SENATE

Tuesday, November 09, 2004

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Satish Ramroop for the period November 09, 2004 to November 16, 2004; to Sen. The Hon. Howard Chin Lee, with effect from November 09, 2004 and continuing, and to Sen. Bro. Noble S. A. Khan, from today's sitting of the Senate.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from Her Excellency Dr. Linda Savitri Baboolal, acting President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency DR. LINDA SAVITRI BABOOLAL,
Acting President and Commander-in-Chief of
the Republic of Trinidad and Tobago.

/s/ Linda Baboolal
Acting President.

TO: MRS. MAGNA WILLIAMS-SMITH

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

NOW, THEREFORE, I, LINDA SAVITRI BABOOLAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MAGNA WILLIAMS-SMITH, to be temporarily a member of the Senate, with effect from 9th November, 2004 and continuing during the absence from Trinidad and Tobago of the said Senator Satish Ramroop.

Given under my Hand and the Seal of the President
of the Republic of Trinidad and Tobago at
the Office of the President, St. Ann's, this
5th day of November, 2004."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency DR. LINDA SAVITRI BABOOLAL, Acting President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ Linda Baboolal
Acting President.

TO: MS. BONNIE-LOU DE SILVA

WHEREAS Senator Howard Chin Lee is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, LINDA SAVITRI BABOOLAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, BONNIE-LOU DE SILVA, to be temporarily a member of the Senate, with effect from 9th November, 2004 and continuing during the absence from Trinidad and Tobago of the said Senator Howard Chin Lee.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 3rd day of November, 2004."

OATH OF ALLEGIANCE

Senators Magna William-Smith and Bonnie-Lou De Silva took and subscribed the Oath of Allegiance as required by law.

MISS LOUISE HORNE
AWARD OF TITLE

Madam President: Hon. Senators, today I would like to take this opportunity to pay tribute to and congratulate former Senator Louise Horne, who has been awarded the honour of St. Gregory by Pope John Paul II and henceforth she will carry the title, Dame Louise Horne. Dame Louise was awarded the title on Sunday, November 07, 2004 for her service as a Roman Catholic to her parish community and the Catholic community of the Republic of Trinidad and Tobago.

Miss Horne was first appointed an Independent Senator in 1976 by His Excellency Sir Ellis Clarke. She was so successful a senator that the President

reappointed her for two further terms of office in the Senate. Dame Louise distinguished herself as a nutritionist and served as Chief Nutrition Officer in the government service, as well as in an earlier career as a teacher. In fact, one of her former star pupils was Lord Kitchener, Mr. Aldwyn Roberts.

Dame Louise has been involved in several service organizations in Trinidad and Tobago, such as the Coterie of Social Workers, the Arima Community Welfare Council and the Trinidad and Tobago Blind Welfare Association. Dame Louise's life has always been and continues to be oriented around service to her fellowman. She has also been awarded the Trinidad and Tobago Medal of Merit—gold—1972, for her work in the field of dietetics and the public service. Dame Louise was also honoured on a postage stamp that commemorated the 1980s decade of women.

In her invaluable history book, the *Evolution of Modern Trinidad and Tobago 2004*, Dame Louise writes that she considers herself fortunate to be living during the most important era in the life of the country, and indeed, we pay tribute to her service and her well-deserved awards for a life well lived.

The Clerk of the Senate will convey our congratulations to Dame Louise.

PAPERS LAID

1. Annual audited financial statements of the National Broadcasting Network Limited for the year ended December 31, 2002. [*The Minister of National Security (Sen. The Hon. Martin Joseph)*]

2. Annual audited financial statements of the National Broadcasting Network Limited for the year ended December 31, 2003. [*Sen. The Hon. M. Joseph*]

3. Audited financial statements of the Trinidad and Tobago Electricity Commission for the year ended December 31, 2001 [*The Minister of Public Utilities and the Environment (Hon. Pennelope Beckles)*]

ORAL ANSWERS TO QUESTIONS

Water and Sewerage Authority (Intentions of Government)

6. Sen. Wade Mark asked the hon. Minister of Public Utilities and the Environment:

> Could the hon. Minister state whether it is the intention of the Government to privatize and/or divest the Water and Sewerage Authority to any foreign interest within the next three years?

The Minister of Public Utilities and the Environment (Hon. Pennelope Beckles): Madam President, the Government of Trinidad and Tobago has no plans to privatize and/or divest the Water and Sewerage Authority to any foreign interest within the next three years.

Sen. Mark: Is the Minister happy with the current financial status of WASA given her response?

Hon. P. Beckles: Even though it is not a question related to this, I will be making a statement on that matter soon.

Conversion of MTS Workforce

7. Sen. Wade Mark asked the hon. Minister of Works and Transport:

A. Could the Minister state whether it is Government's policy to convert the MTS workforce into CEPEP-type operations?

B. If the answer is in the affirmative, could the Minister state whether arrangements will be made to preserve the industrial relations rights of the employees of MTS?

C. Could the Minister indicate which contractors would now be responsible for the maintenance and security of schools and government buildings?

The Minister of Works and Transport (Hon. Franklin Khan): Madam President, I wish to advise this Senate that, with regard to A, the board of management of MTS is reviewing the company's operations under its maintenance portfolio with a view to ensuring the most effective way of delivering such services to its clients. Included in the review is utilization of the system of small and micro enterprises. This system is already being used by MTS in the delivery of services under small construction contracts and for repairs, refurbishment and maintenance of schools and buildings.

With regard to Part B, the extension of the use of small and micro enterprise, as envisaged at this time, is intended to be offered to existing employees who will be given first priority both as contractors and employees. The board and management of MTS will seek, obviously, to preserve the industrial rights of its existing employees.

In response to Part C of the question, this honourable Senate is informed that no contractors have been identified, as the system I have just referred to is still in the planning stages.

Sen. Mark: Madam President, could the hon. Minister indicate what would be the implications for the workforce with the imminent introduction of micro and small enterprise business operations? What does he anticipate would be the implications of such an introduction?

Hon. F. Khan: Madam President, in my opinion, the implications would only be positive in that it is envisaged that there will be phased implementation of the programme. The first phase will include new schools that will fall under the maintenance portfolio of MTS. That is what we call the CRAMPS programme where we bring in all the schools that are not currently under MTS, that is the secondary schools and all primary schools, which, I think, is over 150 new schools. The programme will start there, which means that employees can move across from their companies and it will be a whole new wave of entrepreneurial building in the country, which we think will have a positive impact both on the workforce of MTS and what the Government is trying to do as a policy in building small and micro enterprises. It will not in any way lead to retrenchment and/or a reduction in the workforce.

Sen. Mark: Madam President, through you, would the introduction of small and micro enterprises be along the line of the Community-based Environmental Protection and Enhancement Programme (CEPEP) as outlined by the hon. Prime Minister some time ago?

Hon. F. Khan: Madam President, I really do not understand what is meant by CEPEP-type, which is what the question asked. I restrict myself to small and micro enterprises, which are generic terms and words acceptable in business circles. That is exactly what we mean—we are building small entrepreneurs trying to deliver quality products. They will be employing people and, at the same time, building an entrepreneurial class in this country, which the sociology of this country so desperately needs.

Sen. Mark: Madam President, through you again, does the Minister anticipate, with the introduction of micro and small businesses into the operations of MTS, a dislocation of the collective bargaining process and an undermining of industrial relations?

Hon. F. Khan: It may be too early to understand that question. However, from a cursory point of view, I do not feel that the programme will lead to undermining any trade union or anything of the sort?

Sen. Mark: Madam President, one final question, through you—

Madam President: [*Inaudible*] Sen. Mark, you jumped up before I even recognized you.

Sen. Mark: Well, I anticipated your recognition.

Madam President: You did, "eh"? All right, continue!

Sen. Mark: Madam President, may I, through you, ask the hon. Minister what time frame does the Government anticipate for the transition as outlined by him earlier?

Hon. F. Khan: We hope to implement the first phase of this programme, as I said, not touching the whole MTS per se, but in the expanded programme for the new schools. I would say early in the new year—probably before June.

Mr. Knowlson Gift v
Government of Trinidad and Tobago
(Lands in the Vicinity of Crown Point Airport)

8. Sen. Wade Mark asked the hon. Attorney General:

A. (i) Could the Attorney General inform this Senate whether the outstanding land dispute involving Mr. Knowlson Gift and the Government of Trinidad in respect of the compulsory acquisition of his lands by the State in the vicinity of the Crown Point Airport has been determined?

(ii) If the answer is in the affirmative, could the Attorney General state whether it was a negotiated settlement or a court judgment?

B. Could the Attorney General provide details on the lawyers employed to represent the State's interest in this matter?

C. Could the Attorney General indicate the sum of money that was finally determined in this matter?

The Attorney General (Sen. The Hon. John Jeremie): Madam President, thank you. I rise to respond to question No. 8 as posed by Sen. Mark. The question is in three parts. Part A is divided into two.

The answer to Part A is no, which is to say that the outstanding land dispute involving Sen. Gift and the Government has not been determined. As a consequence, of that A(ii) fails, that is to say I cannot state whether it was a negotiated settlement or a court judgment because it has not been determined.

With respect to Part B, that, too, fails. The answer is none has; no details are possible.

With respect to Part C, that, too, fails because the premise is false. The matter has not been determined, so that it is impossible to state what quantum has been arrived at.

Sen. Mark: Madam President, I can appreciate and follow some aspects of the Attorney General's response, but as it relates to Part B certainly the Attorney General can tell the Senate who are the lawyers. We are not asking for briefs and retention fees at this time because the matter is still ongoing, but I am certain that the Attorney General can inform the Senate on the battery of state lawyers that have been retained.

