HOUSE OF REPRESENTATIVES

Wednesday, December 07, 2005

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received communication from the following Members seeking leave of absence from sittings of the House: the Member of Parliament for Arouca South (Hon. Camille Robinson-Regis), for the period November 25 to December 22; the Member of Parliament for Oropouche (Dr. Roodal Moonilal), for the period December 07 to December 08; the Member of Parliament for Laventille West (Mrs. Eulalie James), for the period December 07 to December 16, 2005. The leave which the Members seek is granted.

INTERNATIONAL CRIMINAL COURT BILL

Bill to provide for the prevention and punishment of genocide, crimes against humanity and war crimes, to give effect to the Rome Statute of the International Criminal Court done at Rome on the Seventeenth Day of July, One Thousand Nine Hundred and Ninety-Eight; and for the purposes connected therewith or incidental thereto, brought from the Senate. [*The Minister of Foreign Affairs*]; read the first time.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Loan Fund for the year ended December 31, 2001. [*The Minister of Trade and Industry and Minister in the Ministry of Finance* (*Hon. Kenneth Valley*)]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Loan Fund for the year ended December 31, 2002. [*Hon. K. Valley*]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the statement of recovery of expenses of the Minister of Energy and Energy Industries for the year ended December 31, 2004. [*Hon. K. Valley*]

Papers 1 to 3 to be referred to the Public Accounts Committee.

4. A Green Paper on the standards for the operation of all schools. [*Hon. K. Valley*]

5. A Draft White Paper entitled "National Policy on Early Childhood Care and Education 2005—Standards for Regulating Early Childhood Services." [*Hon. K. Valley*]

SUSPENSION OF SITTING
(REQUEST OF)

Hon. F. Hinds: Mr. Speaker, could we suspend for a short while, please?

Mr. Speaker: You would like the sitting to be suspended for a little while?

Hon. F. Hinds: Yes, Mr. Speaker.

Mr. Speaker: How much time do you need?

Hon. F. Hinds: I need about 10 minutes. Much obliged, Mr. Speaker.

Mr. Speaker: Hon. Members, the sitting of the House is suspended for 10 minutes.

1.35 p.m.: *Sitting suspended.*

1.45 p.m.: *Sitting resumed.*

SUPREME COURT OF JUDICATURE (AMDT.) (NO. 2) BILL

Order for second reading read.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Mr. Speaker, thank you very kindly for recognizing me yet again. I would appreciate very much if you and the hon. Members would accept my sincere apology for the delay. There were some supporting documents that I needed to obtain and I did as I present the Bill. Much obliged.

Mr. Speaker, I beg to move,

That a Bill to amend the Supreme Court of Judicature Act, Chap. 4:01, be now read a second time.

The Supreme Court of Judicature (Amdt.) Bill proposes to amend the Supreme Court of Judicature Act, Chap. 4:01, to empower the High Court to engage in new forms of investment and to repeal the Court Funds Investment Act, Chap. 7:06.

The Bill contains four clauses and requires a simple majority vote. This Bill seeks to give effect to the ruling of the Privy Council in a case which sought to clarify the duty of the courts in relation to the investment of moneys paid into court in the case of Kirvek Management and Consulting Services Limited against the Attorney General of Trinidad and Tobago (2002). This case was reported in the West Indian Report, Vol. 61 at page 481, where the Privy Council held that the High Court had a duty to ensure that moneys paid into the court are properly invested and the interest credited to the account of the depositor. Consequent upon this decision, the rules of the Supreme Court, in February 2002, drew the attention of the Law Reform Commission to the need to amend the existing law that is the Court Funds Investment Act, to deal with the investment of moneys paid into court.

In the Kirvek case, their Lordships had to consider whether the requirement, under the Court Funds Investment Act, was a mandatory or discretionary one. This amendment would therefore put the law on a more stable footing, so as to remove any doubt as to the duty of the courts in ensuring that a citizen receives justice.

The Court Funds Investment Act currently governs the power of the High Court to invest, deposit and regulate moneys paid into the court. This Act sets out the manner in which all moneys paid into the High Court may be invested and restricts all other forms of investment, but the Registrar of the High Court, in her capacity as secretary of the Rules Committee of the Supreme Court, informed the Law Reform Commission that today many of the provisions of this Act are no longer relevant, as the range of investments permitted under section 2 are now wholly obsolete.

This Act came into force on December 14, 1899. Law, as a tool of social engineering, must, of necessity—[*Interruption*] Mr. Speaker, could you be kind enough to permit my friend to allow me to make my presentation?

Mr. Speaker: The hon. Member is seeking your indulgence.

Mr. S. Panday: Mr. Speaker, I apologize but he did not need to ask for the 10 minutes break; he could have just asked for the *Hansard*.

Mr. Speaker: Please continue hon. Minister.

Hon. F. Hinds: Thank you very much, Mr. Speaker, for retaining the dignity of this honourable House.

Law as a tool of social engineering must of necessity reflect the hopes, aspirations and the realties of the society required to comply with that law, or else,

by the effluxion of time, the law would become like a scarecrow and soon no one would pay heed to it. Obviously, Mr. Speaker, law must keep pace with our changing social circumstances and realities.

The Act expressly restricts deposits to, or investments in prescribed stocks, freehold land, or the Post Office Savings Bank. The reality is that the Post Office Savings Bank was closed on August 31, 2001. Today also, the court no longer invests in stocks or land because of the uncertainty of the market and the costs and charges incidental to these methods of investment. In fact, for more than 50 years, the High Court has not made any such investments or has simply deposited court funds into the Treasury.

Hon. Members are asked to note that the number of amendments required to the Court Funds Investment Act would have resulted in the deletion of many sections and the alteration of others, leaving the amended Act with only four substantive provisions. To avoid this awkward and complicated exercise and to provide for more efficient handling of this, the Law Reform Commission therefore found it expedient to repeal the Court Funds Investment Act, in its entirety, and insert the new provisions of the Supreme Court of Judicature Act. These provisions would effectively empower the High Court to engage in appropriate forms of investment, in particular, to allow for moneys paid into court to be placed into interest-bearing accounts.

The Law Reform Commission consulted with the Judiciary and the Judiciary is in total agreement with this approach. These would be moneys deposited in respect of commitments of one party to another, deposited, as they are, for awards that may be made by the court later.

The proposed amendment to the Supreme Court of Judicature Act would give the High Court power to invest moneys paid into court, in securities authorized by the Rules of Court or any other written law, or in an interest-bearing account, in a financial institution, as defined by the Financial Institutions Act, No. 18 of 1993.

Under section 2 of this Act, a financial institution is defined to mean:

> "…a company which carries on or used to carry on all or any aspects of banking business or business of a financial nature.

The term 'banking business' is defined under section 4(2) to mean:

> "..the business of receiving of deposits of money from the public on current account, or deposit account which may be withdrawn on demand, by cheque, draft, order or notice, and the making of loans, or the granting of credit

facilities, and generally the undertaking of any business appertaining to the business of commercial banking."

The term "Business of a financial nature" is defined under section 5(2) of the said Act to mean:

"…the collection of funds in the form of deposits, shares, loans, premiums and the investment of such funds in loans, shares and other securities and includes the performance for reward, of the functions and duties of a trustee, administrator, executor or attorney as well as the types of business set out in the First Schedule, but does not include the business of banking."

This, therefore, means that a financial institution includes all our commercial banks, mortgage lending institutions, the Unit Trust Corporation of Trinidad and Tobago, trust companies and such other entities.

The Bill would also allow the High Court to deposit any amount of the moneys paid into court in a financial institution and the interest shall be payable to such accounts as would be payable to any other depositor. It is to be noted that the Rules of the Supreme Court would otherwise authorize the types of securities in which moneys are to be invested, thereby ensuring that the court restricts itself to investing court funds in only stable and reputable financial institutions.

Mr. Speaker, Rules of Court are made by the Rules Committee of the Supreme Court under section 77 of the Supreme Court of Judicature Act. The Bill, therefore, seeks to amend the Supreme Court of Judicature Act, to give effect to the decision as has already been outlined in the Kirvek case, where the Privy Council held that the court had a duty to so do.

The amendment, therefore, seeks to empower the court to so deposit or invest these moneys. Consequently, the Bill seeks to repeal the Court Funds Investment Act in its entirety. I ask hon. Members to observe that the Bill contains a savings clause—very important—to protect the rights of those persons; to claim interest on moneys deposited into court prior to the closure of the Post Office Savings Bank.

Mr. Speaker, I now turn to examine, briefly, the various clauses of the Bill. Clauses 1 and 2 would provide for certain preliminary matters, that is the Short Title of the Act for this Bill and the interpretation section respectively.

Clause 3 provides for the insertion of two new sections, that is to say, sections 24A and 24B. These are designed to empower the court to engage in new forms of investment as alluded to earlier.

