, and we have managed to create a pilot family court that has shown great promise, great successes. It is for that reason that the Chief Justice and the practitioners in the family arena, have seen it fit to expand the Family Court pilot to the rest of Trinidad and Tobago. In so doing, they have also decided that it would be an appropriate time to have a special Children Court that goes hand in hand with the Family Court.

Now, the Family Court will be administered in such a way that there will be two divisions. The family subdivision and the children subdivision of the umbrella Family Court. It is because of the experience, because of the understanding of the successes, that we are able to move this forward.

Now, a lot has been made about the lack of consultation on this issue. Let me just say—and this is just a short list of some of the people who were actually consulted in moving this piece of legislation forward. The Family Court Monitoring Committee, which comprise—and I will not call people's names. I will just call the offices: the Court Administration consultant; the Chair of the Children’s Authority; the head of the family law association; the Registrar; the Family Court Manager; the Chair of the Family Court Monitoring Committee; a prominent judge; a family court judge; a social worker and head of Citizen Security Programme in the Ministry of National Security.

In addition to these people, there was a representative from the Family Bar Association, two magistrates of high prominence; High Court judge and head of the Drug Court Project; a representative from the Criminal Bar Association; a prominent clinical psychologist; two other High Court judges; a Deputy Court Executive Administrator; just to name a few of the persons who were actually consulted in the process of putting this legislation together. In addition to the international organizations that I would have alluded to in my opening statement. I am also advised that the Law Association was invited to participate in these consultations.

Now, it may well be that the Law Association did not see the final draft of the legislation, but it is not true to say that there was not consultation throughout the process. Certainly, from the list of names that have been provided, the key

stakeholders, the key users, those who would have been involved in the pilot set-up, would have been involved in the drafting of this legislation.

We have also spoken of the issue of resources. Now, Sen. Young, having fully supported the legislation, could not speak ill of the legislation, so he had to speak of issues outside of the legislation, which is all right. That is all right. So he spoke to issues such as the purchasing of vessels and that sort of thing.

Now, let me make the point on the purchasing of vessels. The Government has recently—[*Interruption*] I am dealing with it. Yeah, you raised it. The Government has purchased six vessels for the price of \$1.3 billion. The three OPVs, the OPVs that the former administration would have purchased, was for the price of, I think it was \$2.3 billion or \$2.4 billion, somewhere around there, \$1 billion more for three vessels than this Government is paying for six vessels. [*Desk thumping*] Whilst the three OPVs were not fit for purpose, did not have—we spoke to staffing—did not have enough people in the Coast Guard to staff those vessels, these six vessels are absolute fit for purpose. [*Desk thumping*]

The additional billion dollars that we would have saved—[*Interruption*] if you want me to deal with that, I could deal with that too, eh. I could deal with that. The billion dollars that we would have saved, would have been used for the allocations of the Judiciary. In 2010, \$300-plus million to the Judiciary; in 2011, \$363 million approximately; in 2012, approximately the same as 2011; in 2013, \$370 million approximately; in 2014, \$450 million approximately, and again in 2015, another \$450 million or thereabouts approximately, that goes—that we have ploughed into the Judiciary, so that they could do their work.

Now, the point must be made, eh, that in any legal system, in any Judiciary, in any penal system across the world, in fact, any health system, any education system, in any public sector, there are never enough resources, because everyone wants to do more, but everyone has to do more within a finite set of resources. That is the reality of existence, and what we have been able to do as a Government, is to ensure that everyone who was hired by the Judiciary, has been paid. [*Desk thumping*] We have also been able to provide money for development. Certainly not all the money that would have been requested, but there is no Minister, in the 52-odd years of independence in Trinidad and Tobago, who would have requested budgetary allocations and received what he requested. It just does not happen, because the resources have to be shared.

Over the last five years, the Government has had to prioritize where it spent its resources. The Prime Minister of this country gave undertaking that the resources would be spent in building human capital. [*Desk thumping*] The

resources that we would have spent, would have been spent on educating children, by building 93 schools, [*Desk thumping*] with another 93-odd on the way.

The money spent would have been spent on the construction of hospitals. We now have the sod turning for the Arima hospital, the Point Fortin Hospital. You spoke to the issue of a children's hospital. Well, what existed is not a children's hospital. It is a children's wing of the Mount Hope Hospital, but by building the Couva Children's Hospital, you are creating a state-of-the-art facility for children of Trinidad and Tobago and the region. [*Desk thumping*]

We have spent money in creating the Teaching Hospital in San Fernando, and we are about to upgrade the hospital facilities in Port of Spain. In addition, we would have spent money on health centres across the length and breadth of Trinidad and Tobago, and not forgetting Tobago, with the completion of the Tobago Hospital.

Hon. Senator: Quite so.

7.30 p.m.

Sen. The Hon. G. Nicholas: We would have spent money on creating environments for children to grow up in—[*Interruption*]

Sen. Al-Rawi: LifeSport!

Sen. The Hon. G. Nicholas:—such as recreational facilities. We would have illuminated recreation grounds across the length and breadth of Trinidad and Tobago creating that environment. [*Crosstalk and laughter*] Now, you know, those on that side like to talk about LifeSport, and LifeSport is obviously an issue that this Government has dealt with by referring it—we have dealt with it frontally by referring the LifeSport issue to the police for investigation. [*Desk thumping and crosstalk*]

I wonder if having spent half a billion dollars, TT \$500 million on a pre-feasibility—not even a feasibility—study that would have properly yielded documentation about this size [*Papers in hand*]; \$500 million worth. This is probably \$100 million [*Papers in hand*]; \$100 million [*Papers in hand*]; \$100 million [*Papers in hand*]; \$100 million [*Papers in hand*] and \$100 million [*Papers in hand*] in documentation that has yielded nothing, nothing, for the children of Trinidad and Tobago. [*Desk thumping*] Nothing!

It would have taken away from them the opportunity to have proper recreational facilities in their communities; it would have taken away from them the opportunity to have the same electricity that Sen. Singh spoke about that is

lacking in the community, because that money could have been ploughed in to provide that electricity but, instead, it has disappeared into thin air, the documents. You all have absolutely no shame [*Desk thumping*]; absolutely no shame to talk about wastage of any kind in Trinidad and Tobago. [*Desk thumping and crosstalk*] That is just one; that is just one.

They are talking about legal fees, \$400 million approximately was spent in legal fees over five years: recovering the \$1.3 billion for the OPVs; recovering some \$2 billion in tax revenue in one matter and the list goes on and on, real matters that this Government had to deal with on a number of issues across the board. That is what that money was spent on. It was not spent on some paper. You take the \$400 million spent over five years on legal fees and you add another \$100 million, and the PNM gives you this. [*Documents in hand*] That is what the PNM gives you for \$500 million. [*Crosstalk*]

Now, coming back to this Bill, there were some other issues that were raised that are of some importance. They spoke about the funding. The question was asked about how we would fund this, and I dealt with some of the issues of funding but, in addition to that, USAID, the United States Agency for International Development, has actually provided a grant of US \$5 million towards this project, and it is going to be administered by the United Nations Development Programme. They have also identified three locations in the north in Mausica, in south in Claxton Bay and in Tobago. So, already they have identified buildings that need to be outfitted, and hence the possibility of meeting the 2016 timeline to commence the project.

Sen. Prescott SC: Excuse me, outfitted as courts?

Sen. The Hon. G. Nicholas: Yes.

Sen. Prescott SC: Thank you.

Sen. The Hon. G. Nicholas: Now, so we have that, the issue of resources dealt with. I am trying to see what else we have to deal with here. [*Crosstalk*] You know, it is actually quite funny.

The issue of domestic violence, I know this issue was raised—where domestic violence would be dealt with—but, actually, clause 30 of the Bill deals with domestic violence. The drug matters, again, that would be dealt with in the Children Court. The registrar, I know that the whole issue of registrars and clerks to registrars, et cetera, well this is really simply based on definition. In some legislation the office would have been referred to as “Clerks” and “Clerks of the

Peace” but, similarly, in the court, in this new court, Masters would be providing a similar kind of role and, therefore, the legislation actually spells it out in that regard.

With regard to qualification, of course, the qualifications would be prescribed by the Chief Justice, and the hiring of all of these officers would be in the usual manner by the Judicial and Legal Service Commission. So that all of those issues would be dealt with in the course of administration.

The issue was raised with regard to bullying, and Sen. Mahabir was very passionate about the whole issue of bullying. Now, the reality is that this Bill does not deal with offences, it deals with procedure and process and, therefore, it is not really appropriate to be dealt with here, but just to allay the fears of Sen. Mahabir, when it comes to determining minor offences and the peer review, et cetera, that would be under the control of the judicial officers. They would weigh the issues with regard to what is in the best interest and how that can be done and, of course, they would have gotten the requisite training to make these calls, as it were.

Now, even so, with the issue of bullying, I want to make the point that the Ministry of Education—in fact, there is an inter-ministerial committee that was set up to deal with this whole issue of bullying, because we see it as a major issue. It is a significant issue, it is a real issue, and it is important that we move to deal with it in a proper and effective way, and this inter-ministerial committee has been meeting and coming up with suggestions to move this whole issue of bullying forward.

The issue of the duty of police to report, Madam President, the point was raised regarding the police having a duty to contact the Children’s Authority upon the arrest of a child and, of course, this is a valid point but, again, not necessarily relevant in these circumstances, because the Bill primarily deals with the administration of the Family Court and the Children Court. And, furthermore, I am aware that the current draft judges rules which are under consideration provide for this, stating that when a juvenile is arrested and brought to police station the following notification shall be made:

- (a) the police officer shall notify the duty counsel, parents, guardian or person with responsibility for the child or an adult with whom the child is comfortable, a Probation Officer, school supervisor for the district at the Ministry of Education, psychologists or social worker and the duty counsel shall notify the Children’s Authority.

I think that, in the main, I would have dealt with the concerns as articulated. There was one that dealt with the conflict dichotomy that Sen. Prescott raised.

Sen. Prescott SC: Could you permit me some questions for clarification please?

Sen. The Hon. G. Nicholas: Sorry?

Sen. Prescott SC: Could you permit me some questions for clarification please?

Sen. The Hon. G. Nicholas: Sure.

Sen. Prescott SC: Madam Chair, I was left a little unsure when I enquired about whether Mausica, Tobago and another location are for courts, and you said they were.

Sen. The Hon. G. Nicholas: Yes.

Sen. Prescott SC: Is there a provision for residential or other accommodation for children along the lines of St. Jude's or St. Michael's and, in particular, in Tobago?

Sen. The Hon. G. Nicholas: That, of course, is a whole other issue. There are a number of facilities around the country that are actually being upgraded with the assistance of the Ministry of Gender, Youth and Child Development, and they have been actually providing financial assistance to get those institutions up and ready.

Sen. Prescott SC: Accommodation?

Sen. The Hon. G. Nicholas: Yes.

Sen. Prescott SC: And in Tobago?

Sen. The Hon. G. Nicholas: And in Tobago. With regard to your concern, Sen. Prescott, with regard to the conflict of procedure, of course, because of the fact that there was a pilot project operating in north Trinidad with the rest of Trinidad and Tobago on a separate system, by moving the system now to cover Trinidad and Tobago we would be removing that dichotomy. Yeah?

So, Madam President, I propose to deal with any other concerns in the committee stage. So that with these few words, Madam President, I hope I would have clarified some of the issues and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

7.45 p.m.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed: That clause 2 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, may I ask a question for our guidance? The preamble of this Bill, we would deal with at the end?

Madam Chairman: Yes.

Sen. Al-Rawi: Yes. Thank you. And on clause 2, may I ask of the hon. Attorney General, through you, Madam Chairman, what the estimated proclamation date of this would be? And what events are required prior to proclamation, please?

Sen. Nicholas: I could not tell you that at this time. It is an operational issue.

Sen. Al-Rawi: For instance, will it include the construction of the courts, the rules, those kinds of things?

Sen. G. Singh: Chair, it is an operational issue. The AG has set a time in 2016 for implementation, it may not mean construction, it may mean renovation, it may mean rental, as is taking place. The key element really is the timeline for which the Judiciary is working with, with a view to operationalizing it. As you are aware, it is the Judiciary that conducts the business of construction of courts, renovation of courts, and so on.

Sen. Young: And they have to hire the judges and Masters, and so on.

Sen. Al-Rawi: Yeah, I know. Why I am asking, hon. AG, is for two reasons, it may simplify a lot of what is done in committee stage. You see—and permit me, please, Madam Chair—part of it is that, of course, the Opposition would not want to unnecessarily detain the passage of this Bill if it is that, for instance, the Judiciary is going to have a second look at this particular law prior to proclamation—that is one point. And, secondly, I do understand that it is not the Judiciary's role to build courts, in fact, it is the opposite; it is the Government's role to facilitate those buildings through the Ministry of Justice, which is specifically charged with the construction of the judicial complexes.

So, insofar as proclamation is an event for the Government of Trinidad and Tobago, I was wondering, even though your Government will not be in power

next, you know—I am just teasing, right, lightening the mood—but even though that will not be a case whether the current estimation is that there would be a second look at the law? And, also, whether there were certain pre-markers?

Sen. Nicholas: The intention, of course, is to move as quickly as we can to operationalize this, working together with the Judiciary. At this time, I could not tell you.

Sen. Al-Rawi: Thank you. And are you aware if there is going to be a second look at the legislation prior to proclamation?

Sen. Nicholas: Certainly that is not the intention at this time.

Sen. Al-Rawi: Thank you.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Sen. Young: Madam Chair—

Madam Chairman: Senator.

Sen. Young: Thank you. Clause 3(1), under the definition “Children’s Attorney”, it states there:

“has the meaning assigned to it under section 88 of the Children Act;”

But when you look at clause 22, which is a reference to the same section 88(5), at clause 22 we say “Children Act, 2012”. Knowing how the Children Act has progressed and how it has changed a number of times, I am wondering, and I suggest we take a decision here now whether we put in the “2012” here as well, or whether we delete it in the other area.

Sen. Nicholas: We can put the “2012” in here.

Sen. Young: I would have thought so. Thank you.

Sen. Prescott SC: Madam Chair, may I just offer a slight reference to a typographical error it seems. The definition of “children care matter”, I would imagine that the verb should be “includes”.

Sen. Al-Rawi: As opposed to “include”, “includes”.

Sen. Nicholas: Sure, yes.

Sen. Al-Rawi: May I join Sen. Prescott at this particular clause, the “2012” would be added into subclause (c) at the bottom of page 3?

Sen. Nicholas: Correct. Yes.

Sen. Al-Rawi: May I ask for some direction? I do find this expression “Children Act” quite cumbersome, in particular, we use “children’s” in other legislation, “Children’s Authority”. I see your head shaking no when the Children’s Authority is with an “apostrophe s”, so I was wondering if we are going to choose one or the other.

Sen. Nicholas: Children.

Sen. Al-Rawi: Children.

Sen. Prescott SC: And we will use “children” wherever we have used “children’s”—

Sen. Al-Rawi: Because it is both, eh.

Sen. Prescott SC:—as opposed to the word, “Children’s Attorney”, the phrase. Wherever we refer to legislation, or to a body or so, we say “children’s”—

Sen. Nicholas: Well, it is “Children’s Attorney”—

Sen. Prescott SC: Yes, but “Children Act”.

Sen. Nicholas: But Children Act.

Sen. Prescott SC: We will not use the possessive for those things.

Sen. Nicholas: Correct.

Sen. Young: I think the issue may be, if I may, Madam Chair, through you, and I could be wrong here, but I think the “Children Act”, which is now before us is referred to as the “Children Act” in the Act, so we cannot here call it the “Children”—apostrophe s—“Act”.

Sen. Nicholas: Correct.

Sen. Al-Rawi: We missed the opportunity on that occasion, but thank you. That one makes sense. Thank you all very much.

Madam Chairman: Any other concerns, Senators?

Sen. Prescott SC: In clause 3?

Madam Chairman: In clause 3.

Sen. Prescott SC: I just needed to enquire if at page 5 of the Bill that is at clause 3, the reference to “family matter” (a), there is something called a “care matter”? Is that all right?

Sen. Nicholas: Yes.

Sen. Vieira: Care proceedings.

Sen. Prescott SC: Thank you very much.

Madam Chairman: Any further concerns?

Sen. Al-Rawi: Yes, Madam Chair, your cameraman sometimes confuses Sen. Young and I when they hear our voices, so I would just say it is me, Faris Al-Rawi—[*Laughter*]

Sen. G. Singh: I am glad you can identify yourself.

Sen. Nicholas: It is good to know who you are.

Sen. Al-Rawi: It actually happens, Sen. Young will tell you the same thing as well. Sen. Coudray finds this highly amusing, but I too as well.

Sen. Nicholas: I thought we were here to deal with the matters at hand here, as opposed to—

Sen. Coudray: Amused, I am not amazed—

Sen. Al-Rawi: I am glad to hear her voice and participation. It is good to know she is here. “Peer Resolution”, hon. Attorney General, I was wondering if we wanted to have something which was a little bit broader and less specific to allow for this to morph. I am concerned, as we progress over time that the peer resolution may fall apart in its current form. So, for instance, something which included a programme which the hon. Chief Justice may, you know, have some creation factor with. So, I thought that this was rather specific—

Sen. Nicholas: The “Peer Resolution” is a specific programme.

Sen. Al-Rawi: So you want to make sure that this lasts from now until the next 50 years, right?

Sen. G. Singh: Other—I mean, legislation can be amended, but what you have here is a definitive, specific programme. You can always amend. It does not have to be, you know, to make it such anachronism to say it is calcified already.

Sen. Al-Rawi: Sure. I am just sort of borrowing the example of technology specificity and the caution that one should adopt.

Sen. Nicholas: I do not think “Peer Resolution” is evolving at the same speed.

Sen. Vieira: This is also consistent with the learning that came out of the peer resolution workshop that we had at the Convocation Hall recently, so I am happy with it.

Sen. Nicholas: Thank you, Sen. Vieira.

Sen. Prescott SC: Chair, may I just bring to the Attorney General's attention, in case it begins to become too pedantic, we have on pages 4 and 5 the use of "children" and "children's" when we speak of Children Division, so is there some electronic way we can address making the change once and for all? If you look at page 4, about five lines from the end you will see "Children's Division" and about four lines above it you see "Family and Children Division", and if you go to page 5—are you with me?

Sen. Nicholas: Yeah.

Sen. Prescott SC: At the top of the page you see "Children's Division", so I am just wondering, because I would not want it to be said that that is all I do for the rest of today.

Sen. Nicholas: Yes, we will go through and correct all of them.

Sen. Prescott SC: I am much obliged.

Sen. Young: Madam Chair, if I may, through you.

Madam Chairman: Sen. Al-Rawi.

Sen. Young: And Madam Chair has made the same mistake as the cameraman; it is Sen. Young, please, Madam Chair. I am constantly bombarded with the fact that I sound like Sen. Al-Rawi. I "doh" know what that means.

Sen. Hadeed: "Alyuh come like twins now." [Laughter]

Sen. G. Singh: I suggest you take a DNA of your voice.

Sen. Young: If I may, when we look on page 4, under the definition of "Deputy Registrar", and we say:

"'Deputy Registrar, Family and Children Division' means a Deputy Registrar and Marshal assigned to the Family and Children Division under section 6(1);"

—and then you go to page 5 where we say:

"'Registrar' means the Registrar and Marshal of the Supreme Court;"

Taking up on the point that I think was made in the wrap up by the hon. Attorney General when we were trying to say what the definition of "Registrar" and "Deputy Registrar" may mean, is it found in the Supreme Court of Judicature Act? That is where the Registrar and the Deputy Registrar definitions are found

and maybe we would want to make some sort of reference to it here. Because it seems to be a different definition for a Deputy Registrar in the Family and Children Division, as opposed to the Registrar—where we are pegging it to the Registrar and Marshal of the Supreme Court—if you follow the point.