Sen. The Hon. J. Jeremie: Madam President, I am happy to be of assistance. The point is that because no private attorneys have been retained, it is impossible for me to stand here and give the names of private attorneys. The attorneys who are involved in this matter, on behalf of the State, which is the question posed, are employees of the State and they might change from time to time, depending on the workload of the particular state attorney. I hope that clarifies the question.

Sen. Mark: Madam President, I have asked a question and I do not have the answer. I did not ask for private attorneys; I asked for lawyers. If they are state lawyers, the Attorney General owes it to this Parliament to indicate the names of those lawyers who are representing the interest of the State. I want the names of these lawyers or prosecutors.

Sen. The Hon. J. Jeremie: I take the Senator at face value. I think the question is genuine and I will answer it in that spirit. The way the office of the Solicitor General and the Chief State Solicitor operates is that an attorney is assigned on a matter like this, on a day-to-day basis. The matter belongs to the State. The State has in its employ in the Civil Law Department, in excess of 280 lawyers, some of whom might be available to do the matter on a particular day. There is no state attorney who is dedicated to deal with this matter so that it is impossible to give you the name of a state attorney. It is absolutely impossible. The file has not been given to a state attorney. It belongs to the State; the State is carrying the matter forward and the attorney who might be assigned, because the matter is in such an embryonic stage, might vary from day to day, as indeed has been the case. This matter is far from being settled and it is awaiting some sort of general policy which will take into account all persons similarly situated. The question, with the greatest respect, is exceedingly premature.

Sen. R. Montano: Would the Attorney General, Madam President, not agree, therefore, on the basis of what has fallen from his lips, if this is the way matters are handled for and on behalf of the State by the Solicitor General, that this is a most inefficient way of handling matters? Would he further not agree that this is not the way that any efficient organization is run? And would he further not agree that certainly in private practice, what happens is that an attorney in a large firm is given conduct of a matter and that attorney sees the matter through, although that attorney can be changed?

Sen. The Hon. J. Jeremie: Madam President, are you going to allow the question?

Madam President: Whatever reply you want to give, Mr. Attorney General.

Sen. The Hon. J. Jeremie: As I understand it, under the Standing Orders, it is based on argument; it seeks my opinion and so forth. I am happy to oblige, but the position is that this matter is so embryonic in nature that it requires no dedicated resources. He is asking my opinion. This is not inconsistent with the highest standards of efficiency. It would be inefficient if I were to assign a dedicated attorney to handle this particular matter because of where it is. Now, if the matter had been further along, obviously it would require the dedicated attention of someone. We have taken a position of principle that the matter is going to await a policy position with respect to persons who are similarly located. Until such time, we are essentially going through the motion as we do in thousands of other matters.

Sen. Mark: Madam President, when the Attorney General says it is in the embryonic stage, is he aware that at November 2002, we were told that this matter had been referred to the courts of Trinidad and Tobago? When he says that the matter is in its embryonic stage, what does he really mean by that?

Sen. The Hon. J. Jeremie: When I say it may be before the court, it may be awaiting a cause list hearing which would be three or four years down the road. I cannot tell you exactly where it is, apart from a description which I have been given, which is that the matter is in its embryonic stage and will not be settled in advance of a comprehensive policy.

Construction/Development Project
Haleland Park, Maraval

32. Sen. Basharat Ali asked the hon. Minister of Public Utilities and the Environment:

A. Could the Minister indicate whether a Certificate of Environmental Clearance and all the other required approvals/conditionalities have been granted for the construction/development project at Haleland Park, Maraval?

B. If the answer to A is in the affirmative, could the Minister inform the Senate:

(i) whether there are any plans for the modification of the Maraval River bed? And if there are, what are these plans?

(ii) what arrangements have been put in place for the disposal of sewage effluent during construction and after project completion?

(iii) what arrangements have been put in place to protect WASA Moka Well No. 5 from chemical pollution during site preparation?

(iv) what plans, if any, have been put in place for the abatement of noise pollution and dust/particulate matter/garbage pollution during construction?

The Minister of Public Utilities and the Environment (Hon. Pennelope Beckles): Madam President, a certificate of environmental clearance was issued for the construction project in Haleland Park, Maraval, for the following activities:

1. Clearance excavation, grading and/or land filling of an area more than two hectares during a two-year period;

2. Establishment of a drainage scheme for a parcel of land more than one hectare during a two-year period;

3. Establishment of a waste water sewerage treatment facility.

Outline planning permission and approvals with conditionalities have been granted for the development by the Ministry of Works and Transport, the Town and Country Planning Division and the Water and Sewerage Authority.

In relation to B, the application for the Certificate of Environmental Clearance made proposals to widen and realign the Maraval River by reducing the degree of meander along the northern boundary of the project site. This information was included only to advise the Environmental Management Authority and not for approval as that approval falls under the purview of the Ministry of Works and Transport.

Portable chemical toilets are being utilized in the construction phase of the project. No detailed plans have as yet been submitted to WASA for sewage disposal after the project completion. However, WASA, in granting outline planning permission, advised the developer of the need to construct a sewerage treatment plant which must meet the standard of discharge into an environmentally sensitive area as set by the Trinidad and Tobago Bureau of Standards, which is the highest standard for effluent discharge.

The WASA Moka Well No. 5 is sited within an enclosed area on the project site. Installation is completely enclosed and secured and it is coupled with the presence of a well head, which would prevent intrusion from migrating sediment or surface run-off from the site.

The Environmental Management Authority has Environmental Inspectors who make frequent unannounced visits to the site to ensure compliance with the stipulations which have been outlined in the Certificate of Environmental Clearance, so that human health and environment are protected.

Specifically the developer is required to:

(1) abide by the Noise Pollution Control Rules, 2001;

(2) not to disturb areas under vegetation when such areas are not directly being utilized in the construction phase;

(3) ensure that equipment and aggregates are not staged within 50 metres of any public roadway;

(4) Ensure that the construction site is dampened to prevent the negative impact of dust on ambient air quality and public health;

(5) Ensure that vehicles are cleaned before leaving the site to prevent the build-up of mud and subsequently dust on the existing roadway;

(6) Ensure that waste is not allowed to accumulate on the site for any appreciable length of time and such waste to be staged in secured and covered containment.

I thank you.

2.00 p.m.

Sen. Ali: Madam President, I have some questions for the hon. Minister. Firstly, I was advised by my fellow residents that, in fact, this project is not part of Haleland Park. There is a misnomer here. Haleland Park is on the western side.

In fact, these are comments from one of the residents who is an attorney at law. He is insistent that this is not a Haleland Park housing development. One of the complaints is that very few residents of Haleland Park had any idea, or were given the opportunity to consult with—

Madam President: Are you asking a question?

Sen. Ali: I am developing the question because the Certificate of Environmental Clearance (CEC) has been quoted extensively here. Whether the opinions of the residents of Haleland Park were taken into account is another question. I know for a fact that there were only two persons who had submitted comments to Mr. Julius Smith of the Environmental Management Authority (EMA). In fact, the one I have here with me was submitted to him with copies to Minister Colm Imbert.

Madam President: Senator, do you have a supplemental question? I do not understand what you are saying. I really do not know where we are. Please ask your supplemental question.

Sen. Ali: Madam President, what I am saying is that there is a CEC issue. I have a copy of it.

Madam President: What is the supplemental question?

Sen. Ali: In fact, one of the supplemental questions refers to this sewage treatment plant. This CEC said that the sewage treatment system should be designed in accordance and so forth, and George Aboud and Sons Limited, who are the applicants, should be responsible for the maintenance and monitoring, as prescribed for the lifetime of the sewage treatment plant. Is this what the Water and Sewerage Authority is saying to us?

Madam President: Madam Minister, could you reply to that question?

Hon. P. Beckles: I am not sure what is the question. I would probably still see if I could give some sort of answer. I gather that the Senator is concerned with whether or not the developer is meeting the requirements as it relates to the sewage treatment plant. Is that what the Senator is asking?

Sen. Ali: This sewage treatment plant would come at the end of the project. I am asking whether the reply about WASA saying that this plant would be designed to a certain standard is in conformity with this statement.

Madam President: Minister, could you answer that question?

Hon. P. Beckles: As far as I know, I indicated that WASA has only given interim planning permission. There are still a number of things that have to be done before the entire plant is completed. What they have done was submitted to them exactly what would be the requirements for them to have the sewage treatment plant approved.

Sen. Ali: Madam President, there is one question I have on a list here. What arrangements have been put in place to protect WASA Moka Well from chemical pollution during the site preparation? Just building a fence around it is not protecting it. In fact, I am concerned about what is going to happen to the aquifer.

Hon. P. Beckles: I gave an answer which indicated that the way the well is constructed that is not likely to happen.

Sen. Ali: Madam President, I beg to differ.

Madam President: Senator, there is no argument on a question. You have asked a question and the Minister has replied. Do you have another question on the same matter? I would give you the opportunity to ask another question.

Sen. Ali: Madam President, no.

Madam President: Let us move on.

WRITTEN ANSWER TO QUESTION

Copy of Agreement (Details of)

2. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Could the hon. Minister provide this Senate with a copy of the twenty year agreement signed between Point Fortin LNG Exports Limited and the U.S. based El Paso Merchant Energy LP to supply LNG from Atlantic LNG's trains II and III to Elba Island regasification terminal with effect from January 01, 2004?

Vide end of sitting for written answer.

TRINIDAD AND TOBAGO POSTAL CORPORATION (MANAGEMENT OF)

The Minister of Public Utilities and the Environment (Hon. Penelope Beckles): Madam President, thank you very much. Earlier this year, during the debate in the Senate on the Trinidad and Tobago Postal Corporation (Amdt.) Bill, No. 12 of 2003, several issues were highlighted by hon. Senators relating to the performance of the Trinidad and Tobago Postal Corporation (TTPost), including issues of accountability, transparency and the future development of TTPost.