The proposed section 24A, in fact, seeks to give the High Court the power to invest moneys paid into court in securities as authorized by the Rules of the Supreme Court or any written law, in interest-bearing accounts in any financial institution, as defined and described earlier under the Financial Institutions Act, 1993.

The proposed section 24B seeks to allow the High Court to deposit any amount of the moneys paid into court in a financial institution in an interest-bearing account and the interest shall be payable to such account as would be payable to any other depositor, as has already indicated; hence, the recipient of the interest payable on such an account would be the person who paid the moneys into the court and not the court itself. Thus, the person who paid the money into the court will be in receipt of the benefit.

Clause 4 seeks to repeal the Court Funds Investment Act, Chap. 7:06, and to save the claim of a person to receive interest earned on money deposited, prior to closure of the Post Office Savings Bank.

This Bill, therefore, represents the continuing work of the Law Reform Commission, which has served our country very well to give effect to its statutory mandate, to reform our law continuously and to do so, obviously, for the benefit of our entire society.

Mr. Speaker, with these observations, I offer these measures to the House and I beg to move.

Question proposed.

Mr. Subhas Panday (*Princes Town*): Mr. Speaker, today clearly demonstrates that this is the most incompetent Government we have ever had; [*Desk thumping*] the most insensitive government we have ever had. The time is coming soon when they must be dealt with. Today is Wednesday—today a not a normal parliamentary day—and we were called out today. One would expect that having regard to the problems of the society; that having regard to how the society is agonizing with crime, that this Government would have come today and put the police bills before us. Instead, Mr. Speaker, they come today with two one-line amendments. These matters in this Bill were matters which occurred over a long period of time; matters which could have already been dealt with; it was on the Order Paper on 16 November, 2005 when we were here but they adjourned the House to a date to be fixed as though they had nothing to do for the rest of the year. Mr. Speaker, today it is the same nonsense on the Order Paper.

Mr. Speaker, what makes it more embarrassing to you and the Members of this House is when the Member who piloted the Bill in the Senate had to ask the House for time to prepare his work. What incompetence! What arrogance of this Government! That is why people have no respect for the Parliament. The PNM is the main cause for the society to have no respect for the Parliament and that is why people think they are "kicksing" in Parliament.

Mr. Speaker, when we agreed, some time ago, to have the police bills presented, it was as a result of the United National Congress feeling the pains of the people of Trinidad and Tobago. The Member for St. Augustine, I remember, in his first speech said—after the President came here and spoke—we are interested in dealing with the issue of crime and in those circumstances, it culminated in the United National Congress dealing with the issue. But they are caught, Mr. Speaker. The society must know now that this Government does not care about crime and it seals the fact that they and the criminals are one. They are safe—other people are being killed and other people are being kidnapped—so they do not care about the people.

Mr. Speaker, to know how the people in this country are in pain and how the PNM is insensitive, I quote from the *Express* dated December 03, 2005:

"Keith Noel Murder Victim 136 Committee"

It is now 17 days since the famous crime agreement. We want to tell that Keith Noel Committee that it was no agreement; the PNM was mamaguying the nation. They are fooling the nation! Since then, Mr. Speaker, how many more citizens have been murdered, kidnapped, raped and suffered from other violent crimes? The total murder rate on December 03, 2005 was 352 citizens in 336 days. Mr. Speaker, add three days and the number today is 360 have been killed and the PNM is in St. Vincent interfering with other people's business; they want to influence other people's elections and their internal affairs; they are minding other people's business and the job which they have been paid for in this country, they are refusing to do it.

How many illegal guns were taken off the streets this past week? How many gang leaders, out of the 66 PNM-known gangs, have been arrested? How many Monos Island-type drug busts were made? How many kidnappers have been arrested and charged? Mr. Speaker, one would have thought that legislation pertaining to that activity would have come here at this time.

Mr. Speaker, Hon Member, I think you have made your point sufficiently well on, perhaps, the crime bills that are yet to come. Could we get back to the Bill before us?

Mr. S. Panday: With the greatest respect to you, Mr. Speaker, I am saying—who want to protect them could protect them how much they want to—that this PNM is incompetent and they should have come with those bills and make use of the parliamentary time and should not come here and make a fool of themselves! Nobody must protect them, Mr. Speaker! Nobody at all!

Mr. Speaker: If you are insinuating that I am protecting them—

Mr. S. Panday: No, no, I am not, Mr. Speaker.

Mr. Speaker: —I think you are mistaken. All I am saying is that I think you have made the point and please get to the Bill before us.

Mr. S. Panday: Mr. Speaker, I find it strange that this is a Parliament and for the Speaker to muzzle me and tell me that I made the point already.

Mr. Speaker: No, no, no, please do not go there—[*Interruption*] No, do not go there at all. You have a Bill before you; I have given you five minutes to talk about crime and so on. It is a simple Bill let us get the work done.

Mr. Panday: Mr. Speaker, it is so simple and so insignificant they could have come with this a long time ago but they call Parliament on a Wednesday to give the population the impression that they are working but they are not working! It pains me to say that, Mr. Speaker, but this is the truth and the truth must be told to the citizens of this country.

Mr. Speaker, while people are waiting patiently to see that the problems in the society are being served, we come here today to talk about—what was said, a simple Bill to amend the Supreme Court of Judicature Act to give effect to the decision in Kirvek.

What annoys us is that this Kirvek case is not a last week case; it is not a last month case. This is a case of 161 of 1999. Since 1999 this matter has been ventilated and that is way it is necessary to tell the population what the PNM is; how incompetent they are; how arrogant they are and we must deal with them! [*Interruption*] The people will deal with you all because you all are encouraging people to kill them!

Mr. Speaker, High Court Action S-376 of 1999 was a case where there was litigation between Kirvek and SIS Limited. Kirvek was a company registered in Canada so they said a foreign company; they wanted security for costs; Kirvek placed $250,000 in the account in the court. When they put it in the court they wrote a letter to the Registrar asking the Registrar to put it into an interest-bearing account. The Attorney General filed an action to dismiss the claim and His

Lordship, Master Doyle threw out the Attorney General's case. The Attorney General appealed to the Court of Appeal and this is when you look and say thank God for the Privy Counsel. What they were asking the Assistant Registrar was to put the money in an interest-bearing account.

What was the situation at that time, Mr. Speaker? It was that you could place the money under the Court Funds Investment Act or you could put it into the Post Office Savings Bank, or you could invest it in lands. To hear that Member come here today so ill-prepared and did not understand what he was reading, he said, we must justify the court. The court said we are not investing in lands because of uncertainty in that market. Have you ever heard about uncertainty in the market? It is an island; there is demand on land all the time, but the court was not investing in it. Since we know ourselves, the price for land has never fallen. But that Member came here today and said the court was not investing in lands and other securities because of the uncertainty in the market.

2.10 p.m.:

Mr. Speaker, I know that you are somebody who know about the land market and you would agree with me that he is talking utter rubbish. What was frightening was when they went to the Court of Appeal—that occurred on July 3, 2000. So when you talk about the UNC was in power in 1999, you did not even read the cases to know what happened as you went along. He is so ignorant. When I say ignorant I mean lack of knowledge. You come to deal with a Bill with Kirvek and you did not read the cases. That is why it came before the House and you say the Privy Council gave directions. The Privy Council never gave directions. That never occurred and you come to mislead the House. Do you know why you did that? You did that because of that symptomatic problem of the PNM's incompetence.

Mr. Speaker, the joke in this matter was His Lordship, Chief Justice as he was then, on July 03, 2000, said he would throw out Kirvek because the State should not really have been brought as a party and he gave the Attorney General to give judgment in his favour. What was frightening was the people who litigated Kirvek Industries, what they said in their statement of claim, was that they were claiming against the State, that the State did not put the money even in the Post Office Savings Bank, which could have given it interest; as a matter of fact, not to put it in any high interest account. They were claiming you took the money and without consideration dumped it in the Treasury, when you dumped it in the Treasury, when it was time to receive the money they got back the same money. In their claim they said that they were suing the State because the State did not even

put it in the Post Office Savings Bank as required then by the Court Funds Investment Act, Chap. 7:06. Section 2 of the Act provides:

> ...all moneys paid into the High Court in any cause or matter, ...may be invested in a number of specified types of investment.

One is the securities that are organized by the High Court in England,

The second is the Tobago/Trinidad inscribed Stock.

I thought he was going to explain what that meant to us.

—given to raise any money by way of loan repayable by the Government—

Probably tax and bonds.