Sen. Prescott SC: Hon. Attorney General, àpropos of the same point, may I just ask you to extend your thinking a bit. On the very next page, at page 6, we refer to 2(c), “Clerk of the Peace” and “Clerk of the Court” being construed as Registrars, but I do not think that the legislation—the Supreme Court of Judicature Act permits us to simply create a person called a Deputy Registrar from the germ of a Clerk of the Peace. Look at it again. I do not know if you could just say, from today on this person will be called Registrar, because Registrars are defined in the Supreme Court of Judicature Act.

Sen. Al-Rawi: That is right. And section 2 only defines, in the Supreme Court of Judicature Act, it only defines Registrar. [*Crosstalk*] And just to point out that under the Supreme Court of Judicature Act, a “Registrar shall be an Attorney-at-law”, but by this clause we are allowing a Clerk of the Peace who is not an attorney-at-law to become a Registrar. [*Crosstalk*]

Sen. Young: And then, of course, Madam Chair, through you, when you look at section 67 of the Supreme Court of Judicature Act, they are saying now the specific powers that a Registrar has, including the powers to act as a judge in Chambers. So, now we are giving a Clerk of the Peace that power, because—and then when you look at section 68 of the Supreme Court of Judicature Act:

“There shall be a Deputy Registrar of the Supreme Court...”

And we are now—and, of course, section 66(5) of the Supreme Court of Judicature Act says, specifically and expressly:

“The Registrar shall be an Attorney-at-law...”

Which was the point I was making in my contribution. So now we are faced with a difficulty where Clerks of the Peace do not have to be, and very frequently are not, attorneys at law, and we are now deeming them to be.

Sen. Nicholas: Senator, we are not actually creating—we are not saying that they are the same in terms of qualification, or that sort of thing—

Sen. Young: Well, then we need to be very careful, hon. Attorney General, how we define, and, of course—

Sen. Nicholas: Yes. I agreed that we have to be careful, and we are just looking at it very quickly for you.

Sen. Young: Because when you look at the point that we were making at page 5:

“‘Registrar’ means the Registrar and Marshal of the Supreme Court;”

8.00 p.m.

Sen. Nicholas: We are not making Clerks of the Peace Registrars.

Sen. Young: You are just deeming them to be; you have to be careful with that because it comes back to the Act.

Sen. Prescott SC: Hon. Attorney General, may I suggest, because the more we look at it we are seeing these positions of Registrar, Deputy Registrar and Assistant Registrar actually have the force of section 111 of the Constitution behind it. The Supreme Court of Judicature Act actually says that they must be attorneys-at-law. However we treat with it to make the juxtaposition between Clerks of the Peace and Registrars, appears to say I am merely changing the nomenclature and creating a new animal. [*Interruption*]

Sen. Al-Rawi: AG, if you keep it at Clerk of the Peace you would not run the risk of the argument.

Sen. Nicholas: We could probably remove the clause altogether. We are just double checking something.

Sen. Al-Rawi: But then the manpower architecture becomes a problem, in how you fit out the two issues. So our concern, just to state it for the record—

Sen. Nicholas: All this deals with is referencing.

Sen. Al-Rawi: It is when they come to fill the substantive post that we run into an ultra vires the Constitution argument.

Sen. Vieira: I think I see the problem. You see, when it comes to the subdivision dealing with the Children Court, and you go into the Magistrates’ Court level, you want to treat the Clerk of the Peace and the Clerk of the Court to be the Registrar, but it does not carry over, because registrar has a specific definition. It is a public office under the Constitution. So we are going to have to re-tweak this, because really what you want is to deal with that criminal jurisdiction, but it does not translate easily. That is the point I think we are drawing to your attention.

Sen. Nicholas: The proposal is to remove the two “Cs”.

Sen. Vieira: Then what happens to the functionary, for the person who is processing the matters that Clerk of the Peace or a Clerk of the Court would do ordinarily in the children's jurisdiction?

Sen. Nicholas: I will just give the technical staff a little time to deal with this and we will come back to it.

Madam Chairman: So we defer clause 3.

Clause 3 deferred.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

Sen. Prescott SC: May I make a suggestion in clause 4(2). Once again it is just stylistic. We have in 4(2):

“The complement of the Family and Children Sub-Division shall be up to twenty-two Puisne Judges and up to twenty-eight Masters”

I am suggesting that we should say “should not exceed”, if indeed you want a maximum.

Sen. Al-Rawi: May I on the issue of maximum, draw exactly following on that point? *[Interruption]* I have the benefit of a little eavesdropping so I think I have heard some of it. The concern that I would ask you to consider is prescribing in dissimilar language to section 65A of the Supreme Court of Judicature Act a maximum now of Masters. I am aware that subsequent legislation amends previous legislation; that is set out in the Interpretation Act. I am not raising the fact that you can amend that way. What I am asking for consideration is to provide the Judiciary with the flexibility of not having to come back to Parliament each time they wanted to go above the number. I am asking for consideration whether we would be better equipped by having language similar to section 65A of the Supreme Court of Judicature Act, which says:

“There shall be attached to the High Court”—in this case the Family Court—“not less than two Masters who shall...”—et cetera, as opposed to prescribing the limit.

Sen. Nicholas: Sen. Al-Rawi, we have heard you on it. We have reflected on it, but we believe that this is the policy decision for moving forward.

Sen. Prescott SC: Would you give some consideration to saying “not exceed” instead of “up to”?

Sen. Nicholas: We have considered that as well, but the technocrats are adamant that this is the way they would like it, having gone through all the committees and dealt with it, they are adamant that this is the way we should go forward.

Sen. Prescott SC: Thank you. May I, through you, Madam Chairman. If you just bear with me, let us look at clause 4. It says in 4(1):

“There shall be a Division of the High Court to be known as the ‘Family and Children Division’ which shall comprise a Family Court Sub-Division known as the ‘Family Court’ and Children Court Sub-Division known as the ‘Children Court’.”

Then (2) says:

“The complement of the Family and Children Sub-Division...”

—which previously we had not heard about. Can you assist me, or is that an error and you mean the complement of the two Divisions?

Sen. Nicholas: It should be Divisions.

Sen. Prescott SC: Family Sub-Division and the Children Sub-Division?

Sen. Nicholas: Yes.

Sen. Prescott SC: Maybe we could say Family Sub-Division and Children Sub-Division?

Sen. Nicholas: Sure.

Sen. Prescott SC: Does it mean there are 22 each?

Sen. Young: That is what I was now going to say, Sen. Prescott. It seems to me that what you should say—

Sen. Nicholas: That is the total.

Sen. Young: It should be the complement of the Family and Children Division.

Sen. Prescott SC: Or “the aggregate number of judges appointed to shall be”.

Sen. Al-Rawi: The language does not suggest, insofar as the way in which —

Sen. Nicholas: Actually it should read: The complement of the Family and Children Division.

Sen. Prescott SC: That is correct; thank you. I am progressing, so we go now to (4):

“The Children Court Sub-Division shall comprise Children Courts,...”

When we look at the definition section on page 4:

“‘Children Court’—singular—“means the Children Court Sub-Division of the Family and Children Division...”

So I am never going to be able to say this correctly, but (4) says: “The Children Court Sub-Division shall comprise Children Courts”, but the definition of “Children Courts” is the Children Court sub-division. Could it possibly be that we wanted to say that the Children Court, which means the Children Court Sub-Division, shall exercise jurisdiction in.

Sen. Vieira: Because Children Court is already defined. So it should be “the Children Court shall exercise jurisdiction in”.

Sen. Nicholas: Sen. Prescott SC, could you just point me to the clause you are referring to?

Sen. Prescott SC: Firstly, let us look at page 4 for the definition of “Children Court”—top of the page.

Sen. Nicholas: Come back to the clause with the quotes.

Sen. Prescott SC: The clause I am looking at is 4(4), which says: “The Children Court Sub-Division shall comprise Children Courts”—which is defined differently, actually conversely, where the larger seems to be Children Court, which means the sub-division. So I recommend that if you had said “the Children Court sub-division shall exercise jurisdiction”, you would have achieved the end you set out to achieve.

Sen. Nicholas: Your suggestion is?

Sen. Prescott SC: That we say instead—providing of course that is the policy that you wish—the Children Court Sub-Division shall exercise. Deleting the words “shall comprise Children Court which— Does that fit with your policy?

Sen. Nicholas: That works for me.

Sen. Young: I think what you are missing is what Sen. Prescott SC is saying. When you look at your definition of “Children Court” in the definition section, you have already captured what you expected it to mean. So what you are doing here at section 4(4) is achieving the converse. Sen. Prescott SC is correct.

Sen. Nicholas: It works.

Sen. Prescott SC: Yours?

Sen. Nicholas: Yours. “The Children Court Sub-Division shall exercise jurisdiction”.

Madam Chairman: Why are you keeping the word “sub-division” there?

Sen. Nicholas: Because that is what it is called.

Madam Chairman: But you have said in (1) that your “Children Court Sub-Division known as the ‘Children Court’”.

Sen. Vieira: AG, if you look at the logic of (4), let us break it down. It says: Within the High Court we have a division known as the Family and Children Division, one. That comprises a Family Court Sub-Division, the Family Court and the Children Court Sub-Division, the Children Court. So you break it down now. “The complement of”—I would have said the Family Court—“shall be up to twenty-two Puisne Judges and up to twenty-eight Masters”. The complement of the two—now you are separating, “The Family Court shall have jurisdiction in all family matters”, and then you say, “The Children Court shall exercise jurisdiction in”.

Sen. Nicholas: Agreed.

Sen. Vieira: So it is a sequence.

Sen. Nicholas: Absolutely agreed.

Sen. Al-Rawi: Madam Chair, you are correct; we are getting better as we go along.

Sen. Young: Before we press on much further with Sen. Prescott SC, just to go back to 4(1). I am surprised Sen. Prescott SC missed this, I think. The second to last line. I think there should be the addition of the letter “a” between “and” and “Children”. Are you following me? The second to last line:

“...the ‘Family Court’ and a Children Court Sub-Division known as...”

Sen. Prescott SC: Back, Chair, with your leave to 4(4)(b).

Madam Chairman: Sen. Prescott SC, (b).

Sen. Prescott SC: I am grateful to you. 4(4)(b) will now read:

The Children Court shall exercise jurisdiction in—

(a) all children matters; and

(b) any other children matters which the Chief Justice may, by Order, assign

to the Children Court.

Madam Chairman: Court.

Sen. Prescott SC: Yes; thank you.

Madam Chairman: Any other concerns in clause 4?

Sen. Al-Rawi: Madam Chair, may I just enquire, it is not so much an amendment. When we use the expression “separately housed” in 4(5), particularly looking at the preamble and section 88 of the Children Act, is it intended that these will physically be in different buildings or just, for instance, that they could be on different floors?

8.15 p.m.

Sen. Nicholas: It will just be different courts.

Sen. Al-Rawi: Separately housed.

Sen. Nicholas: Yes. So that there will be different rooms or different buildings or different floors. Once they are not the same—*[Interruption]*

Sen. Al-Rawi: So long it is not the same court sitting with both jurisdictions in that same court.

Sen. Nicholas: Yes.

Sen. Al-Rawi: Okay, it does not— okay. Thank you. Appreciated.

Madam Chairman: Any other concerns? The question is that clause 4 be amended as follows:

In subclause (1), insert the word “a” after the word “and”, and before Children Court Sub-Division in the fourth line.

In subclause (2), to delete the word “Sub-Division” and substitute the word “Division”.

Sen. Nicholas: Correct.

Madam Chairman: And in subclause (4) to delete the words “Sub-Division shall comprise Children Courts, which”—*[Interruption]*

Sen. Nicholas: Correct.

Madam Chairman: And in subclause 4(b), to insert after the word “Order”, “,” and after the word “Children” delete the word “Sub-Division” and substitute the word “Court”.

Sen. Nicholas: Madam Chair, I believe it is to be read as:

“...any other children matters which the Chief Justice may, by Order, assign to that Court.”

Madam Chairman: Okay, so clause 4(b) is amended by inserting after the word “Order”, “,” and deleting after the word “to”, “the Children Sub-Division” and substituting the words “that Court”.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

Sen. Al-Rawi: Madam Chair.

Madam Chairman: Sen. Al-Rawi.

Sen. Al-Rawi: If we look at clause 5:

“Sittings of the Family Court shall be held at such locations and at such times as the Chief Justice, in consultation with a Family Judge Court, may appoint, in accordance with the Supreme Court of Judicature Act.”

I think the error speaks for itself.

Sen. Nicholas: Family Court Judge.

Sen. Al-Rawi: Family Court Judge. [*Crosstalk*] I wonder, subject to any other observation someone may have on 5(1), whether, in light of the practice that we have in the civil courts where the equivalent of 5(2) is done by way of Rules of Court as opposed to primary legislation. I was wondering whether it was wise to legislate how the Family Court may sit by telephone, video conference or other appropriate electronic means. [*Crosstalk*] I think I heard that. This is the anchor from which the rules will flow.

Sen. Nicholas: Correct.

Sen. Al-Rawi: Yes? Okay, thank you. Do we want to keep the word “electronic” as the penultimate word? Or any other appropriate means as opposed to electronic. I am envisaging the [*Crosstalk*] yeah, if she would hear me first before responding. Could I finish my thought if that is okay?

Madam Chairman: Sen. Al-Rawi.

Sen. Al-Rawi: Thank you, Ma’am. I was just trying to convey, there is current discussion about anonymous witness evidence which is not done by way

of electronic means, it is actually done in a different sort of arrangement. So I was just trying to capture, I accept that the current technology of the use of the word electronic may be appropriate. I was trying to capture the broader sense after we dealt with that which is any other means that may be prescribed.

Sen. Young: Madam Chair, I think I would like to join with—

Sen. Nicholas: If I may suggest, therefore, the insertion of “or other” after electronic.

Sen. Al-Rawi: Yes.

Sen. Nicholas: So we deal with both.

Hon. Senator: Correct.

Sen. Young: But then you, Attorney General, you will have to delete the first “or other”.

Sen. Al-Rawi: Yeah.

Madam Chairman: So you delete after “conference”, “or other appropriate”—

Sen. Al-Rawi: No, no.

Sen. Young: Just the “or”—“video conference, other appropriate electronic or other means.”

Madam Chairman: “...other appropriate electronic or other means.”

Sen. Al-Rawi: I think you need the word appropriate still for the other means. Perhaps we may invite some broader consideration. I hear a gentle no coming from Sen. Prescott at the back, through you, Madam Chair.

Sen. Prescott SC: Would the Attorney General consider this instead? I am reading from line two:

“...and may conduct hearings by telephone, video conference or other appropriate means.”

Because to delete the “or” that he suggests, leaves it—

Sen. Nicholas: There is an insistence that electronic must remain.

Sen. Prescott SC: You must be careful of taking all the advice, should you not?

Sen. Nicholas: Trust me, I am.

Sen. Prescott SC: Okay, so we want to retain the word “electronic”?

Sen. Nicholas: Yes.

Sen. Prescott SC: So then, may it read, “and may conduct hearing by telephone, video conference, or appropriate electronic or other means.” Instead of “or other” twice.

Sen. Nicholas: That is what I was saying.

Sen. Prescott SC: Oh, you did. Thank you very much. Thank you, Chair.

Sen. Al-Rawi: Thank you, Sen. Prescott.

Madam Chairman: Any other concerns in clause 5?

Sen. Prescott SC: I do wish to understand, so I am not drafting, what do subclauses (5) and (6) mean to achieve?

Sen. Vieira: Well, I can have a stab at (5). I think 5 is a transition clause. What I understand (5) to be saying is that currently under the Family Court pilot project the Magisterial District of St. George West is part of that. So what it is I am anticipating is:

“Without prejudice to the foregoing, upon the commencement of this Act the jurisdiction in family matters previously exercised in Courts of Summary Jurisdiction, save the Magisterial District of St George West, shall continue to be exercised in these Courts until the Chief Justice directs otherwise.”

Hon. Senator: So you maintain the status quo.

Sen. Al-Rawi: The point is it is not necessarily status quo unless we have an absolute certification that the Magisterial District of St George West, in fact, does everything which this Act is going to allow to be done, then you may have a problem that you may be dealing with a larger intrusion funneling into the magisterial district. So I am not quite sure that we are comparing apples with apples.

[Discussion between Sen. Nicholas and Parliamentary Counsel]

Madam Chair, if I may also add food for thought, preliminary enquiries, for instance, are not dealt with in the Family Court right now, for children. They are dealt with in the Magisterial District in St. George West in a different court. So this does not, with this current definition, take care of that circumstance. So I am not quite sure that the advice that you have is fully correct on that basis, until we have a certification that that is the case, perhaps we ought to look to a formula which will allow you more flexibility.

Sen. Nicholas: Do you have a suggestion?

Sen. Al-Rawi: I was wondering whether you needed to include the Magisterial District of St. George West, because it would still be open to the Chief Justice to ascribe anything, any way he wanted. So all districts could operate the same way they are operating right now. It is up to the Chief Justice to say so. And if I could also point you to the fact that subclause (4) uses a very useful formula in the second line:

“...or any rules made hereunder”—which subclause (3) does not have.

So it may be useful to allow for rules to be promulgated by the Chief Justice so that he could capture the roll-out in such fashion as the Judiciary wants it to roll-out. The only fear without the certification of fact is whether the Magisterial District of St. George West, in fact deals with everything to deal with children, including committal proceedings.

Sen. Young: Hon. Attorney General and Madam Chair—sorry.

Sen. Nicholas: Clause 5 only deals with family matters and therefore the issue of preliminary enquiries in criminal matters would not arise.

Sen. Al-Rawi: Thank you very much. It is very useful, thank you. May I ask you to point out, just to cross tie it, where else in the Bill do we deal with this jurisdictional issue for the children matters? Is it in 26? No, that is Administration of Children Court. Clause 28, is it?

Sen. Vieira: I think 28 is the answer, because it says:

“...jurisdiction and powers in all children matters exercisable by the High Court and Courts of Summary Jurisdiction shall be exercisable by the Children Court.”

Sen. Al-Rawi: So I am looking at that in the context now by way of cross reference to the Magisterial District of St. George West. So there is no conflict there, there is no collision.

Sen. Vieira: It is a transition because St. George West Magisterial District is—

Sen. Nicholas: Unlike the Family Court that exists, there is no Children Court that exists. Well the Family Court as currently exists has both magisterial and high court divisions and the magisterial division. So it is sort of a hybrid that is in existence right now.

Sen. Nicholas: Yes, that is correct.

Sen. Vieira: And as regards 5(6) which Sen. Prescott has also raised a concern about, that too is an appropriate transitional provision, because what I see is, for example, if you had gotten a decree nisi in the High Court prior to the Family Court pilot project, you still have to go to the High Court to get your decree absolute. And do not forget the Family Court project is just Port of Spain. So this will transition the matters currently obtaining in the High Court of Port of Spain and also San Fernando and Tobago High Court.

Sen. Young: Correct.

Madam Chairman: Could I ask if we are amending subclause (4) at the end to reflect the same language as we just amended in (2).

Sen. Nicholas: Yes, please.