Madam President, throughout my contributions in this honourable House, I delineated the measures that the Ministry of Public Utilities and the Environment had undertaken and continue to take to address all the issues highlighted. At that time, I indicated that I would make a statement at a later time and today I am therefore making that statement.

Since that debate, the Permanent Secretary in the Ministry of Public Utilities and the Environment, the managing director and senior managers of TTPost met with the Public Accounts Committee (PAC) of Parliament and reported at length on the critical issues relating to TTPost, including its management, operation and the issues highlighted by the Auditor General in her report on TTPost for the years 2001, 2002 and 2003. Comprehensive documents relating to the management and performance of TTPost were supplied to the PAC that expressed satisfaction with the information provided and the clarification and explanations provided to queries posed by the committee.

A major concern highlighted during the debate was the delay in tabling the annual reports on TTPost for the years 2002 to 2003. I am pleased to report to this honourable Senate that these reports have since been submitted to the Clerk of the House.

Further, during the debate, I also indicated that an inter-ministerial committee was appointed, whose mandate was to make recommendations on the management of TTPost during the transition period between the delegated management arrangement phase and the long term arrangement phase under the Postal Sector Reform Programme. This committee has since reported. Cabinet deliberated on the report in June 2004 and agreed, inter alia:

(a) that the duration of the transition period shall be 18 months, commencing July 01, 2004;

(b) the contract with Transend Worldwide Limited, the current management operator of TTPost, be extended for a period of nine months from July 01, 2004 to March 31, 2005 to facilitate the handover to local managers by March 31, 2005;

(c) TTPost ensure that a team of local managers be in a position to continue to work or commence work with effect from January 01, 2005 for a period of two years; and

(d) the Transition Committee to be expanded and function as a Steering Committee for the Postal Sector Reform Programme, during the transition period.

The Steering Committee consists of representatives from the following agencies:

- the Ministry of Public Utilities and the Environment;
- the Ministry of Finance;
- the Ministry of Planning and Development;
- the Ministry of the Attorney General;
- TTPost; and
- a representative from the private sector.

The Steering Committee will address the implementation of the following critical areas:

Development of performance targets and project objectives for the long term arrangement: Consultancy services were obtained from NethPost Consultancy to assist the Government of the Republic of Trinidad and Tobago in attaining its postal sector reform policy objectives. In this context, NethPost Consultancy has recommended a number of options for the future. These options involve having varying levels of the Government and private sector participation in the future management of the postal services. These options are currently being addressed by a Cabinet-appointed inter-ministerial committee, which will then recommend a way forward for the postal services of Trinidad and Tobago.

Transend Worldwide Limited, by a letter dated July 07, 2004, advised that if needed, they can assign two specialists who have experience in postal sector marketing reform and strategic business modelling for one month in Trinidad and Tobago, to work alongside the Government of Trinidad and Tobago and the TTPost board, together with TTPost management officials to develop a long term arrangement. This proposal has been endorsed by TTPost and the matter is currently being reviewed by the aforementioned Steering Committee. In this context, after a decision is made on the future role and the business model for TTPost, performance targets and project objectives for the long-term arrangement will be developed.

In relation to the amendment of postal legislation, section 9(1) of the TTPost Act of 1999 provided TTPost with the right to reserve services for a period of five years. These are exclusive rights to carry any letter weighing two kilograms or

less for hire or reward within Trinidad and Tobago; produce and sell postage stamps within Trinidad and Tobago; rent or lease post offices; and perform for hire or reward all incidental services relating to receiving, collecting, sending, dispatching and delivering of any letter.

Madam President, because of the delays in the startup of the Postal Sector Reform Programme, particularly relating to the procurement plan under the World Bank loan, several items remain to complete the total upgrade and modernization of the national postal infrastructure.

In light of this situation, the Government is of the view that the duration of the period of the right to reserve services, which expired on June 30, 2004 should be extended to cover the transition period to December 2005. In order to do this, a Bill will be tabled shortly in Parliament. Further, the entire TTPost Act of 1999 is currently being reviewed with a view to identifying any amendments that would be necessary and would be in line with the policy option chosen for the long-term arrangement.

The development of performance targets and project objectives for the transition period: A postal sector consultant has been contracted to develop performance targets and project objectives for the transition period. The consultant, Mr. John Mulligan, of Postal Policy Consulting (PPC) has developed the draft report for the development of performance targets and project objectives for the transition period. This report is expected to form the basis for the performance targets during this transition period.

In relation to the human resource issues, TTPost is engaged in the implementation of a range of human resource policies and practices that support the ongoing transformation goals of the business. For example, TTPost has an ongoing training programme that is designed to continually upgrade the human resource. This training has benefited workers at all levels, and has included computer literacy, customer service, telephone etiquette and communication skills training. This is expected to cost approximately $40,000 for the first half of the TTPost fiscal year which began on July 01.

In relation to the industrial relation issues, there are currently two unions representing the postal workers at TTPost, namely: the Public Services Association and the Postal Workers Union (PWU). However, none of these unions has obtained recognized majority union status. The matter is currently before the Registration, Recognition and Certification Board.

In relation to the completion of the implementation of the Capital Investment Plan: The Capital Investment Plan addresses the modernization of transportation

operations and the rehabilitation of facilities. In this regard, TTPost has advised that, to date, approximately 75 per cent of the plan has been completed. The remaining items include the following:

(a) complete security upgrade;

(b) complete national address database system;

(c) finalization of the replacement of transport vehicles;

(d) finalization of the procurement of additional motor scooters; and

(e) finalization of the procurement for new bicycles.

In relation to adequate capitalization of the Trinidad and Tobago Postal Corporation, the Cabinet appointed committee is considering and making recommendations on possible funding options in respect of the pension plan. The capitalization of TTPost has highlighted $32.056 million would be required to capitalize TTPost's balance sheet. The committee proffered the view that equity funding through a loan/bond issue to be serviced by the Government of Trinidad and Tobago, under the Ministry of Finance, would be a preferred funding mechanism. The committee's estimate included working capital requirements up to June 30, 2004. However, since that date has passed, TTPost has been requested to reexamine the estimate and, if necessary, provide revised data on its capitalization requirements.

In relation to the vesting of properties, section 61(1) of the TTPost Act provides for the vesting of properties formally under the direction and management of the Postmaster General to be vested in TTPost, 12 months from the commencement date of the said section. This section commenced on July 01, 1999.

Under clause 5 of the DMA, the Government of the Republic of Trinidad and Tobago is obliged to transfer to TTPost, full ownership rights in all those assets and properties listed in appendix 3 of the DMA and, as soon as possible, after written request by Transend, full ownership rights in any of the assets and properties listed in appendix 3 that the Government of Trinidad and Tobago or TTPost intends to sell.

Appendix 3 of the DMA refers to 56 properties in Trinidad and Tobago, identified by the Post Office Division of the Ministry of Public Utilities and the Environment which were stand alone. However, Cabinet at its meeting on April 2001 agreed to the following:

i. The 39 properties or post offices to be vested in TTPost were:

Belmont	Carenage	Diego Martin
Gonzales	Laventille	Maraval
New Town	Santa Cruz (lower)	Santa Cruz (upper)
St. Ann's	San Juan	Manzanilla
Fyzabad	Guapo	Palo Seco
Santa Flora	Caroni	Carapichaima
Cunupia	Claxton Bay	Debe
La Romain	Curepe	Cedros
Marabella	New Grant	Williamsville
Penal	Sangre Grande	Oropouche
Morvant	Tacarigua	Guaico
Couva	Tabaquite	Rio Claro
Moruga	Gasparillo	Toco

ii. The Scarborough, Speyside, Roxborough and Moriah post offices were to be vested in TTPost after consultation with the Tobago House of Assembly.

iii. TTPost must make the necessary arrangements with:

a. the National Housing Authority for the transfer of property rights of the La Horquetta, Maloney and Valencia post offices; and

b. the Mayaro/Rio Claro Regional Corporation for transfer of property rights of the Mayaro post office.

Accordingly, there are a total of 47 properties to be vested in TTPost. An opinion obtained from the Solicitor General, on this matter, states that the variance between the number of properties to be vested in TTPost as listed in Appendix 3 of the DMA and that stated in the Order is not problematic since the Order takes precedence over the terms of the contract.

To date, 43 of the properties have been surveyed. Letters have been sent to the Tobago House of Assembly, the National Housing Authority and the Mayaro/Rio Claro Regional Corporation to commence negotiations. Of the 43 properties, survey plans have been received for 24 properties and there are 19 survey plans yet to be received. To date, 24 properties have been valued by the Valuation Division.

Section 61(3) of the TTPost Act infers that the properties are to be vested in TTPost and the value can be determined at a later date. Clarification is being sought from the Solicitor General on this matter.

In relation to the establishment of a pension fund for TTPost, the Trinidad and Tobago Postal Corporation Act was assented to on February 10, 1999. Section 37(1) mandates the establishment of a pension fund within two years of the date of assent. Cabinet at its meeting on January 09, 2003 appointed a committee to consider and make recommendations on possible funding options in respect of the pension plan and the capitalization of TTPost. Further, Cabinet at its meeting on November 06, 2003 agreed that the establishment of the TTPost Pension Plan Fund be deferred to a date to be determined by the Minister of Finance. The Ministry of Finance sought to have the pension plan established by July 01, 2004 and allocated approximately $4.4 million in the 2004 budget allocation.

However, given that the report of the above mentioned committee was based on a commencement date of July 01, 2003, it is now imperative that the pension liability be recalculated. Further, the necessary legislation was not in place to effect the implementation by July 01, 2004.