1. Deposit in the Post Office Savings Bank.
2. To purchase security of freehold lands in Trinidad and Tobago.

That is what the Court Funds Investment Fund Act was about. That Act does not stand by itself. And he comes and poses as a lawyer. But I will explain the law to him. That Act does not stand by itself. It stands with order 22, Rule 12(1) of the Rules of the Supreme Court and the rules of the Supreme Court say all moneys paid into court under these rules and all moneys under the control of, or subject to the order of the court shall be paid in a separate account and may be invested as dictated by the Court Funds Investment Act.

It says that you need no order from the court. What do you do? The law is clear. The law says, paragraph 2 provides, where under paragraph (1) no order or direction has been given for the investment of the moneys paid in the court the Registrar shall as soon as practicable invest the said moneys in the Government Post Office Savings Bank.

They went to court to cause or to encourage the Government, or to force the Government to put the money in an investment account which was available according to the law. So it was not for any Privy Council to give direction. I will come to the Privy Council's decision in a minute. But hear what this Court of Appeal in Trinidad said: the practice of the Registry in the collective experience both of the court and person who appeared before us had been at variance with what appears to be required by the rule in that the moneys paid into court are not and have not for some time been deposited in the Post Office Savings Bank.

Indeed, in the course of the argument the court did not even enquire whether this Post Office Savings Bank was in existence at the time. Here it says: Indeed, in the course of the argument before us, no one was certain whether the bank still

existed. A court giving a decision, a court determining that and they did not investigate and do the research to find out if the Post Office Savings Bank was still in existence. Indeed, in the course of argument before us, no one was certain that this bank still existed until eventually Dr. Ramsahye was able to refer us to Act No. 1. of 1999 in which there are certain amendments. It came to the Parliament and there were amendments made to the statute governing the bank from which it is obvious that the bank is still in existence. So the court presumed without investigating—this has been our practice although the court has been breaking the law, but the court was justifying the breaking of the law and they were saying we do not even know if this bank still existed and that is the level of our jurisprudence.

So when we talk about the Caribbean Court of Appeal this is an example—those who talk about the Caribbean Court of Appeal and say we must cut the strings from our colonial masters really are trying to butter their own bread. The present practice followed in the absence of any specific order is simply to pay the money in the Treasury. They were breaking the law. Not investing the money, but placing it, and then he said the Treasury, of course, does not pay interest.

And although that is the law, hear how our Court of Appeal tried to deal with Kirvek. The things are clear from the references made to the Court Rule Investment Act, Order 22, Rule 12. The first is that there was no power in the Assistant Registrar to put money in interest-bearing account under the Post Office Savings Bank, but the Post Office Savings Bank is an interest producing account. So they misconstrued the claim completely. There is so far no evidence of course, in this case, that there is no reference in the statement of claim to the bank far less than the rate of interest that it pays; it may be less than 12 per cent.

The Member says we should have written to the Post Office Saving Bank and find out how much it is paying and then we should make a complaint. They did not understand or did not want to understand the situation. It says also—the other thing which is clear is the Assistant Registrar was in breach of the obligation imposed by the rule to put the money in the Post Office Savings Account in the absence of a direction to the contrary and they said but that the claim contained in the statement is not one which even in the most generous interpretation, could be understood as a claim for damages for the failure by the Assistant Registrar to invest money in the Post Office Savings Bank. That was on the face of the document, and they are telling the people that is not in the statement of claim. And they knocked out the claim and said that the master should have knocked out Kirvek's claim and the other judges, all they said: having regard—this is no deep

academic research. It is in the law books and I would not call the name of the Justice who said that. All they said: I agree with the judgment delivered by the learned president of the court and I do not wish to add anything further. The date of judgment is 2000.

Mr. Speaker, hear the other judge: I agree with the judgment of the learned President, I have nothing to add also. A simple matter like this. Had it been a Caribbean Court of Appeal dealing with this matter Kirvek would have been in the dustbin. So Kirvek, knowing their case, went to the Privy Council and the Privy Council gave the decision, heard the matter on June 25 and July 25. And it gave the history of the matter and went on to explain the law. It went on to say that after the action was completed there was an agreement and one of the terms of the agreement was that Kirvek should be given the opportunity to withdraw the money from the account. And all that the Privy Council did it went through the existing laws and it says that is arrogance. It is not only incompetence, I feel it is indolence and arrogance drawn in by other people speaking. But they are not doing me that, Mr. Speaker. They are doing the population an injustice because the population knows that they should have brought legislation to this Parliament to protect our people from the criminals and the bandits.

Mr. Speaker, they went on and just said they should have put the money in the interest bearing an account. The Privy Council never gave any direction to say the highest interest producing account. They never said that. Where you found that from? Somebody wrote a speech for you, which you did not understand on the first occasion, and when you come to this Parliament today you would have understood what you read the last time on November 15, 2005. And they went on to chide the Court of Appeal for saying, how can you support a practice by saying the practice of the Registry in the collective executions of both court and Council being at variance with what appears to be required by the law and still throw out the case?

They went on in their judgment—hear the indictment. I would not call the Chief Justice's name because I do not want to bring anybody's character into disrepute. So and so CJ expressed the opinion that Kirvek's statement of claim did not adequately—their Lordship respectfully disagreed. They said in the alternative, the Assistant Registrar was in breach of his judiciary duty to invest the sum of $250,000 for the benefit of Kirvek in a matter allowed by the rules of the Supreme Court and the Court Investment Fund Act.

Mr. Speaker, they said that they found it strange that the Post Office Savings Bank was a State-owned institution and the proposition of the State could, in the face of the provision, require payment into court, could be deposited with the

savings bank on interest, cause the savings bank to cease to accept deposits and apparently they said they did not know what they were saying.

When you come and tell us here today—and we are people concerned about the law, we are concerned about the people; they did not understand what the Privy Council really said. But that is not the point. The point is that decision was given on June 25 and July 25, 2000. Now is December 2005. You had all this time. Why did you not bring this legislation before as you said? It is a simple legislation just with slight amendments? Why could you not amend it all the time? Is it because of your 2020 vision? Is it because of the indolence of the Government? And they come here today giving the impression they are the saviours and they bring this legislation to the Parliament today when they could have brought it two years ago. And that is the point I was making. Things they could have done two years ago they call out the Parliament on a Wednesday—three years ago they have been sitting on it and they call out this Parliament today to fool the population to give the impression they are working when in truth and in fact they are merely" kicksing" in this Parliament.

People who do not know will say, "thank you, thank you," but we ask the question: If you were really thinking, if you had anything upstairs there, why are we only dealing with the High Court? As time passed the amount of the claim that you could have brought in the Petty Civil Court in your time, Mr. Speaker, would have been $120, as you grew older, $240 now it is $15,000. What about those people in the Petty Civil Court? What about the small man in the street who could only file a claim for $15,000? They do not care about him. What about the poor CEPEP workers? What about the poor URP workers? Are you going give them those menial jobs to keep them in slavery and not think about them? Are you fooling them just for votes? These are the questions we must ask. These are the questions we must deliberate on.

I say they should have gone further and amended the law in such a way as to include any moneys which have been paid in the other courts and not only there. What about the other courts and tribunals? There are other courts and tribunals. Why is it we do not incorporate that? Because only one case went to the Privy Council. You say it must go to the Law Commission and only deal with that in that myopic way. No! A party which hopes to be in government must see about all the people, deal with everybody. Not like in this case, the way the Law Revision Commission does.

Mr. Speaker, with those few words, what do we say? You cannot say thanks because this should have been long before. What we say is more work should have gone in to encompass more people in the system.

Thank you very much, Mr. Speaker.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Mr. Speaker, given the fact that the Member was according a small amount of latitude and made a comment, regarding the Police Bills, so to speak, I think it is only fitting that the Government places on record the simple fact that this package is now with our friends on the other side and we are awaiting their comments in order to proceed with these matters.

It is as simple as that! But the Member for Princes Town is probably so dishevelled and disconnected from the current realities that it is quite likely that he may not have been aware of that very pertinent fact. That apart, I really want to make one small point on all that was said, because it is probably the only thing that drew the need for a response.

The Member wondered aloud why the judges of the High Court and the Appeal Court of Trinidad and Tobago did not determine for themselves when, if at all, the Post Office Savings Bank was closed? In the course of the judgment that was alluded to. I simply remind the Member that it is not the court's business to make or to find evidence. The court relies on the submissions made by councsel for both sides, and both sides were well represented in this. So to ascribe any responsibility to the court in this regard is really demonstrating a kind of layman's approach, that I am surprised to have heard from the Member.

Let me indicate to the Member as well that I am very familiar with the deliberations of the Kirvek case. I have read it, not once but twice, and the very pedestrian facts that he outlined are familiar to me and there is no need to even bore this House by rehashing them. I simply want to say that the Member agreed in his submissions here today that these are simple measures. He has argued as well, that they are necessary. He has protested about their belatedness, but I simply want to say to him that the matter first went to court in April of 1999. It was finally decided on July 25, 2002 and for the period between 1999 and 2002; he should have been more familiar with it. In any event, these are sensible measures for the benefit of those who use the court system in this country and we commend them to the House. I beg to move.