Sen. Young: If you may, Madam Chair, on that exact point, I was going to ask the hon. Attorney General, through you, when we look at subclauses (2) and (4), I am trying to understand the difference in language, at (2) when we are dealing with the Family Court we say:

“Notwithstanding subsection (1), the Family Court may, when required, sit at any time”—et cetera.

When you go to subclause (4) we say:

“Notwithstanding subsection (3) and subject to any written law or rules made hereunder...”

8.30 p.m.

I respectfully suggest, maybe we import that language “and subject to any written law or rules made hereunder” into subclause (2), so it is in conformity and it covers everything.

Sen. Nicholas: One is Family Court, one is Children.

Sen. Young: I understand that but even in the Family Court you are giving now the same language and the caveat, giving the Family Court the same power to do it, subject to any written law or any rules. We know they have pilot rules in existence now in the Family Court but we do not know how life will change and there is no harm, in my respectful opinion, in having the identical language that you used at (4) to (2), but there is harm without it because you can argue now, when you are looking to interpret down the road, “Well, you had it for Children Court but you did not have it for Family Court, so therefore you are not empowered to have written law or rules.”

Sen. Vieira: I do not know if I quite agree with that because the power to

make rules is found in section 14 of the Supreme Court of Judicature Act. Let me read that section:

“The jurisdiction vested in the High Court shall, so far as regards procedure and practice be exercised in the manner provided by this Act or by Rules of Court and where no special provision is contained in this Act or in Rules of Court without reference thereto any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it might have been exercised by the former Supreme Court under the Judicature...Act).”

So the Rules of Court power is in the Supreme Court of Judicature Act.

Sen. Al-Rawi: So why expressly state it in (4) then for the Children’s Court? Are we not colliding and inviting an argument?

Sen. Vieira: No, because in the Children’s Court you are dealing with criminal court jurisdictions and you might have overlapping jurisdictions, so you might have preliminary enquiry, you might have the juvenile court, you may have the Summary Courts Act.

Sen. Al-Rawi: But what about prior to—a matter in the Family Court arises which turns out to be criminal. It is not transferred yet to go there. Would you not want to have at least the things—the point is that there is an inconsistency in language and the beneficial value of including it outweighs the prejudicial value of excluding it in subclause (2). The point is, it can be argued.

Sen. Vieira: I understand the point you are making, but I do not really see it that way. I think the Family Court already has rules which can transition. These are excellent rules, but with the criminal court jurisdiction, with the Children’s Court, it is going to be a mishmash of different laws and rules and procedures. So I think they wanted to be more careful in the second setting, whereas in the first, it is pretty much a fait accompli.

Madam Chairman: Hon. Senators, I just need to bring to your attention that dinner is provided in the dining room.

Sen. Al-Rawi: If the lawyers leave, the committee might go faster. *[Laughter]*

Madam Chairman: Yes, please.

Sen. Prescott SC: Chair, may I make another intervention? I do not know if I missed it, but is clause 5(4)—does the difference in “linguaging” of clause 5(4) have any significance, in particular when we introduce a new criterion for where and when sittings are to be held? We say:

“the Children Court may, when required, and appropriate...”

We did not take a similar approach in (2). There was only one criterion in (2), “required”.

Sen. Nicholas: Because, of course, you are dealing with children.

Sen. Al-Rawi: In both cases.

Sen. Nicholas: No. In the first case you are dealing with family.

Sen. Prescott SC: As opposed to children? Families which have no children?

Sen. Nicholas: No.

Sen. Prescott SC: Let me say it again. Probably we rushed ahead. Is it meant to be different when you introduce the words “and appropriate” in (4)—different from (2)?

Sen. Nicholas: It is meant to be.

Sen. Prescott SC: It is meant to be. Very well.

Sen. Vieira: Again, I think the problem they find themselves with is that in the Family Court Rules there is a Part XVI which deals with procedure and hearings and Part XV with case management. So in here you already have provision for, say, in-camera hearings, but when you come down into the children’s section, which is this wide mishmash, you may not have these rules applicable so you are going to have to put in, “as appropriate”.

Sen. Al-Rawi: But, Sen. Vieira, the law, wearing the classic veil of ignorance, ought not to presume that we have rules at all because this law is now being retrofitted to create rules that come. So we cannot start, with the fact, well, we have rules here and so this law now does not need to factor it. It should be made blind, under that veil of ignorance, to contemplate laws to be made for both avenues. So there should at least be consistency for (2). What happens when those rules change, or something goes wrong? We are dealing with the primary legislation which now would have overtaken the position which exists currently. That is just where the caution comes from, at least from my mind.

Sen. Nicholas: Sen. Al-Rawi and Sen. Vieira, just in order to move forward, I would like you to know that we agree with adding the “and appropriate” after “when required” in (2) so that there is consistency.

Sen. Prescott SC: Thank you.

Sen. Nicholas: I think that would satisfy Sen. Prescott as well.

Sen. Prescott SC: Indeed. Sir, but I have one more.

Sen. Nicholas: With regard to (4) further, we amend as per (2), the language at the end.

Madam Chairman: Are there any other concerns?

Sen. Prescott SC: Yes. May I just make one other observation? In the penultimate line of subclause (6), we use the term “High Courts” which is common use of the language but the plural is not necessary. It should be “High Court”.

Madam Chairman: Any other concerns?

Sen. Prescott SC: No, Ma’am. Thank you very much.

Madam Chairman: Hon. Senators, the question is that clause 5 be amended as follows.

In subclause (1) to delete a word “Court” after “Judge” and insert the word “Court” after “Family” and before “Judge”.

In subclause (2) to insert after the word “required” the words “and appropriate”, and after the word “conference” to insert a comma. Delete the word “other” and after “conference” and delete the word “means” and insert the words “or other means”.

Sen. Prescott SC: May I ask how it would read?

Sen. Nicholas: Chair it is meant to read:

“Notwithstanding subsection (1), the Family Court may, when required and appropriate, sit at any time, and may conduct hearings by telephone, video conference, or appropriate electronic or other means.”

Madam Chairman: That is what I said, except that I did not put a comma after—

Sen. Prescott SC: Of course that “or” is conjunctive and you do not need the comma.

Sen. Nicholas: Yes.

Madam Chairman: So we take off the comma after “conference”.

Sen. Nicholas: Thank you very much, Sen. Prescott.

Madam Chairman: And further amended in subsection (4) by deleting the word “other” after “or” and deleting the word “means” after “electronic” and inserting the word “or other means”.

And in subclause (6), by deleting the word “Courts” and inserting the word “Court”.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, a nice smooth quick one there. Just the question insofar as this ties into the Registrar, Deputy Registrar issue that we have, the first issue being this rather uncomfortable language of “up to three” and “up to ten”. Not exceeding—“up to” is the classic? Do we go one, two, three? Is it on three or before three? It is messy. That is the first point. And then, secondly, did we really want to prescribe a maximum limit?

Sen. Nicholas: Yes, we do.

Sen. Al-Rawi: Okay, on a point of policy. And then the other one is in clause 6(3):

“Where under the Act, a Deputy Registrar and Marshal or Assistant Registrar and Marshal...”

Bearing in mind that the definition incorporates Clerks of the Peace fitting those categories.

Sen. Nicholas: We have removed the Clerks of the Peace.

Sen. Al-Rawi: Okay. So when we come back to that you will clarify that. Then:

“exercises jurisdiction....have all rights, powers and immunities of a Deputy Marshall of Trinidad and Tobago.”

So I was wondering about whether we would be running afoul of the Supreme Court of Judicature Act provisions with the definition being unsettled as it was because we have not gotten back to it yet.

Sen. Nicholas: Well when we settle it we will come back to this.

Sen. Al-Rawi: So would it be appropriate to defer this clause then?

Sen. Nicholas: I think that is a good idea.

Sen. Al-Rawi: May I suggest so, Madam Chair?

Madam Chairman: Okay. Clause 6 is deferred.

Sen. Prescott SC: May I, for the purpose of assisting? When you go back to—or rather when you are contemplating clause 6, could you look at clause 6(2) and probably make the change? Instead of saying “The Deputy Registrars and Marshals”, it should be “The Deputy Registrar and Marshals”. Deputy Registrar and Marshal appears to be a term applied to a specific office. Is that right? If you go back to the definition section, the reference is to somebody called “Deputy Registrar and Marshal”.

Sen. Nicholas: Is your question whether the office is called Deputy Registrar and Marshal?

Sen. Prescott SC: Yes. Is the answer yes?

Sen. Vieira: Yes.

Sen. Prescott SC: Because I am seeing it on page 4 in the definition section.

Madam Chairman: Senators, we will clarify that. Clause 6 is deferred.

Sen. Prescott SC: Yes. I am saying, while that is being contemplated.

Sen. Vieira: I could answer that. If you go to the Supreme Court of Judicature Act, section 71 says:

“The Registrar shall be Marshal of Trinidad and Tobago and shall perform all the duties, have all the rights and powers, and be subject to all the liabilities and obligations appertaining to the office immediately before the commencement of this Act.”

And then Deputy Marshal is dealt with at section 72.

Sen. Prescott SC: So while it is deferred, could consideration be given to those?

Madam Chairman: AG, could we move on?

Sen. Nicholas: Please, Madam Chair.

Clause 6 deferred.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.

Sen. Prescott SC: May I once again, I think by now we agree that in 7(2)(b) and (c) we should be talking about a Family Court as opposed to a Family Court

Sub-Division and a Children Court Sub-Division. Is that right? And should it be “the Family Court” and “the Children Court”, (b) and (c)?

Sen. Vieira: Yeah, I agree.

Sen. Prescott SC: In light of what we had said earlier?

Sen. Nicholas: I think in this case we need to retain the “Sub-Division”.

Sen. Prescott SC: Thank you very much.

Madam Chairman: Any other concerns, clause 7? Sen. Al-Rawi?

Sen. Al-Rawi: Yes, Ma’am. Thank you, Madam Chair. I was wondering, in subclause (2):

“The Family and Children Court Administration Department shall comprise—”

May I understand the policy behind, for the first time in legislation to deal with any court in Trinidad and Tobago, be it summary courts, petty civil courts or the Supreme Court of Judicature Act—may I understand what the thinking behind prescribing the executive management is?

8.45 p.m.

Sen. Nicholas: The establishment of a proper court structure.

Sen. Al-Rawi: But if we are establishing this here now, does it mean that all of the other Courts are not properly running?

Sen. Nicholas: No, we are evolving.

Sen. Al-Rawi: So my question is: insofar as the hon. Chief Justice, pursuant to his powers given to him under the Constitution’s Supreme Court of Judicature Act, has the ability to staff, manage and administer the Judiciary of Trinidad and Tobago, why are we prescribing, for the first time since 1962, the way in which he must do this now?—because later on in the Bill we are not prescribing qualifications, transfer and secondment and trade union issue, to put it bluntly.

Sen. Nicholas: Court administration has evolved to set up this structure in moving forward. The personnel/staffing aspects will be dealt with by the JLSC.

Sen. Al-Rawi: Got you. So the intention is that this is now your template moving forward—

Sen. Nicholas: Correct.

Sen. Al-Rawi:—for all other pieces of law that will come up. Let us say we deal with a drug court, or a gun court, or a commercial court, that the new move is

going to be to prescribe things this way and to therefore remove the flexibility for changes from the Chief Justice unless it is done by Parliament.

Sen. Nicholas: It is certainly the case for this Court. I could not commit to any other Court.

Sen. Al-Rawi: Okay. Thank you very much. And it is the policy that you are maintaining this particular structure, yes?

Sen. Nicholas: For this Court.

Sen. Al-Rawi: Thank you so much.

Sen. Prescott SC: Chair, may I ask one more question under 7?

Madam Chair: Sen. Prescott.

Sen. Prescott SC: 7(3), Attorney General, speaks of “an appropriate number of suitably qualified persons as determined from time to time by the Chief Justice”. It may appear apparent but what is the Chief Justice determining, the number or the qualification?

Sen. Nicholas: The JLSC would normally determine the qualification.

Sen. Prescott SC: So he is determining the number?

Sen. Nicholas: So the Chief Justice will determine the number.

Sen. Prescott SC: So with an appropriate number to be determined by the Chief Justice?

Sen. Nicholas: Yes.

Sen. Prescott SC: “...Family and Children Court Administration Department shall be staffed with an appropriate number of suitably qualified persons that number to be determined by...”.

Sen. Vieira: You know, I just want to remind us we are talking about a court here. It comes under the Chief Justice’s jurisdiction. This is not a Government Ministry or department. So I am quite comfortable letting the Chief Justice decide and govern his own courts.

Sen. Nicholas: He runs the Court.

Sen. Prescott SC: Okay, it is the language. So he is not to determine qualification? Is that it?

Sen. Nicholas: We are okay with this wording.

Madam Chairman: AG, are we deleting the word “Sub-Division” from subclause (2)(b) and (c)?

Sen. Nicholas: (b) and (c). Yes, Madam Chair.

Madam Chairman: So the question is that clause 7 be amended as follows.

In subclause (2)(b) delete the word “Sub-Division” after “Court”, and in subclause (2)(c) delete the word “Sub-Division” after the word “Court”.

Sen. Nicholas: Madam Chairman, we would propose to delete the words “a” for both (b) and (c) and substitute them with “the”.

Madam Chairman: Okay. So the amendment proposed is 7(2)(b):

Delete the word “a” and substitute the word “the”. Delete the word “Sub-Division” after the word “Court”.

(c), delete the word “a” and delete the word “Sub-Division” after the word “Court”.

Sen. Nicholas: Madam Chair, on consideration, we would prefer not to remove “Sub-Division”. It is felt that it should be “Sub-Division” after all.

Sen. Prescott SC: In 7(2)?

Sen. Nicholas: In 7(2).

Madam Chairman: Okay, so, we will withdraw that amendment and propose that clause 7 be amended as follows:

In subclause (2)(b) delete the word “a” and insert the word “the”, and (c) delete the word “a” and substitute the word “the”.

Sen. Nicholas: Yes, Madam Chair.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill.

Sen. Al-Rawi: May I just enquire?

Madam Chairman: Sen. Al-Rawi.

Sen. Al-Rawi: Thank you, Madam Chair. In prescribing strictly that the Deputy Court Executive Administrator must report to the Court Executive

Administrator, does this in any way interfere with the Chief Justice having the discretion to be reported to directly on certain matters?

Sen. Nicholas: It should not, but it does not.

Sen. Al-Rawi: You want to just put that on the record for me, please?

Sen. Nicholas: Well we have no issue with the current drafting of it.

Sen. Al-Rawi: That is one way to do it.

Madam Chairman: Any other concerns with clause 8.

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

Clauses 9 to 11 ordered to stand part of the Bill.

Sen. Al-Rawi: Madam Chair, we could jump to 14 if you are okay with that.

Clauses 12 and 13 ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, if I may on clause 14(1). Clause 14(1) borrows almost word for word from section 65B of the Supreme Court of Judicature Act. The only difference between the two in relation to the provisions for cost is whereas section 14(1)(a) says that the:

“...Family Court Judge to make an order in the matter, and such an order may include—

(a) provision for costs; or

(b) other consequential matters.”

In the Supreme Court of Judicature Act where a Master has similar power, what we say—and we are dealing here with a Family Court Master in this Bill. In 65B we say, if I may read that language:

“...to make an order in the matter and such an order may include provision for costs, certificate for Attorney-at-law or other consequential matters;”

I wondered why we deviated away from the words “certificate for Attorney-at-law” as used in 65B. And I also wondered, and perhaps my colleagues in another realm could help me here, whether the “certificate for Attorney-at-law” meant “certified fit for, or was it a certification with respect to party-party costs under Part 62 of the Rules of the Supreme Court?

So the expression “certificate for Attorney-at-law” troubled me. It is absent in clause 14. I have not seen the expression “certificate for Attorney-at-law” in actual practice, whereas, I have seen certification for advocate attorney in terms of costs.

Sen. Prescott SC: Would it not be redundant if you are making a cost?

Sen. Al-Rawi: I do not know. I was just wondering why. 65B of the Supreme Court of Judicature Act. Madam Chair, through you, to the hon. Attorney—

Sen. Vieira: That was done in 1980.

Sen. Al-Rawi: Yes, the amendment in 1980.

Sen. Vieira: And that certainly now getting to experiment in Masters. So I think that is kind of—the Supreme Court there is not as—[*Inaudible*]

Sen. Al-Rawi: My learned colleagues are assisting me by reflecting upon the time of the amendments of the Supreme Court of Judicature Act in 1980, when we were firstly experimenting with Masters and also prior to the fusion issues that we were dealing with. If it is that we would not fetter the broad discretion for costs, then I think we should probably leave it out, but I was not sure, in looking to the parent law, where it came from, which is why I am asking.

Sen. Young: I think in leaving it as provision for costs that is clear because we know the time that we are dealing with is now and it would not fetter at all the ability of the Master to give cost “certified fit for counsel”, et cetera.

Madam Chairman: Thank you, Senator.

Question put and agreed to.

Clause 14 ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Sen. Al-Rawi: Sorry, Madam Chair, a quick one. Just a question. I am not sure. I have not had the chance to do the homework behind this, whether there were other pecuniary orders beyond maintenance, whether in the High Court or the magisterial division which we needed to include. Say for instance, in the Children Act I did not get a chance to cross-reference them all. So, insofar as the enforcement of certain orders is what we deal with in clause 15, was it that there was another contemplation that we wanted to include “such other orders as the Chief Justice may prescribe”, for instance, “or any other written law”?

Sen. Vieira: On this one, I would be guided by the people who actually worked on the legislation because it involved both the judges and practitioners, and I am sure that they had a specific thing in mind when they were dealing with this. I would not want to tamper with it.

Sen. Al-Rawi: Your faith is refreshing, Sen. Vieira.

Sen. Vieira: I know the people who are working on it.

Sen. Al-Rawi: When we drafted section 34 we were gung-ho too.

Madam Chairman: AG?

Sen. Nicholas: We will leave it as it is.

Question put and agreed to.

Clause 15 ordered to stand part of the Bill.

9.00 p.m.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

Sen. Young: Madam Chair, if I may ask, through you, hon. Attorney General, when we look at clause 16(2), we use a phrase here:

“...shall possess the temperament suitable for appointment...”

I have never seen that phrase used before in legislation. Can you kind of describe the policy behind that? What is “the temperament suitable for appointment”?

Sen. Nicholas: Well, I mean, clearly with the Family Court, you are looking for persons who would treat in a less adversarial manner and who could probably show some more compassion. I think those would probably form the basis for—
[Crosstalk] Yes, that is correct.

Sen. Prescott SC: Chair, may I? Hon. Attorney General, in light of your very clear explanation, could you look at 6(2) which we have dealt with and see whether that formulation is not—

Sen. Nicholas: Look at? Sorry.

Sen. Prescott SC: Clause 6(2) and see if that formulation there is not apt:

“...shall possess the requisite special training, experience and temperament...”

Could it be that the same was required of persons who are referred to in 16(2)?

Sen. Nicholas: I would certainly think so.

Sen. Prescott SC: Well, you would want to recommend that to those who guide you?

Sen. Nicholas: Yes, indeed. *[Laughter]* So recommended.

Sen. Al-Rawi: Thank you, Madam Chair, if I may—

Sen. Prescott SC: Sen. Al-Rawi, just permit me one word. The last word in (b) needs to be looked at again.

Sen. Al-Rawi: “reengagement”?

Sen. Prescott SC: Yeah, is it spelt correctly?

Sen. Al-Rawi: it is “engagement” that is written.