As a consequence, an implementation committee, chaired by the Permanent Secretary, is ensuring that the pension liability is recalculated and the necessary administrative, regulatory and legislative arrangements are put in place with a view to have the pension fund commence on January 01, 2005.

Madam President, to ensure transparency and accountability, audits have commenced on the World Bank funded Postal Sector Reform Project and the audit of the Trinidad and Tobago Postal Corporation. It is estimated that the audit of the Postal Sector Reform Project will be completed and submitted by October 15, 2004.

Madam President, Trinidad and Tobago was elected to the Council of Administration of the Universal Postal Union (UPU) at the recently concluded UPU congress held in Bucharest. Membership in this group will allow us specific benefits which include the following:

(1) The ability to influence administrative, legislative and regulatory issues that affect the UPU.

(2) To participate in the approval of procedures and regulations binding postal administration globally.

(3) The ability to scrutinize and approve the UPU annual budget, particularly as it relates to the contributions of developing countries.

(4) To promote and coordinate all aspects of technical assistance for developing countries.

(5) To ensure continuity of the UPU's work between congresses, thus allowing Trinidad and Tobago to have up-to-date knowledge of issues which we will then share with other members of the Caribbean Postal Union.

This position also carries increased responsibility in terms of the need to ensure that we meet our obligation of full participation on the Council of Administration. However, we now have the ability to directly influence the decisions of the UPU that will affect the postal sector in developing countries such as ours, rather than simply accepting decisions and policies that are largely driven by interests not aligned to our own goals and objectives.

Madam President, it is clear that TTPost has made major gains, particularly in the achievement of its service quality objectives. Today, over 96 per cent of the households and businesses receive postal delivery services compared with an estimated 50 per cent in 1999. Further, over 82 per cent of all local mails are delivered the next day, with 92 per cent being delivered by the second day. This contrasts positively with the days, or indeed weeks that it would have taken previously. Additionally, customer satisfaction is at an all-time high, with over 81 per cent of customers expressing satisfaction with the service offered by TTPost.

Madam President, therefore, I am pleased to say that despite some issues which are being addressed, service levels and customer satisfaction have been increased in line with the stated goal of providing a world-class postal service. This is a step in the direction of achieving the Vision 2020 mandate for the postal sector, which includes the ability to respond positively to rapidly changing customer demand, with increased efficiency and productivity in the face of competition from alternative means of communication.

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

OFFENCES AGAINST THE PERSON (AMDT.) (HARASSMENT) BILL

Bill to amend the Offences Against the Person Act, Chap. 11:08 [*The Minister of National Security*]; read the first time.

FAMILY PROCEEDINGS (AMDT.) (NO. 2) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie): Madam President, I beg to move,

That a Bill to amend the Family Proceedings Act, 2004 be now read a second time.

Madam President, the Bill before this honourable Senate is an amending Bill—that is to say a Bill which seeks an amendment to the Family Proceedings Act of 2004. Earlier this year, I piloted this Bill through all its stages; both in the other place and in this Senate.

Hon. Senators would recall that the Family Proceedings Act of 2004, as drafted, was formulated as a result of concerns expressed by the Judiciary and other stakeholders with respect to proceedings relating to the family. One of the concerns expressed by stakeholders was that the Magistrates' Courts had only power to refer parties to probation officers in the resolution of family disputes before their courts.

The Judiciary had indicated that the matrimonial judges do have an inherent jurisdiction to refer these parties to professionals such as psychiatrists, psychologists, social workers, mediators and counsellors.

Now, this is not a statutory jurisdiction and the Privy Council has recently discreetly cautioned us against the use of the inherent jurisdiction by High Court judges in certain matters. The lawyers would recall the strong words of the Privy Council, in the Chadee contempt matter relating to the freedom of the press.

The Privy Council asked us to consider legislative amendments to give judges the powers to do things in various matters which they have hitherto and, at present, been exercising in their inherent jurisdiction. In the case of the law Judiciary, that is the magistrates, the jurisdiction to refer matters is more limited. Now, it is limited under the various statutes to referrals to probation officers. The point is that we are mindful that the Family Court project is a pilot project and we are learning as we go along.

The underlying objective of the pilot project, which has been launched and is doing quite well, is to promote the resolution of family disputes in a more conciliatory manner, and to enable parties to have quicker access to the services of the professionals, which I have identified before, without the present ambiguity which now applies. This would mean that the courts would now have an expressed power to refer, not simply to probation officers, but to trained mediators, counsellors, psychiatrists, psychologists and so forth, who have not hitherto been assigned a prominent role in the resolution of family disputes.

Now, this is in keeping with the approach of the court and the rational for the project which seeks to resolve disputes by taking them out of the courts rather than having the usual adversarial rules which apply in litigation proceedings, to family matters governing these proceedings.

Clause 5 of the Bill, as it was then before the Senate, would have, indeed, invested the court with the power to refer parties to mediation without their consent. However, during the debate in this Senate, certain Senators expressed strong concerns about the power which clause 5 sought to give to the courts. A view was expressed that parties should not be compelled to go to mediation since the whole concept of mediation is based upon voluntary participation.

At that time, we on this side were not persuaded, but in an effort to achieve a compromise, and in an effort to bring all Senators on board, we agreed to amend the clause. That resulted in an amendment to clause 5 as it is now drafted, which requires the agreement of the parties before they could be referred to mediation.

Madam President, the Family Court has since open for business, and the Government is resolute to ensure that the pilot project would be able to fully carry out its mandate, to remove from the courts the present acrimonious disputes which exist in relation to resolution of family matters, and to put in the domain of the pilot project, a jurisdiction to talk matters out and to resolve matters by alternative means of dispute resolution.

The Monitoring Committee which has been established to oversee the operation of the court has now expressed very strong views on this matter—the matter of the amendment which was done in this place, by all of us, to clause 5. They have since proposed that the Act of 2004 be amended to reflect its original wording, that is to say: "by deleting the words 'with the agreement of the parties'". So, in effect, that brings it back to what clause 5 was in the original draft. Their position is to revert to the position, which was proposed in the original Bill that was piloted by me in this Senate.

One of the arguments put forward by the Monitoring Committee is that the Family Court is intended to be a "one stop shop" to resolve family disputes, without the power of the court in expressed terms, to refer the parties without their consent to trained mediators and other social service professionals, rather than to the old probation officers which was the sole power given to the magistrates.

The Monitoring Committee is of the view that the purpose and object and the spirit of the Family Court project may not be attained. The point is that the whole

objective of the new arrangement of the project is to bring in alternative dispute resolution as a means of resolving acrimonious family disputes.

One of the ways that the Monitoring Committee has identified to achieve that objective was to have trained mediators—persons who are trained in alternative dispute resolution—available to the court to, at least, push the parties at an initial stage to consider mediation. Whether or not they go through with the process is an entirely different question.

Madam President, at this point, I would like to draw a distinction between forcing the parties to mediation, which is what detained us on the last occasion, and forcing them to consider mediation which is all that is really sought in this amendment.

If the parties to a dispute were referred to mediation, the parties would have the right to agree, or not to agree to the process, after they have been made aware of the nature and benefits of the process. That is all the amendment seeks to do. It is uncontroversial in nature. I have spoken with the individuals who have objected strongly in this place, and they have expressed to me that they are prepared to look at—they have not expressed to me that they are prepared to go along with the amendment; I want to be careful on that matter—the recommendation made by the Monitoring Committee.

We recognize that mediation is voluntary and referral to mediation does not necessarily result in mediation. In this regard, I think the rights of the parties are unaffected.

I would like to draw the attention of hon. Senators to section 5(4) of the Act, under which the court may grant an adjournment to facilitate referral to mediation. Now, what that means is that parties are not denied any right of access to the courts since the matter would be—if the parties refused to go to mediation—referred back to the court and the court would proceed to continue its hearing.

The proposed amendments simply seek to empower the magistrates, in particular, with a power, which they do not now have, and to give to the High Court, in expressed terms, a power which they have under the inherent jurisdiction of the court to take possession and control of all matters within their purview.

As I have said, the High Court judges already exercise this inherent jurisdiction, subject to the caveats which have been mentioned in the recent Privy

Council decision. The power contemplated by the amendment is primarily intended to enable magistrates who do not have that expressed power, to refer parties to the social service professionals who are now being brought in by the related Mediation Act.

Now, I think the amendment is uncontroversial. It really removes two or three lines from the Bill as it was passed. I should hope that it would achieve the unanimous consent of all Senators here this afternoon.

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

Question proposed.

Sen. Wade Mark: Madam President, thank you very much and welcome back. Madam President, as the hon. Attorney General has indicated— virtually when he was losing his political virginity in this Parliament—in November 26, 2003—

Sen. Jeremie: Madam President, just to clarify a point. I have repeated on a number of occasions that I am not a politician. So, it is impossible for me to lose my political virginity. [*Laughter*] [*Interruption*]

Sen. W. Mark: Madam President, sometime around November 26, 2003, I recall the Attorney General—who had taken up office two or three weeks before that—agreeing, after very powerful deliberations by Senators—the Independent Senators and Opposition Senators—to ensure that the words that he is now seeking to remove were then incorporated.

We find it a bit strange that just one year later, the Attorney General, like his Prime Minister, has attempted to "flip-flop". I do not know if it is a cover up.

Sen. Jeremie: Madam President, the pilot project has a very limited life. I agreed at the time that it was established that if amendments were required that they would be done speedily. The Monitoring Committee of the Family Court project made the recommendation to me, not the Prime Minister. This committee comprises members of the Judiciary. That recommendation was made to me in May 2004 and I went to the Lower House in June 2004, and the Parliament was prorogued thereafter. The Bill was passed in the Lower House on June 23, 2004, and it was only because of the prorogation of the Parliament that the Bill is here so late.