Question put and agreed to.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 5 ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the House.

House resumed.

Bill reported, without amendment, read the third time and passed.

FAMILY PROCEEDINGS (AMDT.) BILL

Order for second reading read.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Mr. Speaker, I beg to move,

That a Bill to amend the Family Proceedings Act, 2005, be now read a second time.

The Family Proceedings (Amdt.) Bill 2004 and the amendment made in the Senate were introduced in this House on November 26, 2004. However, the Bill lapsed with the prorogation of Parliament and it was reintroduced in the Senate and is now brought before hon. Members for consideration yet again.

Mr. Speaker, Members are no doubt aware of the need for these amendments to the Family Proceedings Act. But for the record, I want to repeat some of them.

The Family Proceedings Act (No. 2) of 2004 was formulated as a result of concerns expressed by the Judiciary and other stakeholders with respect to the proceedings relating to the Family Court. One of the concerns expressed, was that the Magistrates' Courts had only power to refer parties to probation officers in a resolution of family disputes before the court.

The Judiciary had indicated that matrimonial judges as judges hearing matrimonial matters in that jurisdiction, held and they still do, an inherent jurisdiction to refer parties in these proceedings to professionalssuch as psychiatrists, psychologists, social workers, mediators and Counsellors.

Mr. Speaker, hon. Members, this, as I said, is an inherent jurisdiction not based on any statutory foundation and the Privy Council had on occasion very recently and, perhaps, even discreetly cautioned Trinidad and Tobago's Court of Appeal, in terms of its use of this inherent jurisdiction of the High Court.

The lawyers among us, in particular, would recall the strong words of the Privy Council in the Dole Chadee contempt matter relating to the issue of freedomof the press. The Privy Council in that matter had asked us to consider

legislative amendment to give judges the powers to do things in various matters which they hitherto, and at present had been exercising in their inherent jurisdiction.

In the case of the magistrates the jurisdictions to refer matters is more limited. It is limited as I said, to referrals to probation officers. The point is that the Family Court, which has now been in operation for just over a year, was as it was established, deemed a pilot project and as the jurisdiction and the practice therein continues, all parties: lawyers, the court administrators are actually learning as we go along. As Members would recall, this remains fairly new to our jurisprudence. The underlying objective of the pilot project which was then launched and from all reports is doing particularly well to promote the resolution of family disputes in a more conciliatory manner and to enable parties to have quicker access to the service of professionals: some professionals as I have identified a while ago, psychologists, psychiatrists, mediators and counsellors and the like. This would mean that the courts would now have an expressed legislative power to make referral to these professionals and not only to probation officers.

Mr. Speaker, I want to go immediately to clause 5 of the original Bill which was later enacted in the Family Court Proceedings Act (No. 2) of 2004, and that would have indeed vested the court with the power to refer parties to mediation without their consent.

During the debate on this matter in the other place some Members of the other place had suggested that this Bill before the House be amended so that only persons who had consented should be referred to mediators. I am told by the Attorney General, who piloted the measures there, that he did not find that view compelling, but in order to win, if you like, consensus, he listened to the Members in that House and went along with the proposals and an amendment was made permitting the court to refer the parties to mediation only with their consent, and that is what was passed.

The amendment before us today includes a provision which will remove yet again that provision returning the Act to its original form. That is to say, to permit the magistrates to refer parties to mediation even without their consent.

2.40 p.m.

There are those in our society and Members in the other place who expressed the view that this ought not to be so. The view is that persons ought to consent and to voluntarily go to this process of mediation, otherwise the whole process could be rendered useless. I want to take the opportunity to point out to you

Mr. Speaker, and hon. Members, that the fact that persons have been referred to mediation, does not necessarily bear in on the outcome of the mediation. Quite naturally, there has to be a measure of voluntariness, willingness and eagerness on the part of all parties for a process of mediation to work. The response to the suggestion that there must be consent of both parties, is simply the philosophy of the, given its raison d'être and the underpinning of its existence to resolve what would usually be very rancorous proceedings in an atmosphere of consensus and harmony. To suggest that parties can only be referred to mediation, if they consent, really goes counter to the philosophy of the very court. It is that understanding that, in part, drove the amendment that is before us today.

Firstly, it is quite clear that that kind of thing is contrary to the philosophy of the Family Court. More than that, the Chief Justice appointed a monitoring committee that has been established and consists of some very hardworking, renowned public servants, led by a judge of the High Court. They have been reviewing the operations of the Family Court since its existence and put up a report for the benefit of the Chief Justice, which he accepted at the end of the review. The document is entitled *The Family Court Evaluation First Year Report Executive Summary*. The monitoring committee also shared the view that we are advancing here today, that both parties should be able to be referred to mediation, notwithstanding the unwillingness of one or both of the parties.

It is in that mode that we are now trying to correct a position that we had taken before. When I say "we" I mean the Senate, not the Government. The Government came with an original position to be able to refer them without the need for consent. The other side made recommendations and we went along with them on the basis of consensus-building and here we are. That is the simple reason for the amendment, which is to remove from the existing Act the need for the parties to consent before referral to mediation.

The other very simple amendment before us today is to insert, after "referral" in section 5, the words "at no expense to the parties". That is to make very clear and to ensure that when the persons are referred to mediation, that process will be undergone at no direct expense to the parties, but it will be borne by the court and the other ways in which that is funded.

Those are the very simple measures that we are proposing for consideration of this House. In addition to that, in respect of the long title of the Bill that is before us, an observation will yield that it says:

"An Act to amend the Family Proceedings Act, 2005." We are also proposing what I consider to be a small amendment to correct that typographical error, that 2005 therein be deleted and substituted with 2004.

With those very simple suggestions, around two very simple measures, I beg to move.

Question proposed.

Mr. Subhas Panday (*Princes Town*): Thank you very much, Mr. Speaker. There is nothing much anybody could say on this Bill, because it has come to this House and the other place so many times before. All has been said about this Bill already. Why has this been so? The only answer is incompetence by the PNM! This Bill should be named the "Lapsey Bill".

In 2004, we have the Family Proceedings Bill. They brought it back with these amendments and the Bill lapsed. They came back again and the Bill lapsed, under this PNM Government, but they bring us out on a Wednesday to give the impression that they are working. It is because of their incompetence and laziness that these Bills have lapsed. They said that they knew that they were going to prorogue Parliament. They prorogued Parliament and they allowed the Bills to lapse. That is what the PNM is about.

What is frightening, not only about this Bill but other Bills, is when the Member said that the Family Proceedings Bill (No.2) had a clause which stated that the court will refer you to mediation without your agreement. The Member indicated today that after strong arguments in the other place—As a matter of fact, in the other place he said: however, during the debate in this so-called place certain Senators expressed strong concerns about the power which clause 5 sought to give the court. A view was expressed that the parties should not be compelled to go to mediation, since the whole concept of mediation is based on voluntary participation. Has that situation been changed in the other place?

We see, in the other place, when the Bill came on November 15, we saw a different tune being sung in the Senate. The Member said that in the debate Sen. Mark, Sen Prof. Deosaran, Sen. Robin Montano, Sen. Dana Seetahal and Sen. Dr. Eastlyn Mc Kenzie made very valuable contributions. The hon. Member is commenting on what they said and the arguments they put forward on the 2004 Bill. What we observed on this occasion is there is a softening by certain Members of the Senate. Why has that been so? Is it because there are people in the other place and here who are beneficiaries of State funds and who are employees of the State, either directly or indirectly?

Mr. Speaker, by this type of position being taken on Bills like these, are we not undermining the democracy of this country? Are we not undermining that fundamental principle of the Constitution? The fundamental principle of the Constitution is separation of powers.

Mr. Speaker, when we come here in this honourable House the law gives us freedom to speak. Nobody could do us anything; except the Speaker can suspend for bad behaviour. We have been given that freedom of speech, according to the law. Why have we been given that freedom of speech? We have been given the freedom of speech so that we could do our work effectively and represent the people effectively. We must have no fear or want any favour from anyone and the law protects us in doing that.

What we have observed, under this PNM Government, is that people stood in this House and spoke and came back, with respect to this Family Court Bill especially, and the tongue has changed. Something was yesterday and something today but tongue changed. One asks the question: how can you effectively perform your function as an independent and fearless Member of Parliament when you are taking briefs or contracts from the State, or indirectly obtaining contracts from the State? We are undermining the separation of powers. When you take a contract or a brief from the State, the Executive then becomes your boss. Let us take the case of the Director of Prosecutions (DPP).