Sen. Prescott SC: It is a typo.

Sen. Nicholas: Yes.

Sen. Al-Rawi: It is just spelt wrong. May I just ask, will we deal with the issue of transfers, secondment, pensions, positions, elsewhere, not in this parent—insofar as 16 deals with the “Staff of the Family Court”, I was wondering about the successorship issues that are going to prevail now because this is a new staffing arrangement. So, on commencement, how does the successorship issues, and benefits and entitlements, how are they intended to be dealt with and do they need to have an anchor in the parent legislation insofar as most others have it? *[Crosstalk]*

Yeah, just to point out, I do not know if your team had a chance while they were doing something else. I was just pointing out in every other piece of law where we create an entity and see how it is going to be staffed, we always provide in the parent legislation for the secondment successorship issues in the parent law.

Sen. Young: For example, the TTPost and RHA legislation.

Sen. G. Singh: That, the TTPost and RHA legislation, contemplated something totally different. Here you have a situation where it is a brand-new start-up.

Sen. Al-Rawi: When we dealt with the FIU the other day, Sen. Singh, and we dealt with new entities created at law, in this Tenth Parliament—my question is just to make sure we do not run into a trade union or public law issue, eh, I do not know what the answer is.

Sen. G. Singh: I can give you an example—which we will be dealing with, I do not want to be anticipatory—the Waste Recycle Authority, that is a totally new entity. You come into that, you do not contemplate any secondment.

Sen. Al-Rawi: So long as you are sure and the guarantee is yours, I am good to go.

Sen. G. Singh: You come into my enterprise brand new—in that enterprise, but here I see that they will be staffed by public officers, the recruitment process.

Sen. Al-Rawi: But we have contract too and we have an existing Family Court project in existence. What concerns me is the existing court arrangement in St. George West in particular. So, I was just wondering from an industrial relations point of view.

Sen. G. Singh: Yes, but the people will remain within the public service so that therefore, this is not an entity in which you are transferred out.

Sen. Al-Rawi: What about contract officers which is the second part of it? Because this Act now says we are going to have, in addition to judicial officers:

“(b) an appropriate number of other persons engaged on contract...”

Sen. G. Singh: Yeah.

Sen. Al-Rawi: So will they need to break contract and then be rehired and if so, has the continuation issue been mapped out?

Sen. G. Singh: No, it is not a question of succession in the employment contract terms, this is a question of how they fill their operational posts. So practically, if they are already within the system, they will continue as contract personnel. If they are not, then they will be engaged in terms and conditions of contract. So I do not see it being a problem in terms of that succession issue.

Sen. Young: If I may, Sen. Singh, just to continue on the same point, when the Integrity Commission was created, when you look at the legislation, they used this type of language:

“(6) The appropriate Service Commission may approve the transfer of any public officer to any office within the Commission and any public officer so transferred shall, in relation to gratuity, pension or other allowances, be treated as continuing in the service of the Government.”

So I think that is the type of language Sen. Al-Rawi has in mind.

Sen. Vieira: I do not think it hurts to consider what Sen. Al-Rawi is

suggesting, particularly since we are talking about pulling in people with the right temperament and training. You may pull them in from the Magistracy, you may pull them in from the psychiatric departments. Because this new court is going to be pulling in, not just lawyers, but a wide body of professionals. Even the setting-up of the pilot project, if you recall, we had Master Christie-Anne Morris-Alleyne, she was on secondment from a regular Master to this and then she went from there to the Caribbean Court of Justice. So there is a certain amount of mobility within that I think they would like to just cover.

Sen. Young: And the issue being raised by Sen. Al-Rawi is the loss of benefits issue. So if we use that similar language as section 9(6) of the Integrity in Public Life Act which is that you are just confirming and expressing there that when they are transferred in relation to gratuity, pension or other allowances, they will be treated as continuing within the service. I think it protects them.

Sen. Nicholas: I do not think we have to consider it at this time.

Sen. Young: Sure, thank you.

Madam Chairman: AG, could you clarify the amendment for subclause (2), please?

Sen. Nicholas: Subclause (2) will now read:

“The persons referred to in subsection 1(a) and (b) shall be dedicated to the Family Court, and shall possess the requisite special training, experience and temperament suitable for appointment to the Family Court, in accordance with the Court’s performance standards.”

Madam Chairman: The question is that clause 16 be amended as follows in subclause (2):

Insert after “shall possess the”, the words “requisite special training, experience”, and after the word “standards” delete the comma and insert a full stop.

Sen. Al-Rawi: And hon. AG, just for the record, we are relying upon the Government’s certification that the employment succession issue and protection for workers has been traversed and that your advice is that it is probably bedded down, that there is no issue on it, that that is your certification, because it is a very big issue for the labour aspect of this entity. So we would want to lend you support, but you with the resources and policy, armed with the team that you have, you are certifying that you have checked this and you are sure about this?

Sen. Nicholas: The recruitment, the promotion of these officers continues to

fall under the JLSC, Judicial and Legal Service Commission.

Sen. Al-Rawi: So we are relying on your certification, just for the record?

Sen. Nicholas: That is what it continues to be. You can proceed.

Sen. Al-Rawi: Sure, but—thank you for allowing me to put it on the record. Appreciate it.

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17.

Question proposed: That clause 17 stand part of the Bill.

Sen. Prescott SC: May I in relation to clause 16 invite the hon. AG's attention to 17(d) in which there is reference to something called the "Family and Children Courts Social Services Unit"?—which does not appear to have been established anywhere in the Act. Does it have to be created first, before it could have sub-units such as the "Family Court Social Services Unit"? The same goes for (e): "the Family and Children Courts Human Resource Division", and (f): "the Family and Children Courts Finance Unit", and (g): "the Family and Children Courts Communications and Information Unit". I get the feeling that there is a looseness of language somewhere there or that we have to create those four things. Are you with me, AG?

Sen. Nicholas: I am. I am just getting some feedback. The administrative department comprises certain offices and I think that that is what they have tried to capture in this clause.

Sen. Prescott SC: But they have not—look at what (b) says, accepting that the department comprises a Family Court Social Services Unit, that did not need to be created, but it went on to say that that social services unit shall be a sub-unit of another thing and that other thing has not been created under this Act.

Sen. Nicholas: Agreed, so we can stop after unit.

Sen. Prescott SC: Well, a shortcut, I suppose, might eventually turn out to be the best method. But was it meant that we should create these things: "Family and Children Courts Social Services Unit" in (d), "Family and Children Courts Human Resource Division" in (e), "Family and Children Courts Finance Unit", "Accounts and Investment Unit", "Family and Children Communications and Information Unit"? [*Crosstalk*]

May I intervene with a possible suggestion? Thank you very much. If in those

subclauses to which I have referred, the unit, that is to say the “Family and Children Court Social Services Unit”, were to replace the words “Family Court Social Services Unit”, so you would create the larger and then—

Sen. Nicholas: Then it will make sense. I agree.

Sen. Prescott SC: Yeah, so that (d) will simply read: the Family and Children Courts Social Services Unit, and of course, you may go ahead and form a sub-unit if you like.

Sen. Nicholas: Yes.

Sen. Prescott SC: And do the same in (e), (f) and (g).

Sen. Nicholas: Agreed.

Hon. Senator: You have it “wrong side”.

Sen. Prescott SC: Somebody said it was “wrong side” but I am sure you did not want to say that.

Hon. Senator: “But it wrong side.”

Sen. Prescott SC: “It wrong side”, yes, but I did not want to say that. Thank you, Chair.

Sen. Nicholas: Yes, we create the units instead of the sub-units.

Madam Chairman: That word is “Court” and not “Courts”.

Sen. Prescott SC: We started off talking about two courts, each having a social services unit. That is what you meant?

Sen. Nicholas: So, Madam Chair, (d) will now read:

“Family and Children Court Social Services Unit...”

9.15p.m.

Sen. Nicholas: And (e) will now read: Family and Children Court Human Resource Division.

Madam Chairman: That has to be a unit, it cannot be a division now.

Sen. Al-Rawi: AG, you are legislating an organizational chart so I understand that you may have wanted a sub-unit, which you cannot do so easily. And creating a unit now is to, pardon the French, “mess with the people org chart that they want to legislate”, which may not survive for the next 10 years. So I just want to point out that it is really a dangerous thing to be legislating an organizational

chart, which could so easily exist outside of the legislation.

Sen. Prescott SC: Indeed, if I may add my two cents worth, all clause 17 needed to say is that you are creating administrative support divisions, as may be determined by the Chief Justice.

Sen. Al-Rawi: That is right. AG listen to this one. This may help you tremendously. Listen to this, Sen. Prescott SC.

Sen. Prescott SC: I was recommending that instead of doing the minutiae you say:

The Family Court Sub-Division of the Family and Children Court administrating Department shall be headed by a Family Court Administrator and shall comprise:

- (i) such administrative support divisions as may be determined by the Chief Justice.

Sen. Al-Rawi: That is it. Skip everything else.

Sen. Nicholas: Thank you kindly.

Sen. Al-Rawi: And give him the flexibility to make his org chart.

Sen. Prescott SC: Do not say “such other” say “such”. May I suggest to the Chair? Chair, what we are doing is from line 3, we are deleting from the word “a” in line 3 to “and” in (h). You are deleting the letter “(i)” and “other” in the penultimate line.

Sen. Young: “...and shall comprise—

such Administrative Support Divisions as may be determined by the Chief Justice.”

Madam Chairman: And are we keeping that word “Sub-Division” inside of there?

Sen. Nicholas: “Sub-Division” where, Madam Chair?

Madam Chairman: The first few words in—

Sen. Nicholas: The Family Court Sub-Division?

Madam Chairman: Yes.

Sen. Nicholas: Yes, Madam Chairman.

Madam Chairman: The question is that clause 17 be amended as follows:

Delete the word “a” after comprise and the hyphen, and delete paragraphs (a),(b), (c), (d), (e), (f), (g) and (h) up to the word “and”. Delete (i) and the word “other” after “such”.

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill.

Sen. Young: Madam Chairman, through you, hon. Attorney General, we are looking at clause 18(1):

“The Family Court shall have in each location, a Family Court Manager who shall be responsible for the management of the particular location...”

Can we not just pause right there? Why are we going on to say:

“...and shall be assisted by at least one Family Court Assistant Manager.”

Why are we, through legislation, insisting that there be at least one Family Court Assistant Manager? Is that not something that the hon. Chief Justice or the Court Executive Administrator would deal with? And it is an undefined term as Sen. Al-Rawi is pointing out.

Sen. Nicholas: Accepted.

Sen. Young: Thank you.

Madam Chairman: Any other concerns?

The question is that clause 18 be amended as follows:

In subclause (1) by inserting a full stop after the word “location” and deleting everything after.

So that should read:

Inserting a full stop after the word “location” and deleting the words “and shall be assisted by at least one Family Court Assistant Manager”.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, may I, not on clause 19, but rather on a small human request. My back is in a little bit of a spasm sitting since 5.30. I have a little bit of a back injury. Could I crave the Senate's indulgence for us to suspend for at least a couple of minutes? I really would not want to miss the committee stage at all.

Sen. G. Singh: Chair, I understand your own personal medical predicament but we are flowing right now. Perhaps, if you can convey your sentiments to Sen. Young and we will continue whilst you go and exercise your back elsewhere.

Sen. Al-Rawi: Would you mind if I were to stand in spot, I do not want to be rude to the Chair?

Sen. G. Singh: That is not for me to determine.

Sen. Al-Rawi: Madam Chair?

Sen. G. Singh: I do not think it is appropriate.

Madam Chairman: Senator, you are free to stretch your legs but the committee stage will continue. Sen. Vieira.

Sen. Vieira: Thank you, Chair. At clause 19, I think it says Schedule 3 but it should read Schedule 2.

Madam Chairman: Is it Schedule 2? Is that the only concern with clause 19, Sen. Prescott?

Sen. Prescott SC: I know we do the Schedules separately.

Madam Chairman: I think the reference to the Schedule here is—

Sen. Prescott SC: When we come to deal with the Schedules, I will mention it. Thank you very much, Chair.

Sen. Drayton: What is the penalty for breach of the oath in clause 19?

Sen. Nicholas: It is a contempt of court.

Sen. Young: I had checked the Oaths Act. There were two and it does not say anything about any penalty. It just talks about the administration of oaths and who can do it and there is no penalty in either of those Acts.

Madam Chairman: Any other concerns?

Sen. Al-Rawi: If I could just ask AG, and thank you Sen. Singh for suggesting the stretch. It made a big difference. May I enquire—yes I did get to throw a question in vicariously, but if I may ask—what is the point of having something

with no sanction? My suggestion is: do we need to put a subclause (2) to clause 19 to say what a breach of the oath of secrecy would amount to?

Sen. G. Singh: I just want to find out, what happens currently in the court system?

Sen. Al-Rawi: I do not know.

Sen. G. Singh: Because in the court system—

Sen. Al-Rawi: I know the Police Service Rules, for instance, where oaths of secrecy are required, has sanctions that go with it. So I do not know what the current status is. I do not know what the peculiarly or punitive side of it is. I do not know. I am asking.

Sen. Drayton: Would it be treated as misconduct in public office?

Sen. Al-Rawi: So long as there is a sanction to it and it is not just there.

Sen. Young: To follow up on Sen. Drayton's point, through you, Madam Chair, it would be—and Sen. Prescott can either agree or disagree with me on this—by having this here, the common law would assert that if you were to breach it your employer would be able to bring it up as a disciplinary process and procedure.

Sen. Al-Rawi: Okay, great. Thank you.

Madam President: The question is that clause 19 be amended as follows:

By deleting the number 3 and inserting the number 2.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

Sen. Young: Hon. Attorney General, what I would like to suggest is, in any family matter before the Family Court, the Family Proceedings Rules 1998, or as amended. So we are just adding the words “or as amended”. We are tying ourselves to how it currently stands 1998. We know that it can evolve in practise. It will always be as amended? That is the advice?

Sen. Al-Rawi: AG, the rules of construction would fix it in time as at this year, same way is a literal interpretation.

Sen. Vieira: I would like to support what Sen. Young is saying. I was going to make the same point and to add I agree with Sen. Young as amended but I also think when you have “and all other relevant rules of court shall apply” that could be regarding things outside of the Family Court. I would have said: “as amended, the coming into force of subsequent rules and all other relevant rules of court shall apply. Because the 1998 rules here could be set aside and new rules come in to deal perhaps with electronic conferencing and things of that nature. So we need to keep it wider. It is a little too restrictive as cast.

Sen. Al-Rawi: If you are hanging your hat on the always speaking rule, it does not apply, for sure. This is a literal interpretation.

Sen. Nicholas: As amended.

Madam Chairman: What is the amendment, AG?

Sen. Nicholas: After 1998, to insert “as amended”, Madam Chairman.

Madam Chairman: Or as amended?

Sen. Nicholas: Or “as may be amended from time to time”.

Madam Chairman: Why do you have to keep the “may be”?

Sen. Al-Rawi: It may or may not.

Madam Chairman: Either it is amended or it is not amended.

Sen. Al-Rawi: The point is to avoid the amendment at 2015 always speaking.

Sen. Prescott SC: Chair, I think you are on to a good point there.

Madam Chairman: Thank you.

Sen. Nicholas: Do we need to put “from time to time”? We could just put “as amended”.

Sen. Al-Rawi: Would you like it to be “as may be amended” or “as amended from time to time”?

Sen. Prescott SC: Actually it should be from time to time. As amended means as amended as of today’s date.

Sen. Nicholas: We are creating new drafting rules here. This is not normal.

Sen. Vieira: And you may have other rules besides these rules as well, which is not “as amended”.

9.30 p.m.

Sen. Nicholas: We do not usually put “as amended” in drafting of this nature. I have never seen it before.

Sen. Al-Rawi: Well, in the matters that we have done in terms of litigation and in construction, we have been met with the arguments that you are fixed in the point in time, and the classic savings law clause is the classic, locus classicus, which allows us to hang people in Trinidad and Tobago. There has been Privy Council decision on this. It is fixed as at 1962. So it is absolutely correct. So the “always speaking” does not apply to literal interpretation on this basis. I have read the Interpretation Act, and I most respectfully disagree with your technocrats. I do not know if other Senators do, but I think that we need to be careful to allow for the flexibility of the rules.

Sen. Young: If I may, hon. Attorney General, I participated in that case in the Privy Council, the Matthews decision, and we did argue the “always speaking” clause and it was overruled by the Privy Council.

Sen. Vieira: Senator, if you look at the Interpretation Act:

“‘amend’ includes add to, partially repeal and wholly or partially replace;”

So the word “amend” has a particular meaning in law. You cannot imply it in Family Proceedings Rules 1998.

Sen. Nicholas: But, we do not need to put “from time to time”?

Sen. Vieira: I would just say “as amended”, but then I also want to provide for the possibility of new rules that may come into force, which are not as amended at all, because I was looking to see if there were going to be rules of court for the children’s sub-division. I do not see any rules for the children’s sub-division, but I expect that at some point rules would have to be made for that sub-division.

Sen. Al-Rawi: It may be in process, but it is not referred to in the legislation. So, how you get it in where you specifically prescribed that one section must be governed by rules which you specifically contemplate, and then the other one you make rules, but it is not in the parent law.

Sen. Nicholas: So what is your—

Madam Chairman: Clause 20 be amended as follows:

After “1998” insert the words “or as amended from time to time”.

Sen. Vieira: What about the “coming into force of the subsequent Rules, and

all other relevant of Rules of Court”?

Madam Chairman: Sen. Vieira, could you make clear your input?

Sen. Vieira: Sorry, Chair, just checking something. All right, yeah, leave it so.

Question put and agreed to.

Clause 20, as amended, ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.

Sen. Nicholas: Madam Chair, we just have to make some quick changes to the paragraph numbering. After (3), should be (4), then (5) and then (6), and in (6), the third line, which refers to subsection (4), should be subsection (5).

Sen. Al-Rawi: The numbering is off in the subclauses.

Madam Chairman: The question is that clause 21 be amended as follows—

Sen. Al-Rawi: Sorry, Madam Chair.

Madam Chairman: Sorry, Senator.

Sen. Al-Rawi: Thank you, Ma’am. May I enquire, clause 21(1):

“In any proceeding, the Family Court may, at its own instance...”

Would the word “volition” be in keeping with what we usually use? Well, the Magistrates’ Court—I am hearing, through you, hon. AG, inherent jurisdiction. I am specifically wondering about the magisterial side of it, not the High Court side of it. I accept that the High Court has original jurisdiction and, therefore, inherent jurisdiction pursuant to the Supreme Court of Judicature Act. I am not so certain about the Summary Courts Act, and the inherence of jurisdiction there. I am just asking about clause 21(1):

“In any proceeding, the Family Court may, at its own instance...”

Then apart from that, AG, the use of the word “either”, there may be more than one party. So, I was wondering why we would prescribe that there would only be two, and perhaps we should look to the word “any”, as opposed to “either”, but you would have to be a party to the proceedings.

Sen. Vieira: The application of “a party”.

Sen. Al-Rawi: “a party”, that is the point. If we took a break we could—

Sen. Vieira: This is a very important provision because—sensitive—we should take a break. [*Crosstalk*]

Madam Chairman: Senator, it is not the custom to suspend—

Sen. Al-Rawi: I am sorry. I did not mean—I thought I was speaking—Madam Chair, okay. Let me put it on the record. I am distressed that we cannot take a break for 10 minutes. I would like to participate in the committee stage. I have been sitting since 5.30. I find it intolerable to sit here and cannot get up. I want to participate in the committee. I cannot see what taking a 10-minute break could be so difficult about?