Sen. W. Mark: You see, I have been very generous, but I would not be allowing my colleague to rise again. I would ask him to take careful notes and he would have an opportunity to respond in his winding up.

Madam President, we were told by the Attorney General that there is some Monitoring Committee. I have noted this in a report which I would refer to in a short while—that is an annul report coming from the Judiciary for the period 2003 to 2004.

This nameless and faceless Monitoring Committee believes that this Parliament is a tool that they could use. I do not know about the Attorney General, but if he wants to be a conduit merely to convey the wishes, reservations and positions of a so-called Monitoring Committee, and to have us in this Parliament simply endorsing the wishes and views of this so-called Monitoring Committee, I want to tell him that he has another thought coming.

The hon. Attorney General has not identified for the Parliament who are the members of this so-called Monitoring Committee. Who are these people? Who is the chairperson of this committee? Who are the members of this committee? They have the audacity to use our Attorney General and let him come to this Parliament to tell us that they do not like—these six words, so they want us to delete those six words, so that they could have power to do their own thing.

I saw that in clause 3 of this Bill, we are being told to delete the words "with the agreement of the parties". That is six words! The reality is that we are being told to delete those words that I have mentioned to you which are contained in clause 3.

Madam President, the Attorney General should really treat this Parliament with a greater sense of seriousness. Nowhere in his brief contribution did the Attorney General outline what were the problems encountered. We have a pilot project which commenced since May 12, 2004 and we are now in the month of November, 2004.

2.45 p.m.

The Attorney General said a short while ago that he got this request sometime in May and he went to Parliament in June and because of the prorogation, it was not possible to have it enacted in law. Well, the Attorney General must be aware that having witnessed and experienced a lapse in time, he ought to have referred this matter back to the Monitoring Committee seeing that he was coming almost six months later to this Parliament to bring an evaluation report.

We are told that this project is going to be completed shortly. Does that mean it is going to be completed in December? We do not know, and we are being asked to support this particular measure as proposed in the amendment before us.

Madam President, I want to ask the Attorney General: What is the evidence to date? What is the state of play insofar as the pilot project is concerned? How many matters have been resolved in the area of family disputes to date? How many have been referred? I understand it is about 250. Maybe the Attorney General can correct me, and I will go into some details later on to show how the Government is attempting to utilize this process in order to make it work.

I would like the Attorney General to show this honourable Senate the evidence. Where are the statistics? How many persons referred to this Family Court have not taken the magistrate's advice. How many? We do not know, but we are being asked today to delete some words that are going to be very crucial in sustaining the concept and philosophy brought into the Family Courts.

Madam President, we are not puppets and we are not going to allow any monitoring committee from the Judiciary to use this Parliament as a group of puppeteers. We are not going to allow that.

I want to return to the philosophy as outlined in a document entitled *Judiciary of the Republic of Trinidad and Tobago Annual Report 2003/2004.* Page 16 of this report says under philosophy:

"The family court is to encourage…"

Where is the Attorney General? I want him to take note of this.

"The family court is to encourage parties…"

Not to force families. It is to encourage. It is to persuade, Madam President. Not to force. It says:

> "The Family Court is to encourage parties involved in family conflicts to resolve their family disputes themselves with specialist assistance and support wherever necessary."

This is the philosophy governing the concept driving the Family Court.

So when the Attorney General says to us that the monitoring committee has expressed strong views and they recommended that our clause 5, which was unanimously agreed upon by this honourable Senate be deleted, I ask, on what basis?

We ask the Attorney General, on what basis? Where is the evidence? He is a lawyer, we are legislators. We want the evidence before us. Bring the facts; let us see the evaluation report even though it is a pilot project. We want to know. The hon. Attorney General has not provided this Senate with any information that can

provide some clarification as it concerns this demand made by this so-called monitoring committee located somewhere and we do not know the names of these people.

We have a difficulty in supporting this matter and unless the hon. Attorney General can provide us with the necessary data, evidence, and statistics, we on this side will not be supporting any willy-nilly amendment. We have to be persuaded, we have to be convinced, and I am sorry that the Attorney General does not see himself playing a larger role. I hate to think that he sees himself merely as a caddy boy, or some kind of conduit simply collecting information like a messenger and bringing to the Senate to say: "Senate, hear weh happening, the monitoring committee is not happy with this particular section of the law and is strongly recommending that we bow to their wishes, because they do not like a particular clause in the Bill."

Madam President, we do not make laws on that basis, otherwise that will lead to anarchy and chaos. These people must take this Parliament seriously. If they do not take us seriously, we take ourselves seriously.

The Attorney General talks about the pilot project. This Parliament had no say, no input; nothing was brought before this Parliament concerning this so-called pilot project. That was an initiative taken by somebody else outside this Chamber. We do not know the terms of reference, how long this pilot project is to be conducted, how long it will take, how many people will be involved. All we know is that a report came out in the 2003/2004 report of the Judiciary and that the Family Court is located in the St. George West section of Port of Spain; there are some four courts operating and the location is Nipdec House somewhere on Tragarete Road in Port of Spain.

I want the Attorney General who is not here—and I find it is very insulting for the Attorney General not to be present when this particular matter that he has just introduced is being dealt with. How can he expect to get our support when we are speaking to an empty chair? Who is going to monitor it for him, the monitoring committee? Who is going to report to him, the monitoring committee? [*Desk thumping*] What kind of insensitivity is this?

Madam President, I do not know. Maybe as you are here after a long while you have him "toutoulebay" or something. He has just left and I do not know why. [*Interruption*] I do not know, Madam President, but he has gone. Tell me, maybe he is "bazodee". I really feel that some of the issues I am going to raise require his presence.

For example, we have learnt—and we need some clarification on this matter—that the taxpayers of this country spent some $13 million to bring the Family Court at Nipdec House up to a certain standard, but do you know what is ironic about it? We spent $13 million to refurbish, repair, renovate, and house with new furniture, equipment, and all kinds of apparatus within this particular jurisdiction, but the building is not owned by the Government, it is owned by a private landowner. I would like the Attorney General to tell us who is the owner of the building where the Family Court is housed on Tragarete Road.

We were paying $76,000 when the ordinary courts were located there. They are now on St. Vincent Street and that particular area of Port of Spain, as I mentioned earlier, is exclusively allocated to the Family Court. We would like to know why this particular court in question is costing the taxpayers some $130,000 a month after we spent some $13 million to bring that building up to a certain standard. Tell me what is going on here. We spend $13 million repairing a building and when they see a nice beautiful edifice established, someone says I will now up my rent from $76,000 a month to $130,000. Who is this owner?

[*The Attorney General returns to the Chamber*]

Attorney General, I am glad you are back, I felt a bit insulted when you left.

Sen. Jeremie: [*Inaudible*]

Sen. W. Mark: I appreciate that and I bow to your wishes. [*Crosstalk*]

Sen. M. Joseph: [*Inaudible*]

Sen. W. Mark: Madam President, is this the Minister of National Security? [*Crosstalk*] That is why the media called on you to speak. You speak in Parliament when people are speaking, but you do not speak in defence of the country when people are being murdered. Over 230-something persons have died and you are silent.

Madam President: I was hoping not to have to stand, but I agree with the Minister, unfortunately, you are not supposed to turn your back to me.

Sen. W. Mark: I will never do that; with a beautiful President like you? I dare not, and even if I do, it is not intentional; it is just temporary because I have to move to keep my focus and balance. [*Laughter*] Madam President, I apologize.

Sen. Jeremie: Madam President, I apologize to the Senator, but I heard every single thing he said and I will respond in due course. No disrespect was intended by the empty chair.

Sen. W. Mark: Thank you very much, Attorney General, I know that you mean well. I know you are a non-politician, but you are growing and I appreciate that. You are learning as well, you are not only growing because you are a knowledgeable man.

Madam President, I would like the Attorney General to tell this Senate why the State has now been called upon to pay $130,000 per month in rental charges for that building. Let him tell us why that is so. I would also like him to give this Senate an appreciation of an evaluation report from this so-called monitoring committee, and to provide the names of this Monitoring Committee which seems to have a grip on the Attorney General that when they tell him to jump, he asks how high, and comes here to put on the Table whatever they tell him to put. That is what he says to us. Man, you must be a very nice husband.

Madam President, there are no aspersions intended; he is my friend. I want to indicate that this is a matter that is of grave concern to us. When we piloted the Community Mediation Bill, and brought into being community mediation centres, it was on the basis of a report commissioned by Sen. Prof. Deosaran. It was designed to reduce the case load in the High Courts and Magistrates' Courts in the country. It was all aimed at referring what we call simple, trivial, non-controversial matters whether of a criminal or civil nature to mediation centres so that they can be resolved and not send these people before the court.

The PNM came into office, and this vicious, wicked, evil, and vindictive regime closed all our community mediation centres which were working because case loads were being reduced, and the number of matters listed at the Magistrates' Courts were being reduced. That was the purpose of mediation.

Madam President, I believe that when we passed this Family Proceedings (Amdt.) Bill and the Mediation Bill, based on what is happening today in the Parliament that this Monitoring Committee might have been responsible for advising the Attorney General to go with these two pieces of legislation. Because that legislation torpedoed and completely overturned whatever was in existence prior to the regime coming into office.

We are being told by the hon. Attorney General that this particular measure is designed not to force persons into mediation but to have people consider going into this process called mediation. When you put this power into the hands of these magistrates, the philosophy of this particular Family Court as outlined on page 16 of the 2003/2004 report says:

"The Family Court is to encourage parties involved in family conflicts to resolve their family disputes themselves with specialist assistance and support wherever necessary."