If I am a Parliamentarian and I take a case, the law says that the DPP is the only person who can stop prosecution. He is in total charge of the prosecution. I am a Member of Parliament speaking here, but when I take a brief from the DPP, he could tell me what to do. He becomes my boss.

That is why we want to thank His Excellency, the President of this country when he came here and spoke to us about morality, legality and moral and spiritual values. Let him know that some of those persons who he appointed are undermining his own principle and the things he told us in the Parliament; do your job without any fear or favour.

Recently, someone objected to a person who was a member of the Legislature being an employee of the Executive. The learned magistrate was right when he said that there is nothing in the law to ask that person to be relieved. The law must be backed by morality. We are asking those persons where their moral and spiritual values are. We must not only be guided by the law. When one reads this Bill and other Bills, one would see that a certain line is being exercised.

When we come in this House and we speak attacking the Executive, we would see people in the Parliament, not only defending the Parliament but using articles from the newspaper to defeat what we are fighting for, which is justice and fairness for the people.

I have been a victim of that when I had spoken on the Preliminary Enquiry (Indictable Offences) Bill about the Executive. The legislature has a right to criticize the Executive. There was an article in the newspapers entitled the "Crucifixion of the DPP". Over the past weeks I have read and listened as others have cast aspersions, meaning "us", on the DPP. It happened in Parliament and the media where many repeated allegations have been made in a case, as evidence of prosecution by the DPP. Personal attacks have been launched against the DPP, in addition to those against his integrity. Is that not a way of touting and ingratiating yourself with the Executive to get work from the Executive? The time has come. We must inform His Excellency, the President of what is taking place and ask him—we know when he appointed these people he did it in good faith—if he is caucusing with them. They are undermining the democracy, the separation of powers and the rule of law. His Excellency, the President, must not sit, he must get up and deal with it.

I am not saying that those persons are not doing their jobs. Is not what happens but what is perceived to be taking place; not between you me and all of us here but those people at South Quay, City Gate, who cross the road everyday to get the bus. They must feel. Those are the important people in this country. The people of Laventille, Diego Martin, Siparia and Princes Town must feel that our democracy is strong. As the Member for St. Augustine said: "We must get our politics right." What is taking place today, the politics is not right. The PNM and the Executive—

Dr. Rowley: Why are you calling the PNM?

Mr. S. Panday: Why am I calling the PNM's name?

Dr. Rowley: You do not know who your leader is.

Mr. S. Panday: That is the level of the shamelessness of those people. They have no shame! When you are talking and arguing, look at the nonsense he is speaking. That is characteristic of him.

Is the PNM, with their grapevine and connections, not trying to mash up the UNC too? When the Executive were giving briefs—where are we going? That is a fundamental issue which we must address. The PNM is encouraging that.

Dr. Rowley: "Yuh want ah brief or ah boxer?"

Mr. Speaker: Order!

Mr. S. Panday: This Bill has little or nothing. All that has been said has been said in this Bill already.

Dr. Rowley: Okay, then sit!

Mr. S. Panday: If you are willing to stand and talk I will sit. I am sure the Member has not read the Bill. What is the Bill about? If you do not know, keep quiet, sit, and listen.

The Bill states that you must compel people to go to mediation. It says, although we are compelling you to be referred to mediation, you do not have to take it. That is why many people in other places were saying that it was jobs for the boys. Why is the Government introducing this without the consent of the parties? If you say that he has to be referred to mediation and the person says that he does not want to go, and when he goes there he is forced to go, he says that he is not taking part and he does not want any mediation, what would be the effect of the law?

The Bill states that the court could adjourn the case for referral. The argument from the Members of the Senate, when they did not have briefs coming to them, was if you want mediation, you want consensus and if you want consensus, it must be by agreement. Do not bully them, cajole them.

All this Bill is saying today is to force them to go without any agreement, they do not care about the results. This amendment says we are forcing you to go to mediation, but if you do not want to take it, it is okay. When you force someone to go to mediation, it is a coercive action. Are there any penalties for it? Of course, there are no penalties on the book. You can imagine—I know you have practised in the Family Court—when you return to report to the judge, he usually finds out that one side is playing the fool. That must impact upon the proceedings. It is not fair to compel people to go to mediation.

Hear the joke with this Bill: when they have the mediator, all the mediator would do, in the first instance, is to tell them the advantages of going to mediation. After that, they decide what they are doing. How will you be paying this mediator? I heard the Member for Siparia on one occasion said it would cost approximately $1,200—$1,500 per session. How will the mediators be paid? Will they be paid merely on the referral to tell you what the advantages of mediation are? We do not need that. We are wasting the Government's money. To cover up, the Member said that on the last occasion in the other place, a Senator said that

the burden should not be borne on the party; it should be borne by the Government. That does not change the price of corn.

Mr. Speaker, are we not wasting money to refer someone to a mediator merely for him to tell us—why do we not do like the High Court in criminal cases? At the beginning of the month when a jury comes into the court, there is a pamphlet given to the jury telling them their role and function. Why, when every case comes before the court, before the proceedings start, when you file your petition, are you not sent a docket with the advantages of mediation? You could send a copy of that next to the document and when the defendant receives it, he reads it and he knows the value of it. With respect to the plaintiff, you make a rule saying that when you file, on your copy, you can collect a booklet on the advantages of meditation. Then we would not need this legislation. It is simple commonsense. That is why people are saying that you are making work for the mediators. We can do without that.

Furthermore, some people are arguing, with respect to the cases that come before the judges, why do we not give our judges a course on training in mediation, so the moment the matter comes before them, they could start to speak to the persons about settlement or that they should consider X, Y and Z. When this Bill is passed the judge would not ask anything. He would say that from what he has seen in the case, they must go to mediation. That is wasting money. That is the only line which has been beaten like a road march for a number of years. We are here again, on a Wednesday, for this thing. The Government has caused it to lapse and they are not dealing with the fundamental issues.

In closing, His Excellency, has a heavy burden on him. His Excellency, who is the Head of State, has a burden thrust upon him to ensure that the democracy and the separation of powers are maintained and that there is no pollution of the system.

Suppose Mr. X, in an office, is passing briefs to you, do you believe you will ever come to this House if there is something against him and do it with all your might, when you know that tomorrow he could cut off the briefs? These are the things which John Public is looking at and John Public wants an answer. Thank you.

Miss Gillian Lucky (*Pointe-a-Pierre*): Mr. Speaker, I rise to join in this debate. Let me say from the outset that the particular amendment, at first blush, certainly appears, I stress the word “appears”, to be draconian but when one reads the amendment in the context of section 5; the section being amended, I wish to

say quite categorically that I do, in fact, unreservedly support the amendment in its context and in its form.

My only complaint is—I say it with the greatest respect to the Member for Laventille East/Morvant, that I feel that much of what has been said in this House and other places could have been predicted, in terms of the concerns that people would have raised with respect to this amendment. I feel, therefore, it would have been prudent for the Member for Laventille East/Morvant—I am saying it wit the greatest respect—to have been better prepared to meet these arguments, to be able to better allay the fears of those persons who have placed in the public domain their concerns with respect to the amendment.

It is not me in this House, to sit in a seat of judgment. I am merely suggesting that maybe the Member for Laventille East/Morvant, who I think very magnanimously apologized to the House for his lack of preparation, ought to have been aware that this being a very important amendment dealing with a court, that really provides great service in the country, is not a matter that should have been, for whatever reason, appeared to have treated in a dismissive way. That is all I say on that particular point. We are always warned that we should be very careful when criticizing, lest we one day find ourselves in that particular position. I think the Member for Laventille East/Morvant is quite clear in his understanding as to what I am respectfully suggesting.

Mr. Speaker, I would be the first to admit that I am not a regular practitioner in the Family Court jurisdiction. However, as faith or luck would have it, I did have the opportunity to appear in that court earlier this year. It is said that first impressions are lasting impressions. My first impression of that pilot project Family Court is certainly a lasting impression and it is a very good lasting impression.

There is some contention as to whether parties who are involved in proceedings ought to be mandated by the court to be referred to mediation proceedings, a unit responsible for social services, or some other professional. I think it is important to look at the phraseology of the particular clause. The clause being amended states:

> "Where in the opinion of the court the interest of the parties to any family proceedings may be better served if the matter or any aspect thereof is referred to mediation or to the unit responsible for social services in the court or to some other professional, the court may…"

I am now putting in the amendment.

"make the appropriate referral at no expense to the parties."

That is the amendment that is being sought. With that amendment, the clause, as I mentioned earlier, is therefore, not as draconian as it seems. In the first instance the section states:

"Where in the opinion of the court…"

In other words, the court, being privy to the proceedings before it, will be making an initial finding—not a fact on the substantive issues—as to whether this may be a case that would be better served with a level of expertise given by the personnel who, either in the mediation unit, the unit responsible for professional services or some other professional.