Sen. G. Singh: Madam Chair, if the hon. Member wants to take a break, he can take a break—

Sen. Al-Rawi: I heard you on that.

Sen. G. Singh:—and come back and he has a Member that he can pass on the requests, the changes that he wants, and he can go and have his coffee and take his stretch, and do whatever he wants, but we are continuing, because we are not suspending committee—

Sen. Al-Rawi: Why?

Sen. G. Singh:—because of your ache and pain.

Sen. Al-Rawi: It is not me alone, Sen. Singh. It is the pure human experience of sitting here.

Sen. G. Singh: No, no, no, that is not the feeling here. It is—we are proceeding.

Sen. Al-Rawi: Sen. Singh—Madam Chair, will you hear me on a small 10-minute break? You know, we cooperate as a Senate, continuously. Our action speaks loudly.

Sen. G. Singh: We are not even halfway through.

Sen. Al-Rawi: Madam Chair, we are assisting in legislation. Ten minutes break is such a problem for the Government to have? Is that what we are saying?

Madam Chairman: Senator, you are Member of a team. Your team Member—

Sen. Al-Rawi: Come on.

Madam Chairman:—could assist with—

Sen. Al-Rawi: Come on.

Madam Chairman:—while we continue with the business at hand.

Sen. Al-Rawi: Madam Chair, I really want to protest, you know.

Madam Chairman: It is not customary.

Sen. G. Singh: Do that, but do not keep back the proceedings. You are abusing, now.

Sen. Al-Rawi: Sen. Singh, I am abusing, Sen. Singh?

Sen. G. Singh: You are abusing the privilege of the committee proceedings.

Sen. Al-Rawi: The privileges of the Members are what I am talking about.

Sen. G. Singh: Yes, yes, you are. You want to take your break. You took a break. “Yuh stretch you come back.” You have lost concentration or something, and you want now to put the whole Senate inconvenience.

Sen. Al-Rawi: Sen. Singh, you really want to persist with that? You really want to take that line, Sen. Singh? That is not becoming of you, Sen. Singh. I do not think you mean that.

Sen. G. Singh: I am taking that line.

Madam Chairman: Senators, let us continue with the business of the day. We are on clause 21.

Sen. Al-Rawi: I will stand up and walk back and forth. It is intolerable in—
[Stands and paces] [Interruption]

Madam Chairman: Senator, please do not disturb the committee.

Sen. Vieira: Thank you, Chair. I was wondering about subclause (2), why limit only “In order to protect the identity of any child”. You know, in the Family Court everybody’s private business can be disclosed. I have had cases where people’s bank accounts, all kinds of things that really should not be—salacious details that should not get into the public domain come out, or things are said that you want to have redacted. So I am just wondering whether we limit it just to a child. It could be a party—

Sen. Young: I join Sen. Vieira with that submission.

[Sen. Al-Rawi speaks to Sen. Young]

Madam Chairman: Sen. Al-Rawi, you are not contributing at the committee level when you—what are you doing?

Sen. Al-Rawi: I am just in distress, physical distress, Ma'am. I apologise. I am trying to sit, but I am in physical pain and it does not bother the House. I understand. One rule for one set and another rule for other sets.

Sen. G. Singh: Ten minutes will not—

Sen. Al-Rawi: I accept that. I am watching it, right.

Sen. G. Singh: Go and get some therapy elsewhere, not in the House.

Sen. Al-Rawi: Sen. Singh, please, “doh geh meh” upset tonight.

Madam Chairman: Sen. Al-Rawi—

Sen. Al-Rawi: “Doh geh meh upset, Sen. Singh.” Do not get me upset, Sen. Singh. Do not get me upset!

Sen. G. Singh: Get your therapy elsewhere, not here.

Madam Chairman: Sen. Al-Rawi, your—

Sen. Al-Rawi: I apologize, Madam Chair, to you, I apologize.

Madam Chairman: You are out of order to speak.

Sen. Al-Rawi: I am! I am! I am, and I apologize on record, Madam Chair. I apologize. I will step outside for a moment.

Madam Chairman: Thank you.

Sen. Al-Rawi: I will be back in a moment and deal with Sen. Singh.

Sen. Prescott SC: Are we on clause 21?

Sen. Vieira: We are on clause 21, still.

Madam Chairman: Clause 21, let us continue.

Sen. Prescott SC: Chair, may I make a gentle suggestion to those who are responsible?—that in 21 we stick to the spelling of judgment in line 1 of clause 2, that is to say with only one “e”.

Sen. Young:—for consistency.

Madam Chairman: Is this the first time it appears, Sen. Prescott?

Sen. Prescott SC: Beg your pardon?

Madam Chairman: Is this the first time it appears?

Sen. Prescott SC: That is the first time in 21, yes. Or to be more—yes, and then it is spelt differently throughout.

Sen. Nicholas: We will ensure that “judgment” is consistent throughout.

Sen. Young: The spelling of “judgment”?

Sen. Nicholas: Yeah.

Sen. Young: Have we corrected the numbering?

Sen. Nicholas: Yes, we have.

Madam Chairman: We did not finish that yet. Can we continue, AG?

Sen. Nicholas: Yes, please, Madam Chair. So that we were saying that:

(2) becomes (4), (3) becomes (5), (5) becomes (6), and in (6), the third line, subsection (4) becomes (5).

That is it, Madam Chair.

Madam Chairman: Are you deleting the word “either”, in subsection (1)?

Sen. Nicholas: We left it as is.

Madam Chairman: AG, are you deleting the word “either”?

Sen. Nicholas: Yes, Madam Chair, and replacing it with “a”.

Madam Chairman: Okay. The question is that clause 21 be amended as follows:

In subsection (1), delete the word “either” after the word “of” and insert the word “a”.

After subsection (3), renumbering the subsequent subsection that is currently numbered (2), with the number (4).

After that subsection, the subsequent—okay, renumbering (2), (3) and (5) as (4), (5) and (6).

And in the new subclause (6), in renumbered (6), after the word “subsection”, delete the word “(4)” and insert the number “(5)”.

Question put and agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

Clause 22.

Question proposed: That clause 22 stand part of the Bill.

Sen. Prescott SC: May I, in clause 22? I have looked at the Children Act 2012, and it speaks of a “Children’s Attorney” using the “apostrophe”—I do not know, because I have not checked, is there such a thing as—yes, there is a “Senior”. So the “apostrophe” is needed both in reference to the “Senior” and the other “Children’s Attorney”.

Sen. Nicholas: Accepted.

9.45 p.m.

Sen. Nicholas: And, Madam Chair, the “(1)” after “22” should be removed and “relevant legislation” towards the end should become “written law”. Instead of “relevant legislation” it should read “written law”.

Sen. Al-Rawi: May I ask Attorney General, through you, Madam Chair, the issue of the voice of the child not being defined, in section 88(5) of the Children Act where we have secured the interest of the child, I was just wondering whether we wanted to keep in terms of consistency with securing the interest of the child as the Children Act prescribes.

Sen. Nicholas: We prefer to leave it as is.

Sen. Al-Rawi: What does “voice of the child” mean then, Attorney General?

Sen. Nicholas: The literal interpretation.

Sen. Al-Rawi: The child’s voice?

Sen. Nicholas: Yes.

Sen. Al-Rawi: How he sings?

Sen. Prescott SC: In the circumstances, Chair, Attorney General, you want to safeguard the voice?

Sen. Al-Rawi: How do you safeguard the voice, lime and honey?

Sen. Vieira: I agree with the voice of the child, I would tell you why Sen. Al-Rawi. The court would decide what is in the best interest of the child, but that may preclude hearing the child’s voice. A child may want to have its own particular views expressed, which may not coincide with what the court may ultimately hold is in the best interest of the child, but what the legislation is seeking to provide for is that the child has a right to be heard.

Sen. Al-Rawi: And that is provided for in the Act. It specifically says that a

child should be represented by an attorney-at-law later on.

Sen. Vieira: Yeah, but this gives the attorney the right to speak and for the child's voice to be heard.

Sen. Prescott SC: May I just add one more straw to it?

Madam President: Sen. Prescott.

Sen. Prescott SC: Thank you very much. The Children Act reads as follows, section 88(5):

“In any court proceedings, the Court may request that the Solicitor General assign a Children's Attorney to represent and safeguard the interest of a child and perform such other functions as the Court may think necessary.”

So that the children's attorney functions are set out there. He is to represent and safeguard the interest of the child. Are we adding new responsibilities in clause 22 when we say now you are also to represent and safeguard the voice of the child?

Sen. Vieira: I think it is wider than—[*Interruption*]

Sen. Prescott SC: And then there is this concern that I have that I had not heard a voice being safeguarded before.

Sen. Al-Rawi: Never ever!

Sen. Prescott SC: So, I am really just putting it out for your contemplation. Sorry?

Sen. Vieira: This is in keeping with the new direction of the Family Court where it is conciliatory, it is not necessarily adversarial. It is allowing all voices to be heard, and in that being, AG, I want to come back, you know. I think we are making a mistake. We are restricting it to the identity of any child. It should be “any affected party”. We are going to miss an important opportunity. I am going back to 21(4).

Sen. Nicholas: “Any affected party”, where?

Sen. Vieira: I am making a plug. I know we ruled on it just now, but in order to protect the identity of a child, I think it should be “in order to protect an affected party the Family Court may”, do not limit it just to the child. Voice is correct.

Madam Chairman: Are we agreeing on 22 then, AG?

Sen. Nicholas: Yes, ma'am, we go as is, ma'am.

Madam Chairman: The question is that clause 22 be amended as follows:

By deleting the number “(1)”—

Sen. Young: Madam Chair, sorry to interrupt, but just before we move on to the final amendment might I ask, through you, of the Attorney General, if we could get an explanation as to where this phrase “voice of the child” comes from. What exactly is meant to be so? In the future if it comes down to an interpretation, at least, you would be able to come back to the *Hansard* to get a proper understanding of what was the intention of this “voice of the child”.

Sen. Nicholas: Sen. Vieira was very helpful.

Sen. Vieira: I thought it is making his views heard, expressing his position on a particular matter.

Sen. Prescott SC: And what? Pardon me, Chair, and this would be through his attorney? Because the verb used is “represent”. The children’s attorney is to represent his voice. Is that what is intended by what Sen. Vieira is saying, that his voice would be heard through the attorney or does Sen. Vieira mean that he must first have a voice and have a children’s attorney to represent his interest?

Sen. Nicholas: It is actually meant to be the views, the expressions of the child.

Sen. Prescott SC: So the child shall speak.

Sen. Nicholas: Yeah.

Sen. Prescott SC: Not through his attorney?

Sen. Nicholas: Well, the views will capture it just as well.

Sen. Prescott SC: What if we give consideration to using both terms “in the interest of the child” and “the voice of the child”, so that one sees immediately that it is intended that the child may speak.

Sen. G. Singh: I think that is a better approach.

Sen. Nicholas: The interest and voice of the child.

Sen. Prescott SC: Some combination of the two.

Madam Chairman: So what is the proposed amendment?

Sen. Prescott SC: The voice and interest; interest and voice.

Madam Chairman: After what word?

Sen. Nicholas: After “the”.

Sen. Prescott SC: In line four.

Madam Chairman: So, “safeguard the—”?

Sen. Prescott SC: —interest, singular.

Madam Chairman: “interest and voice”. Anything else?

Sen. G. Singh: I think Sen. Vieira made the point with respect to I think it is 21(4), although we passed there, that you ought to be able to protect all parties and that, therefore, if we are going to take the non-adversarial approach, then, perhaps, the tone might be better.

Sen. Prescott SC: So that “instead of any child” we say “the identity of all affected parties”?

Sen. Vieira: In order to protect an affected party. [*Crosstalk*]

Sen. Nicholas: Clause 21 deals with the child.

Sen. G. Singh: Let us proceed then.

Madam Chairman: The question is that clause 22 be amended as follows:

By deleting “(1)” and after the words “senior children” deleting the word “children” and inserting the word “children’s”, and where the word “children” occurs later in that line, delete the word “children” and insert the word “children’s”. In the next line, after the word “the”, insert the word “interest” and at the end of the sentence delete the word “relevant legislation” and then substitute the words “written law”.

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

Clause 23.

Question proposed: That clause 23 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, may I, through you, invite the Attorney General’s attention to directing us on what the policy behind limiting it only to the Legal Aid and Advice Act as opposed to, for instance, the Children’s Authority—sorry the Children Act.

Sen. Nicholas: This is specifically for this purpose.

Sen. Al-Rawi: So only for legal aid applications. Does the court not have the

general authority to entertain adjournments at any point in time? First of all, it is grounded under the original jurisdiction of the High Court in the Supreme Court of Judicature Act; and, secondly, it is specifically grounded in the Summary Courts Act, Chap. 4:20 where there is a right for adjournment for any cause. Why would we need to specify this one and only option?

Sen. Prescott SC: I think that the Legal Aid and Advice Act has a full regiment of applications and the time at which to do it. So that if the matter has commenced and has advanced, you may not in the middle of all of these proceedings, then suddenly decide I wish to apply for legal aid. So, it may be intended to take care of a late application. I seem to have that recall of the Legal Aid and Advice Act.

Sen. Al-Rawi: Perhaps, we can be guided, Madam Chair, through you, to the Attorney General.

Sen. Prescott SC: Does this volume have Chapter 7 in it? [*Crosstalk*] So, it may be appropriate to leave this here.

Sen. Nicholas: And we would like to leave it there.

Sen. Al-Rawi: Okay, so that is the reason why. You are confirming that Sen. Prescott's estimation is the reason why it is there, and it would not stymie any other power under the original law.

Sen. Prescott SC: No, it certainly would not.

Sen. Al-Rawi: Thank you, Madam Chair.

Question put and agreed to.

Clause 23 ordered to stand part of the Bill.

Clause 24 ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25 stand part of the Bill.

Sen. Prescott SC: Clause 25 suffers from the same spelling difficulty that I pointed out.

Sen. Nicholas: About "judgement". This one has the "e".

Sen. Prescott SC: It has more than one "e", lines one and four.

Sen. Young: Indeed. Madam Chair, after that amendment is dealt with, might I raise, at this stage, in relation to both this clause 25 and I believe it is clause 43, the point that I had raised earlier which is we give consideration to using language

here similar to the Judicial Review Act and the Judicial Review Act has a subsection (2) which goes on to say:

“An appeal shall lie from a decision of the Court of Appeal referred to in subsection (1), as of right to the Judicial Committee of the Privy Council.”

The explanation being that as given previously, which is, by giving a right of appeal all the way to the Privy Council, it negates an element of cost and takes the discretion out of the Court of Appeal’s hands. That is my suggestion.

Sen. Nicholas: Sen. Young, we are prepared to go with your suggestion.

Sen. Young: Much obliged.

Sen. Nicholas: And we have drafted accordingly.

Sen. Young: Perfectly, thank you.

Sen. Nicholas: Madam Chair, it is just being pointed out that the last “j” in judge should be a “J”, but in terms of amending, we would like to renumber clause 25, as clause 25(1) and insert a 25(2) which would read:

“An appeal shall lie from any judgment...

Sen. Prescott SC: How are you spelling that?

Sen. Nicholas: We will get them together.

“...or order of the Court of Appeal referred to in subsection (1)...”

Sen. Prescott SC: Forgive me. Just hold a second, please, Attorney General. There is only one Court of Appeal, so we do not need to say the one referred to.

Sen. Young: No, it is the order.

Sen. Prescott SC: It is the order made in (1). So any judgment or order made pursuant to (1)?

Sen. Nicholas: Yes. [*Crosstalk*]

Sen. Prescott SC: Maybe we better go with that.

Sen. Nicholas: In subsection (1).

Sen. Vieira: AG, I just want to put on the record that I do not necessarily favour appeals to the Privy Council in the family division as of right. I tend to favour seeking leave. [*Crosstalk*]

10.00 p.m.

Sen. Young: Attorney General, sorry, you did not complete the language, but, as you were reading it, to me it had mirrored what was in the Judicial Review Act, and I will repeat what is in the Judicial Review Act:

“An appeal shall lie from a decision of the Court of Appeal referred to in subsection (1), as of right to the Judicial Committee of the Privy Council.”

Sen. Vieira: Again, in judicial review you are dealing with a different area of law. You are dealing with administrative law. It will be touching on constitutional matters. It is dealing with powers. In family law matters, a lot of the time you are dealing with a different framework. I have no problem with appeals going to the Privy Council on important points of law, and, certainly, you would get leave for that, but just because a person may have money, you should not have the right—just as a matter of right to go all the way up to the Privy Council. It can be oppressive, and I think it will bring in a wash of unnecessary litigation.

Sen. Young: Well, if I may just add to the counter of that, we have been finding very recently in the Court of Appeal, and in making applications for the Court of Appeal for leave to go to the Privy Council, they are not necessarily granting, and I think when you look at the statistics they are not granting much leave to go to the Privy Council now for whatever reason, and it is equally costly. I understand your concerns, but, I think, equally, what you are doing here is you are giving people a—

Sen. Vieira: No, the Court of Appeal will deal with it judiciously. Quite frankly, I find that the decisions given by the Court of Appeal better than what we have been getting from the Privy Council.

Sen. Young: Well, that is your position.

Sen. Vieira: No, certainly. And we are talking family law matters with our own norms and culture as opposed to somebody sitting thousands of miles away.

Sen. Nicholas: Having heard the distinguished Sen. Vieira, we are quite prepared to leave it as is, and, therefore, the only amendments would be the “capital J” at the end.

Madam Chairman: The question is that clause 25 be amended by deleting the word “judge” at the end of the sentence and inserting the word “Judge” with a “capital J”.

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Clause 26.

Question proposed: That clause 26 stand part of the Bill.

Sen. Prescott SC: May I urge that—

Madam Chairman: Sen. Prescott.

Sen. Prescott SC:—thank you—that in clause 26(2), we use the same language we use in 16(2), which is the say, after the word “temperament” in line three, we say, “requisite special training, experience, and”.

Hon. Senator: Before the word.

Sen. Prescott SC: Pardon me, before the word “temperament”. Thank you. Before the word “temperament”.

Sen. Young: And we just add here, hon. Attorney General, the same—

Sen. G. Singh: I might qualify to be a family court judge.

Sen. Young: I am sure you can. You have the compassion, as we have seen a short while ago. *[Laughter]* If I may just add here, hon. Attorney General, the same point that was made earlier that this should not affect people transferring their rights, their gratuity, their pension, et cetera.

Madam Chairman: The question is that clause 26 be amended as follows:

In subsection (2), inserting after the word “the” in the third line, the words “requisite special training, experience and”.

Question put and agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Sen. Nicholas: Madam Chair?

Madam Chairman: AG.

Sen. Al-Rawi: Same amendment?

Sen. Nicholas: Similar amendment—

Sen. Al-Rawi: Good. Thanks.

Sen. Nicholas:—as earlier, where we delete from (a) in the third line—

Sen. Al-Rawi: In the chapeau.

Sen. Vieira: In the chapeau, indeed, all the way down to (k), and then (l), and the “other” after “such”.

Madam Chairman: Any other?

Sen. Al-Rawi: No, Madam Chair.

Madam Chairman: The question is that clause 27 be amended as follows:

Delete the word “a” after “comprise”, and all of these paragraphs: (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and delete the word “other” after “such”—and the letter (l).

Sen. Nicholas: Indeed.

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clause 28.