Madam President, there must be consent between the parties. A magistrate should not be given the power to simply refer a matter involving family dispute that ought to be resolved between you and me. They are seeking power through this amendment, to send almost every matter before them without your consent. I believe that the Attorney General must tell us what has been the experience. He has not told us how many families appearing before these courts have defied the advice of the magistrate in question. We do not know, because he has not provided us with any information on this particular matter.

The Attorney General says that this monitoring committee envisions a one-stop shop. What does that mean? You know the PNM is good at nice words and terms—one-stop shop. What does that mean, Madam President? Already the Attorney General, based on the advice he has received, came to this Parliament in November, 2003 and against our strongly advanced views refused to incorporate domestic violence on the schedule that will govern this Family Court.

If one looks at the Schedule of the Bill, one would not see domestic violence and he gives us some sort of lame-duck excuse saying that it is a criminal matter and he does not want to confuse it with civil matters. But when the UNC was in office, criminal matters were brought before the Community Mediation Centres for resolution. How come we could have done it, but the Attorney General and the PNM cannot? Why?

Somehow, I am getting the impression that the hon. Attorney General is not making sufficient effort. I think his advice is not being carried properly because there are people who are there who believe that criminal matters ought not to be confused with civil matters and that is why the Attorney General says to us this is how we want to approach it, only civil matters. Then we are told this is supposed to be a one-stop shop. What does that mean, Madam President?

Does it mean that a wife who has been abandoned or separated and seeking a restraining order goes to the Family Court to have him restrained will get that? She has to go to the Magistrates' Court to invoke the Domestic Violence Act.

There is a contradiction because as you will see in the Schedule, maintenance orders enforcement is one of the measures under the Schedule. So if you are not receiving your maintenance for the children you can go to the Family Court and get it to order. I can bring my matter to them and they can take action on

maintenance matters. If that wife is the victim of domestic violence and brutality, she has to go to the Magistrates' Court to get a restraining order issued to prevent this criminal posing as a husband from brutalizing her and we are told this is a one-stop shop.

How that could be a one-stop shop? That is not a one-stop shop. They are fooling the Attorney General and he comes here and repeats the same language. I do not think he understands the concept properly.

Madam President, the reality is that if we allow this amendment to go through this afternoon, it is going to have certain consequences. The purpose of this Family Proceedings Bill, which was passed in June, 2004 was to reduce the heavy backlog of cases particularly of a family nature from being sent to the ordinary Magistrates' Court so that court which has to deal with tens of thousands of matters on a yearly basis can concentrate on these matters and the Family Court would have been used exclusively to deal with family matters.

3.15 p.m.

But if you now give to the magistrates in that particular jurisdiction, the power to refer, without consent—it is the power to refer without consent—can you force a husband and wife to make up? [*Interruption*] If they do not have to go, Dr. McKenzie, why bring the amendment? Why is the amendment necessary? Because right now a magistrate ought to exercise some degree of moral suasion. If I do not have to go when you say I have to go, as the magistrate—and my friend is saying at the back, they do not have to go—well, then, why is this amendment necessary? Because I asked the question and I repeat it: Could the Attorney General tell this honourable Senate how many cases have had that kind of experience that we are seeking to now correct? How many people have gone to the magistrate and the magistrate has said: "Listen, I would like you all to meet and discuss this matter in a nice way", and they refused? They said, "We are not taking you on." So he now wants the power to say: "Listen, you and you, go and deal with mediation."

I am saying, that is what I am getting from this amendment, because if this was not the purpose, why is it here? Why has the Attorney General brought this amendment here? The justice system in our country is in crisis, as you are well aware. I am sorry to say that we are dealing with a matter of the Family Court and the issues that are involved are located within the magisterial portfolio. But apart from that Family Court, which I understand has been properly treated—they have received all the resources necessary. In fact, I am told that that Family Court is

now overstaffed. I understand that the bulk of the workers there are on contract in this pilot phase. I understand that the salaries of some of these contract officers are more than judges. I understand that in spite of a commitment by the Cabinet of this country to introduce audio-digital recorders throughout the Judiciary, including the Magistracy, in 2003, up to this time, as we speak, you still have in the Magistrates' Courts in this country, clerks, judicial officers, taking longhand notes. But do you know what? The Attorney General has allowed the Family Court to have its own audio-digital recorders. I have no problem with that. That is a great move. You want to increase efficiency so you introduce that, but what about the other 40 to 50 Magistrates' Courts in the country? Do they not need audio-digital recorders?

It was the Chief Justice, Justice Sharma, at the opening of the 2003/2004 Law Term, who stated at page 2 of his statement, and I quote:

> "What passes for justice in those Magistrates' Courts is, in my opinion, a serious blot on the administration of justice. It is a stinging indictment on every arm of the state. The Magistracy has been frozen in time, and that time is some forty years ago, precious little has changed except, of course, that litigation in these courts have risen to such an extent that it renders the present system useless."

That is the Chief Justice of the country. He goes on to say:

> "That the Magistrates are still functioning is a tribute to themselves who despite the deplorable and subhuman conditions have shown a commitment which I am yet to see in any system of justice."

He says further:

> "…the archaic and laborious system of note-taking by hand, the unending list of the Magistrates, the sub-human conditions under which…"

they work and function, particularly the buildings; they are in a deplorable state. Do you know what is even more revealing?

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

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. S. Baksh*]

Question put and agreed to.

Sen. W. Mark: Thank you very much, Madam President.

On page 5 of the said statement, the Chief Justice went on to say:

> "…it is envisaged that audio digital, together with the supporting transcription staff will be the means by which proceedings in the Magistrates' Courts and the Civil and Criminal Courts of the Supreme Court will be recorded."

He went on to say:

> "It is expected that the implementation of audio digital court recording systems in courts throughout the Judiciary will cost $17 million.
>
> I am extremely pleased to announce that on the 3rd of September, 2003, Cabinet agreed to the implementation of the audio digital recording system in courtrooms throughout Trinidad and Tobago."

This is the Chief Justice talking in 2003/2004. He is saying that the Cabinet of Trinidad and Tobago agreed on September 03, 2003, to implement this system. We are now in November 2004, shortly 2005, and this incompetent administration has done nothing to implement this measure in the Magistrates' Courts. Could you imagine this? Yet still, I notice that even the Attorney General wants to have a nice time. He wants to travel, boy! He is travelling! And the budget for travelling and entertainment—overseas trips—Madam President, I have the list here for you, and I will come back to it.

So whilst the magistrates want $17 million to effect this audio-digital recording system to speed up the justice process and to improve the level of efficiency in the system of justice, they are not getting any help. I do not know if the Attorney General is sleeping. All I know is that he is engaged in encouraging public officers, headed by the permanent secretary, to scale walls in order to break laws to try to evict the Law Association of this country.

Madam President: Senator, you are imputing improper motives to the Attorney General. Please get back to your contribution. You were going very well; stick to that.

Sen. W. Mark: Yes, but I am a politician, eh. Just remember that. I am not a non-politician like he is. But anyway, I will deal with that.

Madam President, what I am saying is that the Attorney General is sleeping and needs to be awakened. He has been in office since 2003; we are now in 2004, and you have a decision taken in September 2003 to supply the Judiciary of this country with audio-digital recording which would cost $17 million, and they have not done a single thing on this matter! I am saying that is an injustice! Poor people

are suffering in those courts every day because their matters are being put off and adjourned every single day, for 10 years and 15 years and the Attorney General is playing! He is fiddling with his thumbs! He is the person who is responsible, not the Minister of National Security. He is supposed to provide the resources to the Judiciary. He has not done it, but he finds time for other things, which I shall deal with.

So where are we with the Attorney General on these matters? The Judiciary requires $17 million to speed up and to improve the efficiency and the delivery of justice in the country and they cannot provide it. But do you know what they could provide? For overseas trips for 2004/2005, $55 million—having a good time! Propaganda, publicity and promotion—$192 million, between 2003 to the end of the 2005 financial year. They have money to mislead people. You have political advertising, entertainment—$30.7 million! All the Judiciary is asking for is $17 million, but they have $30 million to wine and dine and to have a good time. They have a new concept which is called "Hosting". What that is, I do not know. It was introduced in this year's estimate at a cost of $41 million.

So they have money to burn on themselves and to have a great time, but for justice for poor people, they have no time for the small man in this land—no time! It hurts me. Since 2003 they promised $17 million to the Judiciary and they cannot provide it? And the hon. Attorney General comes here today to get our support because some monitoring committee sends him here and says that we must pass this? I want to tell the Attorney General that maybe he is living in a house of horrors and he needs to get out or get some exorcist to exorcize whatever evil spirit is dominating his conscience at this time.

I was shocked, like your good self, when I read in Friday's *Guardian* of November 05, a screaming headline: "Health Inspectors Blacklist San Fernando Magistrate Facility—Court of Horror". Do you know what? The San Fernando City Corporation has given the San Fernando Magistrates' Court, the premier court of San Fernando, until November 26 to clean up their act or face closure. You could imagine in the year 2004—this so-called regime talks about 2020, which is just "ol' talk"; a pipe dream. They talk about making Trinidad and Tobago the financial centre; trans-financial centre, all kinds of things; they want to make us the transport hub of the region; they want to spend $600 million in establishing a "waste" court, called the Caribbean Court of Justice, and do you know what? They cannot find moneys to clean up their act.

Mr. Attorney General, through you, Madam President, it would be almost a stain on your consciousness if you do not find the money to ensure that this San

Fernando "House of Horror" does not feel the hammer of the city corporation of San Fernando, come November 26. Do we have to wait until a city council or a corporation threatens for the Attorney General to act? What kind of justice is this? When you read the litany and the woes that this particular court is experiencing, it pains your heart to know that human beings subsist in those environments. But the Attorney General is the person who is responsible for the provision of resources. I get the impression that he is not providing the resources.