Secondly, the section goes on to endorse that discretion of the court by saying that the court "may make". The words "without the consent" are being removed. Again, there is an endorsement of a discretion. I think it is important to understand how this pilot Family Court really operates. Even in terms of the physical arrangements in the courts, it is not the same as those of us who are more accustomed to the adversarial premises. Parties sit, literally across from each other. Persons can see what other parties are writing. There is no shouting. There is no jury to try to convince through theatrics and footworks. It is all about trying to remember that the interest of the family is of paramount concern. I can share this with this honourable House. Again, I am not boasting, I am not a regular practitioner. Coming from the adversarial system, having practised extensively in the High Court of Trinidad and Tobago and in the Court of Appeal in criminal matters and then going into the Family Court, one feels immediately the difference in atmosphere; from an adversarial setting into a setting that is trying to obtain consensus.

I have heard the contribution made by the Member for Princes Town for whom I have great respect in his contributions. The Member raised the point that what benefit would be gained if parties come to the court and not interested in mediation, are forced by the court to go to mediation or to get some professional assistance and nothing is gained and then they come back to the court and, if I understood it correctly, the Member was concerned that it was a waste of money.

I would say in answer to that, very respectfully, that I respectfully do not see it that way. To me, it is a win/win situation because my understanding is that those who are primarily involved in the mediation and are attached to the mediation unit are in fact personnel who are attached to the entire structure.

In other words, it is not just a case of choosing people willy-nilly off the street and people charging high sums of money. These are people who are specially trained. My experience is that many times when parties go before a court, they are just not prepared to entertain any suggestion or to do anything that, at the very least, suggests that there is some kind of compromise.

In other words, a husband and wife who may, for some reason, be going to challenge custody or fight for custody, they may not want to consent to any mediation because the point is as far as the mother is concerned, I want the child and as far as the father is concerned, I want the child. I have come to the court and I am telling the court, through my attorneys, if there are attorneys, I want the child. I do not want to hear about mediation, I want the child.

I see nothing lost if this mindset is given a shake or a stir by having the court, in its wisdom, mandate the parties to go for either some kind of mediation, to the social services for assistance or go to some professional who can help. If when the parties go the attitude is one of coldness, hands folded and I am not participating, so be it. But what if that mediator is able to shake down that cold front?

What if the mediator is able to say in some kind of opening remarks—you all are here. I do not know. I am not trained in mediation. I wish my friend, the Member for Barataria/San Juan, was here because he has received training in that regard.

The fact is that the parties may hear something, coming not from the mouth of a judicial officer, but from the mouth of a mediator or professional and it may just give them a second thought or a revisiting. What is wrong with that?

If parties refuse to participate, well then one goes back to the court, the report will be given I presume, and then one proceeds as one was proceeding before, which is to fight and get involved in the cut and thrust. At least there would have been that opportunity; one last chance to see if there could be some kind of compromise and consensus. That is why, with the greatest respect to the Member for Laventille East/Morvant, I think that is the way one has to explain it for people to understand it. Unless people are sometimes involved, either as a party or practitioner, it may be difficult to understand why mediation is so important.

In fact, I dare say, the greatest complaint that I have, with respect to mediation, has nothing to deal directly with this Bill, but rather with the fact that in criminal matters, this Government has been very lackadaisical and delinquent in revisiting the legislation that I think really had in it a loophole or lacuna. There was a

problem. The Government ought to have brought back that legislation in a timely fashion.

It is on that point that I agree with the Member for Princes Town who continued making the point this afternoon that we are brought here on a Wednesday, no problem we all have busy schedules but we come. There is so much more that could be done so that we do not waste time. I would say quite openly that even though the pieces of legislation which the Member for Laventille East/Morvant says they are awaiting a response, I am anxious to have coming to this court, bearing in mind the spate of kidnappings.

I am warning myself, I am not departing from the Bill before us. We have a spate of kidnappings. We have, clearly, the young female group now being targeted and there is no legislation being brought, whether with consensus or not, dealing with no bail for kidnappings of a particular kind. I am stressing "particular kind". That is what we ought to be debating.

I am not saying that we should be debating that instead of this. This too is important. Clearly, there is a breakdown in family values. Clearly, we have to uphold the family unit as much as is possible. This is good, but there is so much more that have to be done. If we have to make night into day and if we have to sit everyday, so be it. Let us get the work of the people done. This 2005 has been the worst year for the Parliament, in terms of public comment.

When we hear about the Family Court—I do not want to fall into the category of criticizing the Member for Laventille East/Morvant presentation on this point. I was disappointed and I will tell you why. There are so many things going wrong in this country, the high crime rate with approximately 360 murders. It seems, therefore, if God forbid, if things go as they are going now, we will be crossing, maybe by a decimal point, more than one murder per day. We have kidnappings. We keep praying as a nation for people to be returned. While we are praying for the return of people, other people are being kidnapped. We are hearing about ransoms being paid. The Government keeps saying that we need to have the legislation. My view is that laws and detection rate alone will not solve the problem. We have that problem.

We have something that is actually working in the country. We have called the Family Court pilot project and anybody who has interacted independently with that court will tell you that it is working and it is working well. I know the Member for Laventille East/Morvant made reference to a document that the monitoring committee did submit to the Judiciary or the person to whom they have to report. The Member should not have ended it there. The Member for

Laventille East/Morvant should have done a little more research and brought to this House, so that people could get the level of confidence that is needed, that it is not only merely words, it is working, and there are documents.

Mr. Speaker, I am referring to the *Judiciary of Trinidad and Tobago Annual Report 2004—2005*. When you read through the pages that deal with the Family Court, it is amazing, remarkable, commendable and fantastic that in this country we could have members of the public, some of whom by way of random sample were surveyed, and found satisfactory the staff they interacted with, the facilities they had to use, the way in which they were treated and directions to get to the court. In my practice, I have never seen this kind of acclamation for any kind of court. To me, this is important material. This is the kind of material that has to be used to say the Family Court Pilot Project, which I think, I am subject to correction, comes to an end some time next year. This is the kind of thing.

This pilot project has worked so well one has to start thinking of establishing a similar type of court is San Fernando and Tobago. I will not forget Tobago, Members for Tobago East and Tobago West. I am talking about your jurisdictions. Tobago needs it. Before we go South, let us go across to Tobago. We say Trinidad and Tobago, not Trinidad and south. Let us go to Tobago, south and the east and let us put these courts in and get the family unit in some kind of structure and order.

When one goes into that Family Court, the court sits on time. Matters that are filed are heard within two weeks and it is not at the compromise of anything; it is just that there is a great level of efficiency, because there is determination, commitment, competence and focus. One wishes that the Government of this country could operate like that court, and then we would not have the problems we have today.

What I cannot come to terms with is that if we have gotten it right with the Family Court, how is it the Government cannot get the necessary infrastructure and resources to get it right in the criminal jurisdiction? Member for Diego Martin Central, I think the greatest irony is that where the Family Court is presently housed was actually where the Port of Spain Magistrate's Criminal Courts used to be housed and matters heard. It is an irony for me, a practitioner, who is accustomed to the criminal law jurisdiction.

Now I walk into that building and I see washrooms the way they should be looking, staff operating the way they ought to operate and court sitting the way they ought to sit and I say to myself, not what a wonderful world only, but how is

it that we could not get it right with respect to the criminal jurisdiction? How is it that in Chaguanas Magistrate's Court we still have problems? How is it in San Fernando we still have the rats, rodents and bats? It means that if we really genuinely want to get the job done we can get it done.

Before I go off the point of mediation, it was the UNC, when it was in Government that brought the legislation that made provision for mediation in criminal matters. Again, when that legislation was brought, there were some persons who felt why should there be mediation in criminal matters; a person has done something wrong and that person deserves to be punished. It did not apply to all matters. It applied to what we call the petty type of matters such as somebody stealing a duck. I am not in any way trying to undermine the status of ducks. To make such a matter part and parcel of clogging up the Magistrates and High Courts, there is a way that it could be resolved. That was mediation.

There was a problem, Member for Diego Martin Central, and I would be the first to stay in that particular legislation. I agree that there was a problem, because the legislation, which allowed the court to take on the role as facilitating and monitoring the mediation, did not take cognizance of the role of the DPP because the DPP, under the constitutional provision of section 90 is the one who, at the end of the day, when there is a criminal matter and it has been initiated, has the power to stop, continue or stay. That power was glossed over, very much like what happened in Scarborough, Tobago with respect to the two Bajan fishermen who to this day we do not know who gave the instruction to stop the matter when the DPP was not even consulted. That was the problem with the Mediation Act. It was revoked, pulled away and repealed.