Question proposed: That clause 28 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, just wondering, through you to the hon. Attorney General, was there need to include a broad sweeping power after (e) in subclause 3, to allow any other matter that the Chief Justice may consider. So, the Children Court, “on commencement”, subclause (1), to the question of any, clause 3:

“Where there is a question of jurisdiction...determined”—in—“Court by reason of it being a matter in which-

- (a) child is charged;
- (b)...Court is to hear an application...
- (c) an application is being...
- (d) an application is being made...
- (e) it is not a family matter within the meaning...”

Do we need to have a sweeping clause saying “or any other”? Or is it just specific? Is it limited in its context only? [*Crosstalk*]

Sen. Nicholas: There is no harm in that suggestion.

Sen. Al-Rawi: I do not want to intrude on our policy, I am just asking you a question.

Sen. Nicholas: You are not intruding, and I will not allow you to intrude.

Sen. Al-Rawi: Well, I am sure you may allow me to intrude but you might put me in my place after, but you may at least entertain what I have to say.

Sen. Young: AG, at (d), do we add after “Children Act”, “2012”? Is this one of the occasions that we will add that?

Sen. Prescott SC: Chair, may I?

Madam Chairman: Sen. Prescott.

Sen. Prescott SC: Thank you. AG, before you step off clause 28(3)(d), could you just remind me what applications are contemplated by section 60 of the Children Act?

Sen. Al-Rawi: If I may assist Sen. Prescott, Madam Chair, section 60 of the Children Act deals with restriction on punishment of children and substitution of custody in place of detention for imprisonment.

Sen. Prescott SC: And it makes no provisions for applications being made.

Sen. Al-Rawi: No, and it is also not a—

Sen. Nicholas: Amend to be 60.

Sen. Al-Rawi: Yeah, and I was about to say section 60 is in fact not fully proclaimed. Subsections (3) and (4) are not proclaimed yet.

Sen. Prescott SC: Section 61 has provision for applications?

Sen. Al-Rawi: Section 61 is inability of parent to control the child, which I think is exactly what was intended.

Sen. Prescott SC: Huh?

Sen. Al-Rawi: It is the inability to control the child clause, which is also referred to in the preamble.

Sen. Prescott SC: Okay, maybe I am not articulating this well. Clause 28(3) says that certain things may be done if it is a matter in which an application is being made under section 61.

Sen. Al-Rawi: Section 61 does not expressly say that an application can be made.

Sen. Prescott SC: But section 61 does not seem to contemplate any application.

Sen. Al-Rawi: No, it says, “the Court shall order”, so where the parent with responsibility proves to the court with jurisdiction, in family matters that he is unable to control and he desires the child to be sent, the court shall order. So, if it is implied in the language of proving to the court that you can do that, one could assume that an application is implied and—

Sen. Nicholas: An application would be required.

Sen. Al-Rawi: Yeah.

Sen. Prescott SC: Huh?

Sen. Nicholas: An application would be required.

Sen. Prescott SC: So, if one wanted to spell it out, one would have said, an application to have a child sent to a community residence?

Sen. Nicholas: No. I think being made under section 61 covers it.

Sen. Prescott SC: And the application there will be an application to have the child sent to a community residence?

Sen. Nicholas: There are different sanctions that could be applied.

Sen. Prescott SC: Pardon me, let me try again. What is meant to be referred to in (d) and what you say is inferred, what is inferred is an application to have a child sent to a community residence under section 61? If one were to spell it out it would read that—“an application to send a child to a community residence”?

Sen. Nicholas: Yeah. Instead of spelling it out that way, I think it would be more appropriate to just refer to the section.

Sen. Prescott SC: Okay. So, it being a matter which—what?— is covered under section 61?

Sen. Nicholas: Yes.

Sen. Prescott SC: The matter in which—okay, you are satisfied if you say section 61 that covers it?

Sen. Nicholas: Yeah.

Sen. Prescott SC: I am not happy, but, okay, fine, section 61.

Sen. Nicholas: And we will put the “2012” after the Act.

Sen. Prescott SC: Maybe an application is made for an order. Maybe you could go along with me on this one, an application is being made for an order under section 61.

Sen. Nicholas: Sure.

Sen. Prescott SC: Yeah. Thank you.

Madam Chairman: Any other concerns in clause 28? The question is that clause 28 be amended as follows:

In subsection (3), paragraph (d), to insert after the word “made” the words “for an order”, deleting the number “60” and inserting the number “61”, and inserting after “Children Act”, “2012”.

Sen. Nicholas: Yes, Madam Chairman.

Question put and agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clause 29.

Question proposed: That clause 29 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, if I could just, through you, invite the Attorney General’s attention to the use of the word “legislation” at the last line of the chapeau.

Sen. Nicholas: Written law.

Sen. Al-Rawi: Yes, Sir.

Madam Chairman: Clause 29?

Sen. Al-Rawi: Sorry, Ma’am.

Sen. Nicholas: You have gone to clause 30.

Sen. Al-Rawi: Apologies, I was looking at clause 30 just under clause 29, apologies. I withdraw that, Madam Chair. [Crosstalk]

Question put and agreed to.

Clause 29 ordered to stand part of the Bill.

Clause 30.

Question proposed: That clause 30 stand part of the Bill.

Sen. Al-Rawi: If I may invite the Attorney General’s attention through you, Madam Chair, to the last line of the chapeau of clause 30, the word “legislation”, and enquire whether he would be minded to consider the words “written law” instead of that.

Sen. Nicholas: The Attorney General will be so minded. [*Crosstalk*]

Madam Chairman: The question is that clause 30 be amended as follows:

By deleting the word “legislation” and substituting the words “written law” in the chapeau.

Question put and agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

10.15 p.m.

Clause 32.

Question proposed: That clause 32 stand part of the Bill.

Sen. Young: Madam Chair, through you, two suggested amendments: the deletion of subclause (1), so we delete the parenthesis (1) and then the word “judge” in the second line, give a capital “J”, and “rules” as well, and also we capitalize “R” in “rules” in the final line.

Madam Chairman: The question is that clause 32 be amended as follows: Remove (1) and delete the word “judge” and insert the word “Judge” with a capital “J”; delete the word “rules” and insert the word “Rules” with a capital “R”.

Question put and agreed to.

Clause 32, as amended, ordered to stand part of the Bill.

Clause 33.

Question proposed: That clause 33 stand part of the Bill.

Sen. Prescott SC: In relation to clause 33, I invite attention to clause 33(3)(c), and enquire whether it is intended that the attorney-at-law referred to there should be the Children’s Attorney, as named in the Children Act, section 88(5)?

Sen. Al-Rawi: AG, just before you consider that, the use of the mandatory “shall” and whether in specifying the Children’s Attorney pursuant to 88(5) of the Act, that you would be stymieing or limiting the ability for another attorney-at-law to appear, if so elected.

Sen. Nicholas: (c) is correct as worded.

Sen. Young: Then do we capitalize attorney-at-law or it does it not matter? [*Crosstalk*]

Sen. Prescott SC: May I ask again, please, Chair, of the Attorney General. Hon. Attorney General, in the way that it is worded, does it suggest that if a child

is not represented by an attorney-at-law he will not be heard or something, or he would have committed a wrong? Is he obliged to have an attorney-at-law? Is that what is meant by that?

Sen. Nicholas: The court will ensure that he has an attorney.

Sen. Prescott SC: And that attorney-at-law would be the Children's Attorney?

Sen. Nicholas: Not necessarily. The Children's Attorney is only required in special circumstances.

Sen. Prescott SC: It reads:

"the child shall be represented by an attorney-at-law"—and if he has none, the Court shall select one.

That language is too much to put into this subclause, or even to say, "the Court shall ensure"?

Sen. Al-Rawi: It is the Legal Aid and Advice Act that actually allows for the appointment of the child attorney when we did that.

Sen. Prescott SC: Hon. Attorney General, I am thinking of another formulation, "shall be represented by an attorney-at-law or a court-appointed attorney-at-law". Is that helpful?

Sen. Al-Rawi: The child appointing and the Solicitor General appointing the Child Advocate or the Children's Authority is an issue then. [*Crosstalk*]

Sen. Nicholas: "The Court shall ensure".

Sen. Al-Rawi: That works.

Sen. Prescott SC: So it is semicolon after "attorney-at-law"?

Sen. Young: No, what is the language being suggested, AG?

Sen. Prescott SC: So after "shall" we delete "be represented by" and say "ensure"—

Sen. Nicholas: After "criminal offence", "the Court shall ensure that the child is represented by an attorney-at-law".

Sen. Al-Rawi: Capital "A", capital "L" in keeping with clause 31 of the Bill.

Sen. Nicholas: Yes.

Sen. Prescott SC: "the Court shall ensure"—

Sen. Young: Madam Chair, through you, Attorney General, might I suggest

wherever we use “attorney-at-law” we just keep it consistent. I see throughout the Bill we have common “a” or capital “A”.

Sen. Nicholas: You have it in (b) as well.

Madam Chairman: The question is that clause 33 be amended in subclause (3) paragraph (c) by inserting after “the”—

Sen. Nicholas: After “offence”.

Madam Chairman: By inserting after the word “offence,” the words “the Court shall ensure that the child be represented by an attorney-at-law”.

Sen. Nicholas: Madam Chair, we are inserting after “offence,” “the Court shall ensure that”, and then it will continue to read “the child” and then we will delete “shall be” and insert “is”.

Madam Chairman: And insert “is” where?

Sen. Nicholas: After you delete “shall be”, you insert “is” after “child”. So it reads “the child is represented by an attorney-at-law”, and caps for “A” and “L”, attorney-at-law.

Madam Chairman: Could you re-read that?

Sen. Nicholas: So it will now read:

In any hearing of a charge against the child charged with a criminal offence, the Court shall ensure that the child is represented by an Attorney-at-Law.

Madam Chairman: So subclause (3) paragraph (c) is amended by inserting after the word “offence,” the words “the Court shall ensure that”, and by deleting the words “shall be” after the word “child” and inserting the word “is”.

Sen. Nicholas: And ensuring that attorney-at-law—

Madam Chairman: And deleting the word “attorney-at-law” and inserting the word “Attorney-at-Law”.

Question put and agreed to.

Clause 33, as amended, ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Sen. Prescott SC: May I in relation to clause 34, please. There is a reference to clause 4(3) which appears to be incorrect. Am I right?

Madam Chairman: What should it be, Sen. Prescott?

Sen. Prescott SC: I am unable to say. It is either reference to location or to Children Court Manager, but neither appears in (4)(3). I cannot remember seeing any reference to Children Courts being located in any place. I am unable to assist you at this time, Chair.

Sen. Nicholas: It should be (5)(3) as opposed to (4)(3).

Sen. Prescott SC: Thank you, yes; as simple as that.

Madam Chairman: Any other concerns with clause 34?

Sen. Nicholas: Yes, Madam Chair. The deletion of “and shall be assisted by at least one Children Court Assistant Manager”.

Madam Chairman: The question is that clause 34 be amended as follows: that after the words “section” the number (4) is deleted and substituted with the number (5), and after the word “location”, insert “.” and delete all the words appearing after.

Question put and agreed to

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clause 36.

Question proposed: That clause 36 stand part of the Bill.

Sen. Prescott SC: Do I have to make the observation about judgment again or the computer is at work?

Madam Chairman: We have the commitment that the word will be corrected throughout, consistently.

Sen. Prescott SC: Thank you very much.

Sen. Al-Rawi: Just a question, Madam Chair, through you. In 36(3) whether it is appropriate to use “Children Court Judge or Master”. I was wondering if the terms of art needed to be specified, or could we use them that way?

Sen. Prescott SC: We have used it before in 21(5).

Sen. Al-Rawi: Okay, I withdraw that then, Madam Chair. Thank you.

Question put and agreed to.

Clause 36 ordered to stand part of the Bill.

Clause 37.

Question proposed: That clause 37 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, through you. If the hon. Attorney General could make the consequential amendments as we did for clause 22; words inserted before the word “voice” and changing legislation at the end of the clause, in subclause (1) to “written law”.

Sen. Nicholas: As agreed.

Sen. Al-Rawi: Much obliged.

Madam Chairman: Could you, AG, clarify that amendment, please? Insert after the words “safeguard the interest”—

Sen. Al-Rawi: After the words “safeguard the”, insert the words “interest and”—

Sen. Nicholas: “interest and the”.

Madam Chairman: That is already there.

Sen. Nicholas: So it would read:

“and safeguard the interest and the voice”—

10.30 p.m.

Sen. Al-Rawi: Because, Madam Chair, was inserting after the word “safeguard” which would have made sense.

Madam Chairman: And then you said something else.

Sen. Al-Rawi: And then deleting the word “legislation” and inserting instead the words “written law”.

Madam Chairman: Are we deleting the word “relevant”?

Sen. Nicholas: Relevant legislation.

Sen. Al-Rawi: Yes, Ma’am, sorry.

Madam Chairman: “any other written law”. Any other concerns on 37?

Sen. Vieira: I was just wondering about the words “Duty Counsel”. I do not recall seeing it defined anywhere.

Sen. Al-Rawi: It is defined in the Legal Aid and Advice Act.

Sen. Nicholas: Yes.

Sen. Al-Rawi: Yeah. But the question is whether there needs to be a consequential reference to it here?

Sen. Prescott SC: Yes, I think so.

Sen. Al-Rawi: I had the same question, and also whether the word “may” in subclause (2), which appears on page 20, ought to be shall in light of the Committal Proceedings Act which require that testimonies of children who are witnesses, et cetera, must be supervised by a counsel.

Madam Chair: That is after “Court”?

Sen. Al-Rawi: Yes, Ma’am. No this is—

Sen. Nicholas: After “Counsel”.

Sen. Al-Rawi: One of the—I am just asking first before I suggest whether the Attorney General holds that view as well. The Committal Proceedings Act which has been assented but not proclaimed, which is intended to repeal the indictable proceedings legislation. In the Committal Proceedings Act we make it mandatory that wherever a child is a suspect or being interrogated, a child is being investigated, a child is a witness, that the testimony of the child must be supervised and, in fact, signed by relevant persons. So the supervision is by a child attorney and the witness statement must be signed by a relevant officer. I forget the exact clause. I can find it now.

Sen. Vieira: I found the definition of “Duty Counsel”. It is the Legal Aid and Advice Act, 4(a).

Sen. Al-Rawi: 4(a) of the Legal Aid and Advice Act. I think it should be referred to in the Marginal Note and in the body of it.

Sen. Nicholas: I am hearing you.

Sen. Prescott SC: Do you want to consider it?

Sen. Nicholas: What is your suggestion?

Sen. Prescott SC: That in the reference to the Duty Counsel we should say as appointed by—or pursuant to.

Sen. Nicholas: Pursuant to section 4 of the Legal Aid and Advice Act.

Sen. Prescott SC: Section 4A(1) of the Legal Aid and Advice Act.

Sen. Al-Rawi: Has it been assented to, that particular—

Sen. Vieira: It is in the Legal Aid and Advice Act.

Sen. Prescott SC: Yes, sorry. You want to say that again.

Sen. Nicholas: Yeah, go ahead.

Sen. Prescott SC: Chair, we are recommending in clause 37, at page 20, after the letter:

“(c) a child is a witness,”

That the reference to Duty Counsel should be followed by a comma, pursuant to section 4A(1) of the Legal Aid and Advice Act.

Madam Chairman: And we are keeping “may”.

Sen. Prescott SC: Maybe I should have said “appointed pursuant to”.

Sen. Al-Rawi: Madam Chair, may I ask the Attorney General for his views on “may” versus “shall”, after subclause (c) on the top of page 20 in light of the committal proceedings legislation? [*Crosstalk and laughter*]

Madam Chairman: May we proceed.

Sen. Al-Rawi: So you are leaving it as “may” or “shall”?

Sen. Nicholas: I think we can use shall.

Sen. Al-Rawi: No, I am not quite sure, eh. I mean “may” can include “shall”, but “shall” cannot include “may”. So I do not know how you want to do it.

Sen. Nicholas: I am still getting a final verdict here.

Sen. Al-Rawi: And the concern only arose insofar as it may collide with other legislation.

Sen. Nicholas: “May” it is.

Sen. Al-Rawi: “May”, okay, thank you. Thank you, Madam Chair.

Madam Chairman: The question is that clause 37 be amended.

In subclause (1) by inserting after word safeguard, the words “the interest and”, and deleting the words “relevant legislation” and substituting the words “written law”.

Sen. Nicholas: Madam Chair, the amendment is after “safeguard the”, we insert “interest and the”.

Madam Chairman: Same, same.

Sen. Nicholas: I was not quite sure if you got both there.

Madam Chairman: We got it.

Sen. Prescott SC: Madam Chairman, may I make a further observation in clause 37.

Madam Chairman: You certainly may.

Sen. Prescott SC: This time at (3). In subclause (3)(a), although this may not trouble you Attorney General, it says:

“that a particular social service...”

Is that how you want to express it? And I will just move readily on to (b).

Sen. Nicholas: Yes, that is fine.

Sen. Prescott SC: Subclause (3)(b)(i) should read:

“pre-hearing assessments of a child and the submission of relevant relevant report;”

Sen. Nicholas: Double relevant.

Madam Chairman: That is relevant squared.

Sen. Prescott SC: Yes.

Sen. Nicholas: It is very relevant.

Sen. Prescott SC: And what about “reports”? Should it be “reports” or singular?

Sen. Nicholas: Yes, relevant reports.

Sen. Prescott SC: Thank you.

Sen. Al-Rawi: “The child...”

Sen. Prescott SC: Which one is that?

Sen. Al-Rawi: Subclause (3).

Sen. Prescott SC: Yeah, it should be “the child”. Well no, suppose it is more than one child.

Madam Chairman: Pre-hearing assessment of “the child”.

Sen. Prescott SC: No, it may be more than one child before him, I suppose.

Sen. Nicholas: The rest is fine.

Sen. Prescott SC: I would leave it as is.

Madam Chairman: Okay, the question is that clause 37 be amended:

In subclause (1), by inserting after the word safeguard “the interest and”, and deleting the words “relevant legislation” and substituting the words “written law”. In subclause (2), by inserting after the word “Counsel”, the words “pursuant to section”—

Sen. Prescott SC: Chair, pardon me. I have made a further amendment and said, “appointed pursuant”.

Madam Chairman: After the word Counsel, insert the words “appointed pursuant” to section 4A(1) of the Legal Aid and Advice Act.

Sen. Prescott SC: Thank you.

Madam Chairman: And in subclause (3) paragraph (b)(i), deleting the word “relevant” after relevant—

Sen. Prescott SC: [*Laughter*] Why not the first one?

Madam Chairman: Deleting the word “relevant reports” after “relevant” and inserting the word “reports”.

Question put and agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38 ordered to stand part of the Bill.

Clause 39.

Question proposed: That clause 39 stand part of the Bill.

Sen. Nicholas: Madam Chair, the suggestion is that after “minor offence” we insert “as may be prescribed”.

Madam Chairman: Is it in the second line?

Sen. Nicholas: In the second line, please, yes.

Sen. Al-Rawi: Madam Chair, thank you hon. Attorney General for putting that insertion in which takes care of the definition of minor offence. May I ask, why we are limiting it to the first time offender? Should we not leave that in the discretion of the court? Because there may be circumstances in a second time offence.

Sen. Nicholas: That particular Peer Resolution is designed for first time offenders.

Madam Chair: Sen. Vieira.