I understand—and the Attorney General must tell me if I am wrong—almost $1.5 million has been spent on rental facilities involving two buildings in San Fernando; one costing $30,000 per month; the other one costing $40,000 per month, and they have been paying that money for the last two years with no occupation. So a landlord is laughing all the way to the bank. He has gotten $1.5 million in rental fees for the last year and a half to two, and the city corporation of San Fernando has threatened to close down the San Fernando Court on November 26, if they do not clean up their act.

Where is the priority of this regime? I think it is all mixed up. You want to take back a building, so you take over the work of the National Security Minister and you send the police to do what, to evict the Law Association? It was not Bank and General, you know; not an ordinary NGO, you know; it is the Law Association of Trinidad and Tobago. Why could the Attorney General not have utilized mediation here? Why? [*Desk thumping*] Why this heavy hand of the Attorney General? He came here in November and promoted this concept of mediation. He is now doing the same, through this piece of legislation, but yet still, he used a hammer to kill a fly. That is what he did.

Do you know what it is about? Power! "I am the Attorney General. I am the big man in this town. What I say goes. Get out of this place, Law Association, and if you do not go, I will show you who is boss." And he used a permanent secretary. These public officers have to be warned, you know. These permanent secretaries in the public service must be warned not to allow politicians to use them. That is an abuse of power! They will end up in jail like you all, you know, if they are not careful. Many of you all are heading that way, you know—okay.

I am totally disappointed in the Attorney General, and for him to bring this measure today for us to support, he must be thinking that we are all fools. How can we support this without any evidence, any valuation, any data, any statistics? He comes here on instructions of a monitoring committee, and we must support him? I want to tell the Attorney General, he should refer this matter to a select

committee of the Parliament so we can interview this so-called monitoring committee. They cannot come before us now, but we can bring them before a select committee and let them tell us what is going on in the pilot project. We do not have a clue, but we are asked to support it.

How many more minutes do I have, Madam President—10 minutes more? Because the Attorney General took 10 minutes of my time.

Madam President: You have four minutes.

Sen. W. Mark: You are not giving me injury time? The Attorney General interrupted me, you know. I am advised by the President, no future time for you.

So, Madam President, as I said, I would really like the hon. Attorney General to give us an understanding of what has developed in this area. We really would like to know. I have no difficulty, as I said, in the kind of facilities that they have provided to the Family Court in Port of Spain. All I say to the Attorney General: Be fair; extend the same facility to other Magistrates' Courts. Why the discrimination? You cannot stop! You are mad in terms of discrimination. It does not end. You discriminate against people and now you are discriminating against institutions. It cannot stop. When will it stop? Where is the equity in the distribution of resources? Why do you not do a pilot on the Magistrates' Courts and say, "out of the 40 I am going to give at least about 20 of them the same kinds of facilities; the same kinds of resources", and lift them up to the same standard as the Family Court? I challenge him to do so.

We cannot support the measure that you have brought here this afternoon without the hon. Attorney General—I had so many things to say. I could talk for another three hours on this matter, but I would pause at this time. I think I have made my mark—no pun intended—I think I have submitted a very strong argument in the context of the Attorney General providing some explanation. We can still be persuaded at this late hour, but we need facts, proper information and documentation. I am not taking any assurances from the Attorney General. I want no assurances. Assurances are for fools, not for me. I want documentation; I want evidence; I want facts, before us. If I do not get documentation, facts or the necessary evidence, we would not be able to support this measure and he could take that back to his monitoring committee and let them know that this Opposition is not a rubber stamp and this Parliament will not rubber stamp what they say and use the Attorney General as a conduit to bring it here. We will save you from them.

Thank you very much, Madam President. [*Desk thumping*]

Sen. Prof. Ramesh Deosaran: Madam President, the Bill has, in the midst of its title, the word, "Family" and I think in this season of Divali, I am told family plays a very important part in terms of sharing religious experiences, holy spiritual thoughts and so I want, with your permission, to extend Divali greetings to all my colleagues in this honourable Senate. But even further than that, I do not think I should allow the opportunity to pass without expressing my very silent admiration for the manner in which our female colleagues—most of them—have adorned themselves to reflect this spirit of the occasion. The resplendent manner in which they have excelled in such sartorial elegance, including yourself, Madam President, I think reflects the season of goodwill and it is in that spirit I hope I can shed some light on the matter before us.

You see, in today's circumstances—and I think with your own ministerial background and your civic involvement—we would all recognize—I am sure the Minister of Education, the Minister of National Security, the Minister of Social Development and the Minister of Community Development—that the family is now a key institution in terms of what is happening to us. Some say we are degenerating; some say the problems of the family are absorbing more and more taxpayers' dollars through several programmes when we try to heal or stop the haemorrhage. So the Bill is much more than really an amendment concerning a few words.

I will draw a lot of what I have to say from the Attorney General's presentation and also from Sen. Mark's contribution by starting, first of all, through you, Madam President, to request of the hon. Attorney General when he said that "from the pilot study so far we have learnt much and it seems to be doing quite well"—I think we would like to know what does that mean in some quantitative manner, because without sounding premature, I am somewhat reserved on the merits of the amendment. And listening to the hon. Attorney General, I get the feeling—I hope I am wrong—that he has not, through time, gotten really fully into this matter of the Family Court and the justification for the amendment.

So I think on further reflection as he hears contributions, he might respond finally with something more persuasive and something that merits our support of the amendment. Because at one point I was thinking—and I would even suggest to him with respect—that the passage of this amendment should not rest on the pure majority in Parliament. Because of the nature of the amendment and what it implies—mediation, consensus, a negotiated settlement—I would like to feel that he should be patient enough to get more than a simple majority, and if he gets

through by just the Government majority, it is my view that this would not be enough for the passage of this type of Bill.

I think Sen. Mark does have a point. The point was so good that he kept repeating it all the time, and that is, this monitoring committee. As I understand the Attorney General, this monitoring committee comprises personnel from the Judiciary. I do not know if that means judges or support staff, like the chief administrative officer or whatever, but I do not think a matter as this, having to do with family and the circumstances under which the proceedings are brought before the court, whether the lower court or the upper court—given the circumstances such as these—that lawyers should dominate, or the monopoly of thinking should be exercised by people from the legal profession, with due respect to my distinguished colleagues, and I hope they take it in the light in which I am making it.

You see, it seems as if this Bill, given the inception of the amendment and also the preceding legislation—and without belabouring the point, I am sure you would have memories as to the genesis of this whole matter of mediation—it would seem to me that the Judiciary has highjacked the spirit of what the concept of mediation and negotiated settlements ought to be. [*Desk thumping*] And I believe that it is not their fault. It has to do with the training which perhaps lawyers of a particular era have experienced. They have been trained, perhaps inevitably, in the adversarial manner of court trials.

The whole issue of mediation and restorative justice, and these issues which seem to bring the community more into solving their disputes, if not completely solving them, but to play a significant role in reaching conciliation, I think it is, to some lawyers, and especially judges, a foreign matter still, not because of maliciousness, but I believe because of their professional upbringing, as it were. I do not, therefore, believe that the monitoring committee should be left, as I presume it is, with legal personnel monopolizing the outcome, because I believe one of the consequences is to have the hon. Attorney General in the kind of—well, I wanted to say, monkey pants, but that would be too excessive—ambiguous position in which I believe he, at least from my point of view, finds himself.

Since I am on that point, the same comment would hold for the composition of your Law Reform Commission. You want to tell me in this day and age you have about 12 lawyers, piling one on top the other, trying to bring legislation to the Parliament, so again you have the monopoly of lawyers. I believe the time has come to follow the British example, and even so, in terms of setting up medical councils and medical boards, as is done in other Caribbean countries; that we

should broaden the competence and the experiences of the Law Reform Commission. For the same reasons, I am saying that the monitoring committee seems too restrictive in its perspective and its obvious suggestion.

3.45 p.m.

I would have liked to see a report laid before or referred to by the Attorney General in trying to justify the amendment. Unfortunately, there is no such report. I do not believe that the case for the amendment has been well laid out by the Attorney General. It is not because it comprises a simple phrase with the agreement of the parties. It is similar to a wedding ring. It is a very small object but without it there should be no marriage. If you take out this particular phrase you will kill the spirit of the Mediation Act which is based largely on the voluntariness of the participants. You will be subscribing to an earlier point I made that the Judiciary has hijacked mediation in this country.

Incrementally, it is being done. This is another step toward making the mediation concept and practice the traditional path of judicial proceedings. We know that there could be reasons such as the unwillingness of partners in disputes to willingly go to mediation. That is part of the process and their right. That is part of the philosophy of mediation and we should seek other means to deal with it. Prove by the accomplishments of these Family Courts over time, that it will be done in a voluntary manner.

If the monitoring committee had told us that a certain percentage was unwilling and you cited a case or two to show us, as parliamentarians, how it would have been better if they had gone voluntarily, that gap would not exist in my mind. He has to come stronger to persuade my colleagues and me that this amendment should be supported. It is more than that. It seems to me that the Executive needs to be more consistent in this matter of community-based justice, or having a broader and strictly legal approach to deal with these matters of disputes as those outlined under section 3 of the parent Act relating to family proceedings of 2004; that is matters arising out of matrimonial or domestic relationships and matters concerning the welfare, maintenance and guardianship. I will come back to welfare in a while.