When it was repealed there were personnel who were trained. There were mediation centres. Mediation was working. Again, I did not have much experience in terms of matters going to mediation, I had just two, but it worked well. Lawyers do not play any critical role or any role at all in mediation. Parties must consent and the mediators take over and then the court monitors. Mediation in criminal matters works. I am imploring the Government—who no doubt will say that it is a work in progress and they will bring it back—to speed it up because we need to ensure that there is no compromise in terms of time with respect to hearing of very serious matters in terms of criminal law.

People will say that all crimes are serious. Let us be serious in saying that one can categorize. In the same way, the suggestion is to categorize kidnappings. For the serious kinds you can have no bail. In the same way, criminal matters have to be categorized. Maybe assaults can go for mediation and people can be told that

this is not the way you treat people. You do not threaten people. Obscene language cases can go for mediation. It is a way that would actually boost the community service legislation that provides for the alternative to prison. It will therefore, impact significantly on prison reform. It will force, then, all the institutions that are working, in terms of ensuring that we have proper administration of criminal justice. It will force them to do what they are supposed to be doing and work at an optimum. That is what has to be done. It will act as the catalyst, so bring that legislation.

When it comes to the Family Court, I am going to respectfully ask the Member for Laventille East/Morvant to bear in mind some of the concerns that I am expressing on the points I am about to say. I would put them in bullet point form.

The first challenge—and it can be solved—with respect to the Family Court as it is operating now is the fact that there is a shortage of transcriptionists and persons who can transcribe the proceedings which are taped by way of CD or audio recordings. Because of the shortage of personnel, people who are either secretaries or have other responsibilities, have to take time out from what they are supposed to do to act as transcriptionists.

It is not that they cannot do the job, you are looking at time. If someone is involved in administration but that person also have to listen to the CD or whichever medium is used to tape the proceedings and then put it down and have it recorded into writing, or typewritten form, the problem is that it takes a long time. If a proceedings took four hours it means that person has to listen for a four-hour period because you are supposed to transcribe everything that was said in the particular proceeding.

What is needed, there is already a transcription unit, is to separate those involved in administration and those who will be coming for the purposes solely of transcribing. It means that the proceedings are being heard very swiftly, but there is a little blockage. That is simple to solve, by getting persons who are so trained who would be dedicated for that purpose. The facility is there. They would sit and their job is to listen to the proceedings and have it put into typewritten form so that it can go before the respective judicial officers, whether they are judges or the magistrates, so they can look at the proceedings. Although they can have the opportunity to hear, it is sometimes also very important to have it in writing.

Another concern, Member for Laventille East/Morvant, is with respect to the contract officers who operate in the Family Court system. Apparently what occurs is that those persons who are on contract, because they get the necessary skill and they are trained to do their respective jobs, because they may lose their service or benefits in the civil service, when their contract comes to an end they prefer to go back into the civil service, taking with them all their training, expertise and skills. Rightfully so, they do not want to lose their pension benefits or whatever other terms and conditions they would be entitled to. As a result, as you are training people, at the end of their contracts you are losing them.

I am sure there must be some civil service regulation that would stipulate if they were to remain on contract or renew the contracts they would lose the benefits which they are seeking to protect. What I do not understand is when these challenges arise, to me, I am not saying it could be done overnight, there is a solution. Find the regulation that creates the problem, review it, revise it, change it and then draft the contract accordingly, so that persons who do not want to lose their service or their pension benefits would be protected contractually and will also be protected by way of the regulations.

The reason I raise this particular point is that quite recently, with respect to the problem at the Port Authority, the point was made by the Port Authority that they were not to be blamed; it was the Customs and Excise Department. It seems and appears that there are problems with the port and its operations and its management and that problem was exacerbated by some kind of bureaucracy at the Customs and Excise Department, which, according to reports, was that contract officers working in Customs and Excise Department could not work overtime. That is what was in the report. The first thing that came to mind is if that is in fact the case; that people who are hired on contract for this busy peak season of Christmas cannot do the overtime that is necessary to go through the papers and process the documents, why is that regulation that causes that problem not addressed?

If the problem in the office of the DPP is, as it is, a haemorrhaging of senior staff; not just with the DPP but all state counsels across the board. Persons get a lot of training and experience, then—in their own interest and no one can fault them—they leave, why has there not been—this has been a problem way before in the 1980s and it continued in the 1990s. Why do we still have those limited numbers in the various departments that stipulate how many state counsel one can have? Interim relief comes by way of contract. We do not want interim relief, we want long term relief. This is taking too long to solve.

The pilot project is working. I want to know and we as a people want to know that we are not going to wait for the pilot project to finish. I know that there is a monitoring committee. I think some of the names on that monitoring committee are people who are well aware of how family proceedings operate and they brought their expertise to that committee. Plans should already be in progress for the establishment of more courts, to make sure we have the personnel to address the problems, only some of which I have highlighted.

More than that, I have tried in my own way to give some of the solutions. It is one thing to have the matter determined quickly, which is happening, at no compromise to justice, but you do not have enough people to take the reports down, as I mentioned earlier; to actually transcribe. Let us work on getting it that way. Let us not lose all the personnel that have been trained, who could help in terms of getting the job done.

As I conclude, there is one point I want to make. I heard the Member for Princes Town make the point that Members of Parliament who take briefs from the DPP, there could be, and in many instances there seems to be, some kind of compromise.

It would be remiss of me if I did not qualify that statement, because as a Member of Parliament, I was retained by the DPP to represent that office in magisterial appeals in the Court of Appeal. I think the problem really is that we live in a society where people are suspicious and where everybody second guesses. People cannot go in a constituency and just hand out hampers because they may be caring Parliamentarians, it is because they want media and press. People cannot go to a function that supports the fight against cancer, just because they want to do it or they may have relatives who had to go through that fight because they genuinely believe in it, in terms of fighting, it must be because they want some kind of thing. People cannot just treat people nicely; I wonder what it is they want?

That is why if professional integrity reigns supreme, you would not have these problems. That is the situation. People have to understand that as attorneys at law, when you walk into a courtroom, you leave your political affiliation behind you. You walk into that courtroom and you represent your client or the State and you do not compromise. When you walk outside you could hug and kiss who you want. You can vote for who you want, but in that courtroom, justice.

When you sit in a Parliamentary Privileges Committee, you go there without any political affiliation and you make a decision based on facts presented. People

are afraid to say these things. But I am not so afraid. I am saying it like it is. The reason I am saying it is because it was raised by a Member. I do not want it ever said that this Member for Pointe-a-Pierre heard such a statement, it fell into the garden of that Member because the Member did represent the DPP in days when I was retained by the DPP and that the Member fell into the category of persons who would compromise. Maybe there is a paucity in this country of persons who know how to operate on independent levels. Whether there is a paucity or not, it is no excuse.

If we all become, not just parliamentarians, but if people could understand when you see somebody and interact with them, a spade is spade and an ace is an ace and integrity reigns supreme, whatever a affiliations, justice is to be done and it must reign supreme, then we would not have this level of suspicion and second guessing that takes place.

When this provision is brought—[*Interruption*] Please, Member for Diego Martin West, let me finish the point. With the greatest of respect, I do not think the clause ought to be read as to well I wonder who will be the mediators and who will not or will they be PNM or UNC mediators. That is the same complaint that could have made when the UNC was in power and they brought the legislation—I only say "they" because I was not in government at the time—the Opposition could say you are only bringing mediation in criminal matters because you are trying to give your friends jobs. If this kind of tit for tatting continues, my time in here may be limited. I do not know how long or how short it is. Never let it be said that I did not say that at all times, if there is adherence to professional integrity, at all times without compromise, this level of suspicion, second guessing and reading things that may or may not exist and, perhaps, making decisions not on facts but on speculation, it would all come to an end. I think that would really be better for the country.

I am asking the Member for Laventille East/Morvant, as I conclude, to bear in mind some of the concerns I have raised. I think that this is a step in the right direction. Sometimes it has been said, especially when we were young, our parents told us that as children we sometimes do not know what is good for us and, therefore, they guide us. I think in this case sometimes parties coming before a court may not know what is good for them. You are not mandating them to participate and make concessions. What you are really saying is if the court thinks it is fit, go. Perhaps, a judicial officer or magistrate may not have the expertise he or she thinks necessary and the court may think that you cannot tell the parties before the court I do not have the experience, go elsewhere. You cannot do that.

What the court does is exercise its power to do that which is right. We have something working in this country, let us not break it down, but build it up. I thank you.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Thank you very much, Mr. Speaker. It is very interesting. I think it ought to be said, that quite frankly, one could not have anticipated any objections from the other side to the measures that we are proposing here today, simply because these measures were offered to the other place and were settled and agreed to by all sides in the other place. It simply lapsed. When it was presented again, recently, by the Member for Laventille East/Morvant in that place, it was the second time that it was presented to that place having already been settled and agreed in the Senate before.