Sen. Vieira: Yeah, I would like to support Sen. Al-Rawi in this. You may have an offender who has circumstances in which he will be prone to doing the thing more than once. So if he only has the one shot, the whole question about conciliation and rehabilitation and supporting and deflecting wayward offenders goes out the window. Also, when you talk about the offence as may be prescribed, the thing with Peer Resolution is that it is the children who will set the sanction so there may be nothing prescribed per se. They will come up with their own, it could be an apology—

Sen. Al-Rawi: Or the minor offence.

Sen. Vieira: Oh, the minor offence.

Sen. Al-Rawi: Because you know what is a minor offence.

Sen. Vieira: Well, I suspect that we will have to create our own legislation in working out what the court would regard as minor. But it would be for the court to decide what a minor offence is. My understanding of the word “minor” is something that is of lesser importance; lesser in scope and effect as opposed to a summary offence.

Sen. Nicholas: I think the particular Peer Resolution system as designed, as it is working now in other jurisdictions is for the first time offender. And one does not want to corrupt it at this time.

Sen. Al-Rawi: AG, if you read the language:

“In any children matter in which a child who”—let us take off “for a moment”, “is a first time offender...”

Sen. Vieira: Who is charged.

Sen. Al-Rawi:—who—“is charged with a minor offence and admits guilt, the Children Court may with the agreement...”

So it is entirely in the discretion of the court to grow its power or not. I mean it would be a pity if some other jurisdiction figured out a second time offender should be included because it was such a minor offence and then we had to come and move Parliament to do it.

Sen. Vieira: You know with minors—I agree.

Sen. Nicholas: The aim of it is actually to discourage, you know, the repeat offenders. I suppose—

Sen. Vieira: A child who is currently serving in an industrial school, for

example, he already has a prior offence. This Act comes in, he will not be able to avail himself of this because he already has a prior conviction.

Sen. Nicholas: That is true.

Sen. Vieira: I agree with Sen. Al-Rawi. I think it reads much better to just delete, “is a first time offender” and give the court the wide house.

Sen. Nicholas: The policy criterion is important in this particular circumstance.

Sen. Mahabir: Madam Chair.

Madam Chairman: Sen. Dr. Mahabir—

Sen. Mahabir: Yes.

Madam Chairman: It is good to hear from you.

Sen. Mahabir: I would like to come in here. Thank you very much for that very warm and generous welcome, Madam Chair. But this is a clause that particularly concerns me. And the issue I have had, as I made in my contribution, was that we are seeing the court seeking the agreement of an offender. This, to me, contravenes natural justice. We are seeking the agreement of an offender.

10.45 p.m.

I thought the objective of the court—the administrators of the court—was to exercise their own discretion and their own judgment on what is the appropriate punishment or remedy for the offence that is caused. You see, what troubles me about, “may with the agreement of the child, and the consent of the parents, guardian or person with responsibility for the child”, is that it empowers the aggressor. The offence is minor but it is an offence; it is a wrong that has been committed. I see nothing here with respect to the victim, and I really would like to know what is the thinking behind focusing and treating the offender with such courtesy and kid gloves, and saying nothing at all about a victim who had, in the opinion of a court, been injured but in a minor way. The victim may, in the mind of the court, have received a minor aggression or injury, but it may not be so in the mind of the victim. It may be so in the mind of the court. And my own position is, why are we going and drafting our law with the agreement of the aggressor? Once I can get an explanation I will be quite willing to move on, but I think that explanation would be something that I would—

Madam Chairman: Sen. Vieira.

Sen. Vieira: Perhaps I can help. This is a situation in which the accused minor

has to make an election. He can elect to have the case fought and be found not guilty, or he can elect to say, “Listen, I am going to admit my guilt and I am throwing myself into this jurisdiction to see where it goes”. Because sanctions will be applied. The victim’s views will be taken into account in the peer-resolution process, but for purposes of opting, whether to try your case or to opt for this procedure, that is what this clause is targeted at.

Sen. Dr. Mahabir: So we are giving the aggressor a choice? Is it now that the law is going to be so drafted that we give these aggressors a choice as to what the punishment is going to be?

Sen. Nicholas: Sen. Mahabir, we have to understand that, one, we are dealing with a child, two, we are dealing with a first offender, and three, we are dealing with a minor offence as prescribed. So it is not that we are dealing with this big aggressor. We might have had somebody who has transgressed the law, who is sorry, who wants to be dealt with in a particular way and the court sees it fit to deal with that person in that particular way.

If the person is not suitable to be dealt with in that way, the court will not suggest that way. The whole idea is to ensure that that person can be rehabilitated at the earliest possible time whilst taking responsibility for their action.

Sen. Prescott SC: May I, in the circumstances, Chairman, engage the Attorney General? Attorney General, if rehabilitation is a foundation element of what we are attempting, could we firstly address the use of the word “sanctions”? As to suggest that a sanction ought to flow—well, a recommendation for a sanction ought to flow—from the peer resolution exercise, will be to almost rule out the chance of a rehabilitative settlement, some other measure being applied. So I am inclined to say, “to seek a recommendation as to what measures should be employed”.

Sen. Vieira: I like that term. And a sanction could take any form.

Sen. Prescott SC: It invariably suggests a punishment or a deprivation, some forbearance. Whereas, with a rehabilitative approach, one may well be asked to clean the facilities or to—

Sen. Nicholas: That is a sanction.

Sen. Prescott SC: Sorry. Maybe you are right, I should not have said that. It may be that the parties may agree to shake hands and walk away.

Sen. Vieira: It could be an apology. It could be that he goes in for some type of treatment. These are not sanctions, they are measures.

Sen. Prescott SC: Yes. Sanctions convey—

Sen. Nicholas:—“measures” it is.

Sen. Prescott SC: Well, please, I am not done. Thank you very much, though.

Madam Chairman: “As to the measures which should be”?

Sen. G. Singh: Chairman, I do not think that she should preclude “sanctions”.

Sen. Prescott SC: So “as to appropriate measures or sanctions”?

Sen. G. Singh: I would prefer “measures or sanctions”.

Sen. Prescott SC: Very well.

Sen. G. Singh: Because if I know that—you have to give the court flexibility, but you have to give the court the power to have some measure of direction, what they want to impose. So “measures” alone—

Sen. Prescott SC: Once again, though not necessarily to extend it, but it does say it is a recommendation that is coming out of the exercise. So the judge may say, “I do not accept”.

Sen. G. Singh: Yeah, because it is not sanctions.

Sen. Prescott SC: But I do agree that we can put both words.

Sen. G. Singh: Both of them, yes.

Sen. Prescott SC: And I think this is supportive of Sen. Dr. Mahabir’s point. If we were to leave it to the discretion of the court, “the Children Court may, in its own discretion, assign—refer”, will that be contrary to your policy, Attorney General?

Sen. G. Singh: Yes, I think so.

Sen. Prescott SC: It is contrary?

Sen. G. Singh: What I mean, throughout the system you are going to have agreement of the child. You want the voice of the child—assertion of the voice of the child. Responsibility is a component in it.

Sen. Dr. Mahabir: Through you, Madam Chair, to hon. Sen. Singh. Sen. Singh, what concerns me about the legislation is this, you know—and I want to go on the record. We are saying very little about the victim. We seem to be, really, very courteous to the aggressor, and this is my concern, and it is for this reason I raise the issue. I see nothing about compensation to victims. I do not know what

the policy of the Government is, but my own recommendation is that I think we need to focus a little bit more on those who have received the injury. Because what we are doing here is we are dealing with the perpetrators of crime and, like in all other areas of the law, we are not dealing at all with victims. And in the case of children's law, you see the victims are the ones who we absolutely need to focus on, and to rehabilitate. You see, it is not only the aggressor.

You do not need to be a social worker or a psychologist to know that we need to focus on the victims. So that what makes me happy, despite the recommendations of my distinguished colleague, Sen. Prescott, is, you see this word "may"—"the Children Court may with the agreement of the child", it means that the judge has wide discretion and this gives me a lot more comfort; this word "may". If this word "may" were to be removed, we will have some more disputes on this clause. So we keep the word "may".

Sen. Nicholas: Thank you.

Madam Chairman: So what is the new language for "sanctions"?

Sen. Nicholas: "measures or sanctions".

Madam Chairman: "as to the measures or sanctions"?

Sen. Nicholas: Yes, Madam Chair.

Madam Chairman: Not "appropriate"?

Sen. Nicholas: "appropriate measures or sanctions".

Madam Chairman: Okay. The question is that clause 39 be amended as follows:

To insert after the word "offence" in line 2, the words "as may be prescribed" and to insert in the penultimate line after the word "the", "appropriate measures or".

Question put and agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

Clause 40.

Madam Chairman: Hon. Senators, clause 40 marks a good distance that we have covered and it is an appropriate time. We will suspend for five minutes. It is now 10.54. We shall be back at 11.00 p.m.

10.54 p.m.: *Committee suspended.*

11.00 p.m.: *Committee resumed.*

Question proposed: That clause 40 stand part of the Bill.

Sen. Prescott SC: Chairman, may I intervene on a small point in line 2? I think a word “withhold” should replace the word “withholds”.

Madam Chairman: Any other concerns—clause 40?

Sen. Al-Rawi: Except that “parents” is plural; “guardian” is in between and “person” is singular. So it does not quite match up.

Sen. Prescott SC: So it should be all singular.

Madam Chairman: “if the parent”. Take off the “s” from “parents”?

Sen. Prescott SC: In which case we will return the “s” to “withhold”.

Madam Chairman: Yes. The question is that clause 40 be amended by: Deleting the word “parents”—

Sen. Prescott SC: Chair, forgive me. If I may, if you go back to 39, that formulation was used, you know, in line 3, plural parents and singular guardian. What is the thinking? Is it an error and we could just correct it both at the same time?

Madam Chairman: Yes. Just delete the word “parents” and insert the word “parent”.

Sen. Prescott SC: Yes. It seems to me that the formula should be the same throughout.

Sen. Sturge: I do not mean to be a stickler, but the issue of the singularity of consent from one parent, particularly where they are divorced, becomes an issue.

Sen. Prescott SC: Excuse me?

Sen. Sturge: There may have been a specific reason for the use of plural with “parents”, singular with “guardian” or “person”. I mean, parents, when you are dealing in a situation with divorce, you may want both parents to consent to it.

Sen. Prescott SC: So it may be well that they meant to say “parents”.

Sen. Sturge: So it may well be—

Sen. G. Singh: I share that point of view.

Madam Chairman: Sen. Vieira?

Sen. Vieira: I actually think that this having “parents” is a dangerous thing

because supposing the parties are separated, or one parent is living abroad, or, as we have talked about in the past, delinquent parents. This legislation requires both parents to agree. And, in fact, usually it might be just the mother taking care. So I think “parent”, and if both, well, all the better. But “parents” is a dangerous word there.

Sen. Prescott SC: May I just jump in again? In clauses 39, 40 and 41, the same approach is used. So there must have been some thinking that led to its use. The same formula is used.

Sen. Sturge: I think there is a useful suggestion, Sen. Prescott. In the Interpretation Act, singular includes the plural. So let us just go with “parent” and it will include both parents if both turn up.

Sen. G. Singh: And you still have a discretion.

Sen. Sturge: Yeah.

11.05 p.m.

Madam Chairman: And both parents may never be available.

Sen. Prescott SC: Some people think it is the man’s fault, but I doubt it.

Madam Chairman: So the amendment is to delete the word “parents”. So the question is that in clause 40, delete the word “parents” and insert the word “parent”.

Sen. Nicholas: Madam Chair, the “withhold” becomes “withholds”.

Madam Chairman: It was always “withholds”.

Sen. Nicholas: Yes. Right. Oh yes. I changed it and changed it back.

Question put and agreed to.

Clause 40, as amended, ordered to stand part of the Bill.

Clause 39 recommitted.

Question again proposed: That clause 39 stand part of the Bill.

Madam Chairman: The question is that clause 39 be amended as agreed, and further amended by deleting the word “parents” after “consent of the” and insert in the new word “parent”, and deleting the word “refer” and inserting the word “refers”.

Sen. Prescott SC: I am afraid no, that will be incorrect. It really reads “the

Children Court may refer”.

Madam Chairman: “the Children Court may refer”. So that stays then. So withdraw that last amendment with respect to “refer”.

Sen. Nicholas: Madam Chair, just on reflection and deliberation, we are prepared to alter the policy on the first offence, and therefore, remove “is a first time offender”.

Sen. Prescott SC: What about the “who”?

Sen. Nicholas: “a child who is charged”.

Madam Chairman: Okay. We will take the amendments to clause 39 from the top. The question is that clause 39 be amended by deleting after the word “who” the words “is a first time offender”, and inserting after the word “offence” as may be prescribed, and deleting the word “parents” and inserting the word “parent”. And inserting after the word “the” in the penultimate line the words “appropriate measures or”.

Question put and agreed to.

Clause 39, as amended, again ordered to stand part of the Bill.

Clause 41.

Question proposed: That clause 41 stand part of the Bill.

Madam Chairman: Sen. Vieira.

Sen. Vieira: In light about what we had said earlier about “parent” and “parents”, it might be easier to just say “before seeking the agreement of the child and parental consent under clause 39, the Children Court must explain”. So instead of “and the consent of the parent” just say “parental consent”. And then it will be the child’s parent.

Madam Chairman: And deleting everything else after section—

Hon. Senators: No.

Madam Chairman: Any other concerns?

Sen. Dr. Mahabir: Yes, Madam—

Madam Chairman: Sen. Dr. Mahabir.

Sen. Dr. Mahabir: Madam Chair, the last few words read as follows in language that they understand. I am sure we do not mean by this that they be

explained in English or a native language of Trinidad, but that you want to ensure the understanding of the process to the child and to the parents. Would it be more precise to say that we strike off “a language that they understand” and insert “in a manner to ensure the understanding”? You see—

Sen. G. Singh: What is the objective in taking what you are talking about—

Sen. Dr. Mahabir: Clarity of expression. You see, in language that they understand, does that mean that they must be taught in English, that they must be instructed in the language of Trinidad and Tobago; or is it that you want to ensure that they understand the process and you simply say that “with responsibility for the child in a manner to ensure their understanding”.

Madam Chairman: Or do you want to say “in age appropriate language”? [Crosstalk]

Sen. Dr. Mahabir: Is the child and the parent and, you see, what is of issue here is whether we are only going to use language, verbal communications to explain. We may have other aids and so on that in addition to language, it is words. We may have images and so on. It could very well be cartoon characters using both language and images to explain the process because essential to it is understanding. There must be an understanding of the process by the child and an understanding by the parents or guardian. So that simply it is just purely for the Government, whether we are going to explain the process in a manner to ensure their understanding. That is all. In a manner. Any manner. A manner means a wide range of media.

Sen. G. Singh: Chair, whilst I hear what Sen. Mahabir is saying, there is a discretion in the Court, and the Court will not be robot-like if, for example, if the language has to be sign language, if the language has to be a foreign language, an interpreter is required. So I think that it is appropriate here, but subject to what the technical people have to say. Yes, the discretion of the Court is what will guide all the nuances and the variables in a situation like this.

Madam Chairman: Any other concerns, clause 41?

The question is that clause 41 be amended by deleting the word “the” before “consent” and inserting the word “parental”.

Sen. Nicholas: No, you are putting “parental” after “the”.

Madam Chairman: Okay. So we are deleting the words “the consent of the parents” and substituting the new words “parental consent”. And in the penultimate line deleting the word “parents” and inserting the word “parent”.

Question put and agreed to.

Clause 41, as amended, ordered stand part of the Bill.

Clauses 42 and 43 ordered to stand part of the Bill.

Clause 44.

Question proposed: That clause 44 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, through you, clause 44(1)(b). The initiation of matters in each of the subdivisions of the Family Court and Children Court, I was not quite sure if that was correct. Unless we wanted to say in the Family and Children Court Sub-Division, or Sub-Divisions?

Sen. Young: In each of the subdivisions.

Sen. Prescott SC: In the Family and Children Court?

Sen. Young: Yes.

Sen. Al-Rawi: The first time term used earlier where we established the Divisions.

Sen. Prescott SC: Family and Children Division.

Sen. Young: It is defined in Family and Children Division.

Sen. Prescott SC: Division, yes. "...in each of the subdivisions of the Family and Children Division".

Sen. Al-Rawi: "of the Family and Children Division" it should be perhaps?

Sen. Prescott SC: Um-hmm.

Sen. Al-Rawi: "of the Family and Children Division"?

Sen. Prescott SC: Yes. "Children Court" means the Children Court Sub-Division of the Family and Children Division.

Sen. Young: The Family Court and the Children Court are the same.

Madam Chairman: So the word there in each of the subdivisions is redundant.

Sen. Young: No. If you go back to the definition section, you will see you have defined it as Family and Children Division and Sub-Divisions.

Madam Chairman: And Court.

Sen. Drayton: But how it is reading here reads as though there is a subdivision of the Family Court and a subdivision of the Children Court.

Sen. Young: AG, perhaps if we go back to clause 4(1) where we define it:

“There shall be a Division of the High Court to be known as the ‘Family and Children Division’ which shall comprise a Family Court Sub-Division known as the ‘Family Court’...”

Sen. Prescott SC: So if you are saying each of the subdivisions of the Family and Children Division, you will get it?

Sen. Young: Correct. You just stop there.

Sen. Nicholas: Sen. Young, could you just repeat?

Sen. Young: Sorry. Attorney General, if they direct their minds to clause 4(1), it defines it. Clause 4(1) says:

“There shall be a Division of the High Court to be known as the ‘Family and Children Division’ which shall comprise a Family Court Sub-Division known as the ‘Family Court’ and a Children Court Sub-Division known as the ‘Children Court’.”

So if we just transpose now the “Family and Children Division” it captures it, and then we go to 44(1)(b):

“the initiation of matters in each of the subdivisions of the Family and Children Division and the transfer of matters between the subdivisions;”

So you remove “Family Court and Children Court” and replace it with “Family and Children Division”. That captures it, yeah?

Sen. Nicholas: Yes.

Sen. Prescott SC: Thank you.

Madam Chairman: What is it, AG?

Sen. Nicholas: So that it will now read:

“the initiation of matters in each of the subdivisions of the Family and Children Division and the transfer of matters between the subdivisions;”

Sen. Al-Rawi: So delete the words “Court and” appearing after the word “Family”, and delete the word “Court” appearing after the word “Children” and substitute it with the word “Division”.

Madam Chairman: The question is that clause 44(1)(b) be amended by deleting the words “Family Court and Children Court” and inserting the words “Family and Children Division”.

Sen. Al-Rawi: Madam Chair, if I could just invite attention to (f) on the page over. Sorry, (e) and (f) both refer to forms of application.

“(e) ...complaints, notices, particulars, summonses, warrants and other processes necessary for the purposes of the Family Court and Children Court...”

Again in (f):

“...Family Court and Children Court...”

I was just wondering whether you wanted to—

Sen. Young: That captures the subdivisions. Better you go back to the same—

Sen. Al-Rawi: Okay. I guess we could leave it that way because of clause 4(1). Apologies.

Madam Chairman: Sen. Vieira.

Sen. Vieira: On subclause (e), I was concerned about “forms of application”. Why limit it to just “forms of application”? I was looking at the Family Proceedings Rules forms and really what you are talking about is practice forms, “complaints, notices, particulars, summonses...” So I would leave it.

Sen. Prescott SC: Does the word “other processes” come in?

Sen. Vieira: Well, the forms state many forms. So it is really forms pertaining to practice, but these are only forms of application and that is my concern.

Madam Chairman: “,” after “forms”?