One came here today expecting that we would have gone through this procedure without any meaningful objection in principle at least, as we heard today from the Member for Princes Town, but based on what we have just heard from the Member for Pointe-a-Pierre, we could understand why. I got a feeling though, and there were elements of the contribution of the Member that I thoroughly enjoyed and agreed with, for the last five minutes or so, we were exposed to the dirty linens of the UNC. It was a lecture to the UNC and we agree. Unfortunately, the Member no longer forms part of their caucus for reasons that she has stated. She had no opportunity to ventilate these important points of principle there. These were not directed at us; they could never be.

Whenever measures came before this House, during the six years we were in Opposition, we acted quite responsibly. We did not behave so! The records would show that there were several occasions when the United National Congress, as Government, came to this Parliament requiring constitutional majority support and they got it from the People's National Movement in Opposition, several times. That lecture from the Member for Pointe-a-Pierre clearly is not directed at us. The nation has seen. They continue to see and we assure them, as long as God and the Balisier live, they will always see integrity, public-spiritedness, love for country and patriotism from this side. They will always see that. It is not good for today and bad for tomorrow. That is why the Member was able to make the point.

The Member for Princes Town, in typical UNC style, came here and put the kind of objection that he put today and the kind of objection that he would do, not bearing in mind the very simple fact as made by our friend from Pointe-a-Pierre that if it were so, then tomorrow, we in Opposition could take the same approach. Legislation is for the benefit of the entire society. It is anticipated, at least within

reasonable foreseeable time, to be good for our nation. He cast aspersions on hon. Senators and other people as well, without realizing it. Right now they are trying to co-opt the support of the Member for Pointe-a-Pierre again. Cuss yesterday and hug up tomorrow!

3.40 p.m.

While they are trying to win the friendship of the Member for Pointe-a-Pierre to pursue their ignoble causes, the Member for Princes Town did not realize that what he said had fallen into the garden of the very Member—shortsightedness and incompetence, to use his very popular terms.

I want to say to the Member for Pointe-a-Pierre that much of what she said, I do not see them as concerns. Quite frankly, I see them as an opportunity for the Member to express herself as eloquently as she can. I want to let the Member know that when I apologized to this House earlier today, in another debate, it was not because I was not prepared, but I needed a document to use in support of the discussion and I got it. I am grateful to Members for allowing me to get it. It was certainly not because I was not prepared. [*Interruption*] You can go into your semantics if you want. It certainly was not that.

On the substantive point, the existing clause in the Family Proceedings Act No. 2 of 2004 says:

> "Where in the opinion of the court the interest of the parties to any family proceedings may be better served if the matter or any aspect thereof is referred to mediation or to the unit responsible for social services in the court or to some other professional, the court may with the agreement of the parties make the appropriate referral."

That is what exists.

> The measure today, if passed, would read:
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> "Where in the opinion of the court the interest of the parties to any family proceedings may be better served if the matter or any aspect thereof is referred to mediation or to the unit responsible for social services in the court or to some other professional, the court may make the appropriate referral at no expense to the parties."

So the word "may" implies that the court "may". It is not that the court "shall". There is no question of forcing a person to mediation. I dealt with this matter in my introductory remarks. I made it clear there is no question of forcing. It is simply that the philosophy of the Family Court is about mediation,

conciliation and harmony rather than acrimony and taking positions and fighting. The very measure supports that philosophy rather than works against it.

In any case, if the parties referred to mediation refuse to participate meaningfully—go into mediation and still do not come to a settlement on the basis of the principle of mediation—then the matter is referred back to the court and the trial continues in the same spirit of fighting that had subsisted before.

I agree with the Member for Princes Town when he said that somebody other than the court ought to speak with them. You know, the magistrates and judges are participating in mediation courses. As a matter of fact, practitioners are also participating in mediation. These are persons who may never adjudicate in matters. It is common knowledge, but the Member for Princes Town does not know that. I could advance reasons, but I would not venture to talk about them here. He just does not know.

Hon. Member: Why?

Hon. F. Hinds: I do not want to say why here. Insofar as the question of research is concerned, the Member for Pointe-a-Pierre pulled a document and quoted from it. I made reference to that document. I did not want to bore Members with it. The Evaluation Report is very complete. It makes all the points. I do not think it was necessary to bore you. [*Interruption*] In any event, this is a very public document any you have access to it. I am going to make my presentation in the way I think appropriate. I want to assure the Member for Pointe-a-Pierre, it was not that I did not possess the facts, but it was simply, as I said, based on the fact that we had agreement on both sides in the other place—the same political parties at work. I did not expect or anticipate any reasonable and conceptual objections. Do you understand? So, I would now proceed. I was always opting for integrity.

The Member for Princes Town expressed concerns that we came here today on a Wednesday. Mr. Speaker, in some Parliaments because of the size of those jurisdictions and the nature of their work, they sit every single day. The United Kingdom Parliament sits every day; the United States Congress sits every day and a number of sub-committee hearings go into all hours of the night. That is normal.

On the other hand, there are Parliaments that sit once per year because of their workload and size. So, if our friends on the other side are asked by a very forward-thinking and progressive Government to come here an additional day for the week to discuss public business—I would never try to suggest that one Bill is any better that the other. Every single Bill passed in this House, must go through

the same constitutionally enshrined procedures. [*Desk thumping*] All are important. They may not affect you, but they affect other people. This is so important to the Judiciary; this is so important to the thousands of persons who go to the Family Court to resolve issues of divorce; issues of child maintenance; issues of child care and custody and so forth. This is very important. So it is absurd, in the extreme, to hear the Member on behalf of his hapless colleagues suggesting that one Bill is more important than the other, and that it is too much to come here on a Wednesday to discuss, according to him in his very strange way of thinking, this little Bill. They bind themselves together to work mischief in this country but God is great. He saw the back of them in 2001. I am sure that it is going to remain so for a very long time while they fight and squabble with each other.

Mr. Speaker, I heard the Member for Princes Town say that when you create an opportunity for mediation for parties who have a dispute or an issue to be resolved in the Family Court what you are doing—listen to the most warped and convoluted application of thought on a matter as simple as this and a matter as noble as this—is creating jobs for the boys and girls.

The Member for Princes Town went on to identify that he is aware that it would cost the State—we are saying here that these proceedings should be at no expense to the parties. Just as we have said from January 01, 2006, tertiary education would be free for all our citizens, we are saying that mediation would be free to the parties "at no expense". The Member for Princes Town is seeing that in the context of creating jobs for PNM persons and persons who support the PNM. There was a softening in their second contribution to a debate that they have dealt with, as I said, once before.

I want to tell the Member for Princes Town, as a matter of historical and economic fact, that mediations in that place never cost the State as much as $1,200. It is considerably less per mediation. What is worse, to use his very favourite word "frightening", the Member comes here and expresses deep concern about the Government wasting money—$1,200 or $1,500—and completely ignoring that when the UNC was in government they refused to access loans to construct that airport at 3 per cent. They borrowed three times from the National Insurance Board and we are now paying $112 million a year in interest for loans that they borrowed to finance that airport which received so much coverage and raised so much concern and what we, the citizens of this country, must pay for 20 years. So, the initial cost of that airport renewal, if I may call it that, was TT $1.6 billion. When one considers the interest accumulation over 20 years, it would cost

the taxpayers of this country something like $7.2 billion, and the Member comes here today and says that we are wasting $1,200 in mediation.

Mr. Partap: What about the hospital in Tobago?

Hon. F. Hinds: Hypocritical and deceptive to the extreme. They cannot talk about wasting money. Just like the little story with "Brer Anancy": You put your hands in the cookie jar and it got you into trouble.

Mr. Partap: Talk to Franklin.

Hon. F. Hinds: Mr. Speaker, I want to agree with one thing that the Member for Princes Town said in his contribution. He said at the end that there was nothing really "useful else" that one could have added to the debate. I agree with him and I concur that there is nothing "useful else" to add and, as such, 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 House.

House in committee.

Long Title.

Question proposed, That the long title stand part of the Bill.

Mr. Hinds: Mr. Chairman, may I crave your indulgence that the long title should be amended to read "2004" instead of "2005".

Question put and agreed to.

Long Title, as amended, ordered to stand part of the Bill.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Hinds: I beg to move that clause 3 be amended as circulated:

The Act is amended in section 5(1) by deleting the words "with the agreement of the parties" and inserting after the word "referral" the words "at no expense to the parties".

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move that this House do now adjourn to Friday, December 16, 2005 at 1.30 p.m. I wish to inform Members that on that day the Government plans to debate the International Criminal Court Bill, 2005 which was brought from the Senate.

I also want to put the House on notice that there is a probability that the Finance Bill would be circulated, hopefully before the end of the week, and if that happens the Government plans to take the Finance Bill through all

its stages on that day. I beg to move.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 3.55 p.m.