Sen. Nicholas: Yes, so “forms, applications”—

Sen. Vieira: No, no, I was going to say in front of “forms” put “practice forms”. “may make rules with respect to the practice forms, complaints, notices, particulars, summonses, warrants and other processes.” In fact, you could have just said “practice forms”.

Sen. Nicholas: You could just leave it as “forms”.

Sen. Vieira: Just “practice forms”.

Sen. Nicholas: Or just “forms”.

11.20 p.m.

Sen. Vieira: Because if you look at this, and interestingly enough, this practice direction, it is just called “forms”.

Sen. Nicholas: I think we should leave it as “forms”.

Sen. Vieira: It says pursuant to the Family Proceedings Rules 1998 as amended.

Sen. Nicholas: So “forms”, we will just leave it as wide “forms”.

Sen. Vieira: Forms, I think so.

Sen. Nicholas: So “forms, applications, complaints, notices,” et cetera.

Madam Chairman: Any other concerns with clause 44? The question is that clause 44 be amended in subclause (1)(b):

By deleting the words “Family Court and Children Court” and inserting the words “Family and Children Division”, and in paragraph (e)—

Sen. Prescott SC: Pardon me, just one minor—in (j), it should read:

“things that are incidental or necessary for giving effect to the purposes”—of—“this Act.”

Madam Chairman: Continuing the amendment, in paragraph (e):

By deleting the word “of”, inserting “,” after the word “forms”, deleting the word “application” and inserting the word “applications”, and in (j), by inserting the word “of” after “purposes”.

Question put and agreed to.

Clause 44, as amended, ordered to stand part of the Bill.

Clause 45.

Question proposed: That clause 45 stand part of the Bill.

Sen. Prescott SC: I think the punctuation needs—[*Inaudible*]

Sen. Al-Rawi: Madam Chair, just to add the full stop on the end of 45, okay.

Madam Chairman: Taken as a typographical error.

Question put and agreed to.

Clause 45 ordered to stand part of the Bill.

Clauses 46 and 47 ordered to stand part of the Bill.

Clause 3 reintroduced.

Sen. Nicholas: Stays as is.

Sen. Al-Rawi: Clause 3 is where we raised the issue of the Registrar.

Sen. Nicholas: I think we needed to make some amendments in clause 3 with regard to “Children’s Attorney” and “children care matter”.

Sen. Al-Rawi: So, on page 3, “Children’s Attorney”, add “2012” after the word “Act” and before the word “;”.

Sen. Young: “children care matter, add “s” to “includes”. At (c), in “children care matter”, add the “2012”. Remove in “Family Court” on page 4, the “s”.

Madam Chairman: Yeah, we have all of that.

Sen. Nicholas: And the rest stays as is.

Sen. Al-Rawi: AG, could we just get the explanation on the record with respect to the concerns raised?

Sen. Nicholas: The (2)(c) and (3)(c) make reference to Schedule 1—they are all 1—a whole list of legislation where those pieces of legislation referred to—we used the terms Clerk of the Peace or Clerk of the Court, but those terms are referenced as Registrar and Deputy Registrar, et cetera, in this particular Bill.

Sen. Young: So, in other words, when we look at Schedule 1 and you see Supreme Court of Judicature Act, Summary Courts Act, et cetera, and wherever there are references to these words, we are now construing it as per this definition clause?

Sen. Nicholas: No, specifically, when you see Clerk of the Peace or Clerk of the Court, they are construed as being made reference to Registrar, Deputy Registrar of the Family and Children Division, or Assistant Registrar of the Family and Children Division.

Sen. Young: But when appointing these people to the post in the Family Court or in the Children Court, they would have fulfilled the requirements to be appointed in our court. So it is just when you are reading it in this other legislation, you now import the meaning to be the person who has been appointed as the Registrar under this—

Sen. Nicholas: Absolutely, yes.

Sen. Young: Okay. Understood.

Sen. Al-Rawi: So, it is for the record, an issue of nomenclature as opposed to capacity within the meaning of section 67 of the Supreme Court of Judicature Act. Right?

Sen. Nicholas: Correct.

Sen. Al-Rawi: And it is under no circumstances intended to make those persons in the other legislation referred to in Schedule 1 as having the capacity prescribed by that law. Right? Just for the Pepper and Hart interpretation.

Sen. Nicholas: Correct.

Sen. Al-Rawi: Thank you.

Sen. Prescott SC: May I, Chair? As we are at clause 3 again, could I ask you to look at “Peer Resolution” once again, and see if we need to introduce the words “measures or sanctions”. In the definition of “Peer Resolution”.

Sen. Al-Rawi: Before the word “recommend”, mid paragraph.

Sen. Nicholas: Sure, we could put that in. We could put in “measures or sanctions” so that it is consistent.

Madam Chairman: So AG, we have the word “appropriate”—

Sen. Nicholas: “appropriate measures or sanctions”.

Sen. Prescott SC: No, it already says “measures or sanctions appropriate to”.

Madam Chairman: Just “measures or sanctions”.

Sen. Nicholas: Yes, you are right.

Madam Chairman: The question is that clause 3 be amended by deleting the words “Children Act” wherever it appears and substituting the words “Children Act, 2012” and in subclause (1) under the definition of “children care matter”, delete the word “include” and substitute the word “includes”, and deleting the words “Children’s Division” wherever it occurs in clause 3 and substituting the words “Children Division”, and in the definition of “Peer Resolution”, inserting after the word “recommend”, the words “measures or”.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 6 reintroduced.

Sen. Al-Rawi: We had deferred it in light of the definition but I think that we

have solved that.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Schedule 1.

Question proposed: That Schedule 1 stand part of the Bill.

Sen. Nicholas: Madam Chair, “[Section 3(1)(b)]” is to be amended to read “[Sections 3(1) and 45]”.

Madam Chairman: We are talking about the Schedule?

Sen. Nicholas: The marginal note in Schedule 1.

Madam Chairman: Supposed to be what?

Sen. Nicholas: It should read “[Sections 3(1) and 45]”.

Madam Chairman: No (b)?

Sen. Nicholas: No (b).

Madam Chairman: The question is that Schedule 1 be amended as follows:

Delete the words “[Section 3(1)(b)]” and substitute the words “[Sections 3(1) and 45]”.

Question put and agreed to.

Schedule 1, as amended, ordered to stand part of the Bill.

Schedule 2.

Question proposed: That Schedule 2 stand part of the Bill.

Sen. Nicholas: Madam Chair, again, in the margin, “(Section 17)” should be amended to read “(Sections 19 and 35)”.

Madam Chairman: Any other? Senator.

Sen. Prescott SC: Well, I have one other now because that was the first. The body of the oath seems to need some revisiting. It reads:

“I, (A.B.), do swear by...”—and I suppose that is the holy book—“that I will not, without due authority in that behalf, in any manner whatsoever, publish or communicate any facts or information being facts or expressions of opinions based on such facts that came to my knowledge by reason of such employment.”

And there is no reference to “employment” anywhere in the body of it, so one is left to wonder to what employment are we referring?

Sen. Nicholas: Members of staff.

Sen. Prescott SC: Those words should be inserted? Okay, but this person is swearing:

I, John Brown, will not communicate facts which came to me by reason of—

Of what? Is it my “employment”?

Sen. Nicholas: My “employment”.

Sen. Prescott SC: So we change “such” to “my”.

Sen. Nicholas: Yes.

Sen. Prescott SC: Thank you.

Madam Chairman: The question is that Schedule 2 be amended:

By deleting the words “(Section 17)” and substituting the words “(Sections 19 and 35)”, and by deleting the word “such” and substituting the word “my”.

Question put and agreed to.

Schedule 2, as amended, ordered to stand part of the Bill.

11.35 p.m.

Schedule 3.

Question proposed: That Schedule 3 stand part of the Bill.

Sen. Nicholas: Madam Chair, again in the margin, “(Section 28)” should be amended to read “(Section 47)”.

Madam Chairman: Any other? The question is that Schedule 3 be amended in marginal note by deleting “(Section 28)” and inserting the words “(Section 47)”.

Question put and agreed to.

Schedule 3, as amended, ordered to stand part of the Bill.

Preamble.

Question proposed: That the Preamble be approved.

Sen. Prescott SC: May we, in relation to the Preamble if you could just bear

with me. In the first paragraph it reads:

“An Act to make jurisdiction for all family matters and children matters exercisable in a Division of the High Court to be called the Family and Children Division...”

It seems unfinished.

Madam Chairman: Yes, it needs a full stop.

Sen. Prescott SC: Something seems to be—no, actually I did not mean that, sorry. It says:

“...to make jurisdiction...exercisable in a Division of the High Court to be called...”

To make what? I am reading the first paragraph.

“An Act to make jurisdiction...exercisable...”

It is to make the jurisdiction exercisable? That is correct? To make jurisdiction exercisable in a division of the High Court? Sorry, my focus was on to make jurisdiction. Is that an acceptable term; to make jurisdiction exercisable? It may well be, it is just that I am not grasping it at 11.37.28 p.m.

Sen. G. Singh: An Act to provide for jurisdiction for all family matters. It is to provide for jurisdiction for all family matters.

Sen. Prescott SC: To be exercisable? Yes? It is to make provision for jurisdiction for all family matters to be exercisable?

Sen. G. Singh: To provide for.

Madam Chairman: No, that is still very awkward. Make it smooth. It is the opening—

Sen. Prescott SC: You can do that. You can make it exercisable. If so it is correct:

“An Act to make jurisdiction...exercisable...”

Sen. Al-Rawi: I think make is correct because the jurisdiction is already vested by virtue of the Supreme Court of Judicature Act and Summary Courts Act. I think that, perhaps, “make” may be correct, Sen. Prescott.

Sen. Prescott SC: Yes, it does appear so. Thank you very much. On further reflection, I think it is okay.

Madam Chairman: Any other concerns in the Preamble?

Sen. Prescott SC: Oh yes, in the third paragraph, one of my little quirks, in the penultimate line, there is a word there that needs to be spelt correctly.

Sen. G. Singh: Yup, “fouteen”, that is the Chinese.

Sen. Prescott SC: Oh, well in that case, I withdraw. If we turn the page to the first full paragraph:

“And whereas the Children Act No. 12 of 2012 was enacted by Parliament...”

It seems to me that we should either say: “, premised, *inter alia*”, or do something about the words “which was”, because “which was” does not refer to Parliament. “...was enacted by Parliament, premised *inter alia* on...”

Sen. Al-Rawi: Yeah, I think you would have to delete “which was”.

Sen. Prescott SC: So let us delete the words “which was” and substitute a comma.

Sen. Nicholas: Yes.

Sen. Prescott SC: That is good? And in (g), lower down the page, I would recommend that the same format be used as for solutions-based and evidence-base. That is to say, you should have used a hyphen. Those would be all for me, please.

Sen. Al-Rawi: (i) is missing a semicolon and (j) is missing a colon.

Sen. Prescott SC: Actually it should be (i); and—

Sen. Al-Rawi: There should be a semicolon after (i); and. Then you have (j) and after (j) there is a colon at the end of programmes because there is a further—

Sen. Prescott SC: Yes, indeed.

Madam Chairman: Any other concerns?

Sen. Al-Rawi: No, Ma’am.

Madam Chairman: The question is that the Preamble be amended as follows:

In the first recital by adding a full stop after “therewith”.

In the third recital, by deleting the word “fourteen” and inserting the word “fourteen”.

And in the recital that begins with the words “And whereas the Children Act

No. 12 of 2012” by inserting a comma after the word “Parliament” and deleting the words “which was”.

Sen. Nicholas: Madam Chair, just to say that in the first paragraph where we have inserted the full stop, because it is the long title, a full stop should not be inserted.

Madam Chairman: There is no full stop.

Sen. Nicholas: There is no full stop.

Madam Chairman: That is the title, sorry. In recital (h), paragraph g, inserting a hyphen between the words “trauma and informed” and in paragraph (i), inserting a semicolon and the word “and” and in paragraph (j), at the end inserting a colon.

Sen. Nicholas: Madam Chair, I just have one request to revisit clause 7, please.

Madam Chairman: Okay, before you do that let us approve the Preamble.

Question put and agreed to

Preamble approved.

Madam Chairman: We would be revisiting clause 7.

Clause 7 recommitted.

Question again proposed: That clause 7 stand part of the Bill.

Sen. Nicholas: Clause 7(2)(b) and (c), after Family Court and Children Court, respectively, we should insert Administration Department, because these actually deal with the administration departments of the specific courts. We have already removed sub-division.

Madam Chairman: According to our recall, we did not remove the word “sub-division”.

Sen. Nicholas: You should have because I have it marked off.

Madam Chairman: We only included the words “the” instead of “a”.

Sen. Nicholas: It is good thing we actually tape as well.

Sen. Al-Rawi: I have sub-division as redacted.

Sen. Nicholas: So it slipped us.

Sen. Al-Rawi: We probably went back.

Madam Chairman: You all put it back.

Sen. Al-Rawi: I see.

Sen. Young: So we now should remove it and replace it with “administration department”.

Madam Chairman: You put it back.

Sen. Al-Rawi: If it is there then we remove it.

Sen. Nicholas: Madam Chair, we will remove sub-division and insert “Administration Department”.

Sen. Prescott SC: May I, before we commit to that, please? There is a view and a practice in Human Resources, rather in organizational structures, divisions and departments, one is larger than the other. So the department could not be divided into two departments. The Family and Children Court Administration Department probably is comprised of divisions. I think division is larger than department or is it the other way around? Division is larger. So this thing should be called the Family and Children Court Administration Division and it comprises divisions.

Madam Chairman: Or such divisions.

Sen. Prescott SC: The division is smaller than the department? The thing, the large behemoth—

Sen. Nicholas: So would it be administration subdivision?

Sen. Prescott SC: Chair, I am persuaded that the larger creature is the division and it may be divided into departments. So that clause 7 should begin by saying:

There is established a Family and Children Court Administration Division.

And then 7(2) (a)(b) and (c) will all be departments in that division.

Sen. Al-Rawi: That is correct.

Sen. G. Singh: In the public service, department is the larger one and then your divisions take place. You regionalize it or you have specific tasks associated with that.

Sen. Prescott SC: Good, so therefore, if we revisit clauses 7 and 8 we will read as follows:

There is established a Family and Children Court Administration Division

Sen. Nicholas: Department is bigger than division.

Sen. Vieira: But in the parlance of courts, you have a civil division, a criminal division, a family division, not a civil department or a criminal department.

Sen. Prescott SC: Okay, let us go to clause 7. Following your line of thinking, 7(2) now reads:

The Family and Children Court Administration—something—shall comprise three divisions, (a), (b) and (c)?

Sen. Nicholas: Yes.

Sen. Prescott SC: So (b) and (c) should be the Family Court Administration Division?

Sen. Al-Rawi: AG, the thing is this, notwithstanding Sen. Singh's correct position that departments and divisions are the way they are in the public sector, in this Bill we have chosen to divide this into divisions. And, therefore, establishing that as the larger entity we are now bound to reverse the terminology and for consistency call it something in (a), (b) and (c), which is all the same—department, department, department or division, division, division. That is just the simple point.

Sen. Prescott SC: So that 7(2) should read:

- (a) The Central Office or the Family and Children Division;
- (b) the Family Court Administration Division; and
- (c) the Children Court Administration Division.

Well, it is a good thing Sen. Al-Rawi was standing.

Sen. Nicholas: That is what we were actually proposing.

11.50 p.m.

Sen. Prescott SC: It helped. [*Laughter*]

Madam Chairman: I think you all had it correct in the first instance.

Hon. Senator: Because there are three divisions in this—three divisions within your department.

Sen. Prescott SC: Yes, so (a), (b), and (c) are now all called divisions, but not subdivisions in (b) and (c), but administration divisions.

Sen. Nicholas: Now, looking at it, you have the central office of the family and children division, therefore, if you have the Family Court and the children

court, they would be subdivisions.

Sen. Prescott SC: Okay, so we are back where we started.

Sen. Nicholas: Should it not?

Sen. Prescott SC: We are only 10 minutes away from midnight, so we could—

Sen. Vieira: Correct, AG, the division is the family and children division, and that has subdivisions.

Sen. Prescott SC: Is that right?

[Sen. Nicholas confers with Parliamentary Counsel]

Sen. Nicholas: So, you have the central office division and then you have subdivisions.

Sen. Prescott SC: Very well. So, we are fairly much back to where we began?

Sen. Nicholas: So, I think it was properly—

Sen. Al-Rawi: AG, no, no, no. AG, you do not—sorry to interrupt you, (a) refers to—it is actually just the central office. It is the central office of X. No, it is not a division. It is the central office of this thing which is called the family and children division. So forgot the word division there. So you have created one, the central office, which is fine; and two, you are creating now, the family court administration department—could work.

Hon. Senator: No.

Sen. Al-Rawi: I am just saying it could work once the terminology is kept—so do not get taken away by the use of the word “division” in (a), because it is not the same as division in (b) or (c).

Sen. Prescott SC: Let us stay with subdivision.

Madam Chairman: It was correct in the first instance, I think.

Sen. Drayton: Why are we changing it?

Sen. Al-Rawi: Subdivision could work.

Madam Chairman: AG, clause 7 as approved, passed and stands—

Sen. Prescott SC: AG, you have the right—

Sen. Nicholas: Previously stands.

Madam Chairman: We are not opening that again.

Sen. Al-Rawi: I stand with the Chair.

Sen. G. Singh: Why are we not including administration?

Sen. Al-Rawi: Oh, administration sub divisions?—you could.

Madam Chairman: No, no, it is a subdivision. It is a family court subdivision which is all administrative. It follows that these are administration departments. It follows in the chapeau that the family and children court administration—so it cannot be anything but administration. You would have to put it back again, that would be redundant.

Hon. Senator: The administration division.

Madam Chairman: No, it is good as it is. Subdivision is good.

Sen. Nicholas: Agreed.

Question put and agreed to.

Clause 7 again ordered to stand part of the Bill.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Madam President. I beg to move that this Senate do now adjourn to Monday, 08th June, at 10.30 a.m., when we will be dealing with the Motor Vehicles and Road Traffic Bill, 2014 and also the Waste Recycling Bill, 2015.

You may recall, Madam President, that I had indicated on a prior occasion that we would seek to sit two days per week. This week, we had this marathon session, and I want to thank all Members for their productivity.

However, next week, with the Appropriation Bill taking place—and I do not want to anticipate events—but we may have another sitting in addition to the two that I had indicated to you, but that would depend upon circumstances arising in the passage of the Bill and so on, and the timeline.

Sen. Al-Rawi: You mean, after Monday's session?

Sen. The Hon. G. Singh: It will be Tuesday and Wednesday. Just for clarity in response, Madam President. On Tuesday, another Bill qualified, the Gambling (Gaming and Betting) Control Bill, 2015, and depending upon whether or not the Squatter Regularisation is completed also, we may have that also. So it depends upon the other place, and let us see how we proceed, but certainly, we are looking at possibly three days sitting next week.

Sen. Al-Rawi: Madam President. Thank you hon. Leader of Government Business. May I just enquire without anticipating or running afoul of the anticipation, would the third day be to cater for the supplementary appropriation, which the House may or may not have finished then? Is it that?

Sen. The Hon. G. Singh: Yeah. The third day will be for the Variation of Appropriation. It is not a supplemental.

Sen. Al-Rawi: Sorry, apologies.

Sen. The Hon. G. Singh: Well, good choice of word, but if I were in Opposition, I would say that too, [*Laughter*] but the third day is really for the Variation of Appropriation.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.57 p.m.