I feel a bit let down by the way the Executive is handling this matter. On one hand you have a tremendous amount of work and expenditure undertaken by the Ministry of Social Development and other areas of the Executive towards restorative justice and on the other hand, parts of which the Executive has some jurisdiction, you are pushing it back into the strictly legal mode and that is

creating some inconsistencies. We are not saying that restorative justice which relies heavily on people coming together to forgive, compensate, explain why, promise not to do it for certain offences, will solve all the problems. We have taken an important step in one or two ministries with great expenditure. Now, you are coming on the other end, with clenched fists, incrementally, to push back these things in the traditional legal sector. I am quite worried. I think that the amendment is brought in too leisurely a manner.

Sen. Mark raised the question of facilities for the Magistracy. To some extent it is a valid point. When you look at the estimates given by the Government to the Judiciary, there is a tremendous increase over the last few years. In the last few years, the staff at the Judiciary has increased by over 200 per cent by all different kinds of officers such as managers, coordinators, and there is even a building and maintenance unit, whose job it is to inform the Government or to take charge of certain aspects of their buildings. They asked for that jurisdiction and they got it. The Government has also given more leeway in terms of budgetary allocations. Whilst I understand the point, I believe that the Judiciary can carry some of the responsibility, if not blame in these matters. It is too reflexive to blame the Executive for everything that happens. Not anymore. Not when you look at the estimates of expenditure and the drift from the Executive onto the Judiciary on certain powers and privileges. We have to be a bit reserved on that point and ask the Judiciary to help us mind their business with their cooperation as well.

I mentioned the point about family and the welfare of children. The whole Family Court scenario rests not only on the fact that we need to clear up the backlog in an expeditious and fair manner, but also to prevent an increase in some of the family problems that face us and to have a better welfare policy in practice for our children. The cases will increase.

When I looked at the last annual report of the Judiciary, in terms of the number of cases that come under the relevant family laws; the Status of Children Act; the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, there are thousands of cases both filed and dealt with. It is about 30 per cent of the cases before the Magistrates' Courts and the number is increasing year after year. About 30 per cent of those cases will fall under the Family Court. It means that you need more than a monitoring committee and the leisurely manner that is taken before us. As far as the family is concerned there is the plight of street children; children in prostitution and child labour. If you listened to one of the Ministers the family is in deep crisis in this country. The more quickly we wake up and expedite matters—some of it is being done by the Ministry of Social

Development. If this remains neglected at the family level, the welfare programmes will multiply both in terms of expenditure and in an inverse relationship to the outcomes. That is the more you spend, the less you will get. The other institutions, particularly the education system will be more and more severely burdened by the damaging consequences from the family crisis that I am speaking about. Now is not the time to talk about the crisis, but those of us who have ears to hear should listen and those who have eyes to see should also see.

The Minister of National Security has given attention to the rising crime among the young people. Where did these young people come from? Families. If you look at the legislation, and in particular, the Family Proceedings (Amdt.) (No. 1) Bill which has been withdrawn, you will see certain operations and units that can fall under the Family Court structure that can prevent such damaging consequences. I will leave that aspect for another time. I alert the Parliament and the appropriate Ministers that this matter of the Family Court, given its serious consequences be taken very, very seriously.

I suggest that the Minister and the Government revisit urgently, the Family Proceedings (Amdt.) Bill. Let this pilot study come to a quick and proper end and come back to Parliament with a fuller package of legislation that will deal with family matters; the welfare of children and will restore some significant aspect of the philosophy of mediation onto the national agenda. It is quite clear that whilst we were in agreement to some extent with the pilot nature of the Family Court, by now we should have had some reliable evidence of how it is working and if it is not working well, why it is not working well. Jump high or jump low, we have to consider a Family Court Bill sooner or later. We cannot run away from that. The pilot study was a step towards the Family Court Bill. I believe that in the circumstances that we face today, that process should be expedited. I further ask that that process include the Ministry of Social Development as a collateral agency in this social legislation matter.

When there is a mother with ten children who does not know the father of each one, this is the situation that reaches the court and draws on taxpayers' money repeatedly. I am using this as an example to suggest that whatever agencies we have and money allocated to the different agencies in social welfare, the reach between that money and what is happening at the ground level is not there. There are so many other incidents.

A man chopped his wife to death two days ago and I understand that the villagers ran him down and held him. I believe that with a properly structured

Family Court and a supportive Ministry of Social Development, we can be proactive in terms of the agents, social workers, probation officers and counsellors. They will have a long enough reach to know what might take place and to prevent it. It was known to the police and the villagers that this crisis would have erupted sooner or later. If there were a proper agency at the district level; proper utilization of the funds and personnel, I believe a counsellor, probation officer or an officer in the district should have been able to warn the proper authority about this imminent murder. Everybody knew that the woman was under siege and it was only a matter of time. I cite that example to show that whilst we have money and a number of agencies, the reach between those offerings and the actual problems that exist on the ground level, is too short.

To compound the problem, every year we notice that the Government—perhaps it has no option—asks for more and more money for these same programmes. When I made the point it was not to offend the Ministers, but to encourage them to start asking for some outcomes from the expenditure. Some people really need the help and they will need the help repeatedly. We know those handicapped people are in utter distress. There is a grey area. There is a group of people who should be able to help themselves and understand that if only they need to give back something that the Government gives them, it is just simple civility and law-abiding.

We are not getting that exchange. The garbage that flows from those deficiencies come in the Family Court. They come under the Ministry of National Security and drop in the Ministry of Education. The Ministry of Social Development has to do a mop-up exercise which Sen. Dr. Mc Kenzie calls “try to mop up the sea”. There is circularity. The Government must revisit its policy on matters of mediation, Family Court and restorative justice and impress the Parliament with a more consistent philosophy and legal framework.

The same absence of a proper reach is there with the pensioners. You do not reach the pensioners. They have problems with medicine and hardships to get their cheques. With the vendors, you have regional corporations and the Ministry of Local Government. When it comes to a decision to treat with the vendors, it is as if there is an invisible bureaucracy. How can you move the people from Arima Market at Christmas time to renovate? There are millions of examples, metaphorically speaking. The reach between the bureaucracy of this country and the people who need the help is either absent or too short. I made the same point to the Minister of Consumer Affairs on the last occasion. The Minister did not respond to my concern. He is one of the primary Ministers who ought to take this

point seriously. Are we reaching those who are in need of the money with our bureaucracy? The answer is no. As Minister of Consumer Affairs it falls in the same category of welfare.

The repercussions affect family life; children leave home and mothers are left unkept. Up to this morning there was an issue where they were asking a sample of the population whether they feel that the Government is doing enough to prevent domestic violence. The answer is no. In today's *Newsday* on page 9, there is the question: Are the Authorities doing enough to stop domestic violence? That is related to the Family Court. One person said that this crisis will not stop and the authorities can do only so much to make a difference. Five others said that the Government is not doing enough. This is the dilemma that we face. At the same time, the Government cannot do everything in matters of family life. I have been asking for a line to be drawn as to where self-responsibility will take off and government welfare will properly reach. We are still searching for that line.

It is time that families be told one way or the other that they have a responsibility to bear in raising their children and looking after their welfare. I have made that point several times and I tend to do it repeatedly. It shows the incivility of this country. When you make a point about parents accounting for their children or being responsible, people say no for a million and one reasons. I am not asking for anything new. Laws exist that call for parental accountability and responsibility. People do not even know the laws. How can they act in accordance with the law? It is a travesty against the welfare of children for parents to bring children and leave them uncared for, especially when they can do better.

I urge the hon. Attorney General to expedite the process to bringing a Family Court Bill to us. Through the assistance of my colleague, Sen. Prof. Ramchand, I read the Attorney General's presentation at the time when this Bill was being introduced, I must say again, with regret, that he was not persuasive as to the reasons this Bill was withdrawn. He was not persuasive because I think that he is being influenced by the Judiciary. I understand the fraternity that lawyers have with each other, even the Attorney General; it is a string that cannot be easily cut. The fraternal feelings exist. I must tell him that the Chief Justice is not his boss. His boss is the people of this country as long as he holds that office. That makes a tremendous difference. I do not know if he can say the Prime Minister because that will make him a politician.

Given the constitutional aspect of appointment and what it claims to represent, the Attorney General should be broader than just a lawyer. He should have a

vision extending beyond the legal fraternity from which he comes. I have a feeling that he is lapsing in this regard. I have a feeling that when the Chief Justice calls they are willing to answer and not negotiate. I do not think that we should deal with the matter so arbitrarily for two reasons. They are the amendment before us and the reason for withdrawing the Family Court Bill. The reason about Uganda and Australia and not being relevant, I have seen no evidence to support that particular allegation. That was one of the reasons advanced for withdrawing the Bill. In a sense, we are close to a mess when it comes to this Family Court. It is not a simple amendment for the reasons I enunciated. It strikes at the heart of mediation and what a voluntary settled negotiation ought to be like which is what the Bill should be about.

Section 5 to which the Minister referred says "where in the opinion of the court". It means that the court, magistrate or judge will have to form an opinion. Recently, when I read the extent to which magistrates are willing to be trained to form such enlightened opinions on contemporary social problems, upon which many of the family matters rest, I was very disappointed. This story has been going on for a long time. This Government in particular, and to be fair to them, I believe has been bending backward to supply the Judiciary with cash. What happens to the cash as I said, is another matter.

When there is a conference where you invite magistrates to improve their capacity to make judgments as referred to in the legislation they do not come. They absent themselves with an arrogance that is shocking to the taxpayer who expects better, to the extent that the Chief Justice has to write them. I refer to the *Newsday* dated Sunday November 07, 2004 on page 5. Are we going to sit quietly and allow this to happen? Every time there is a problem it is either the magistrates or the judges want more money; better conditions or something else. We can give them that but the taxpayers want performance and diligence. We have been hoping for that for a long time. It is a longer story than that. We leave that for another case at another time.

Magistrates have to buck up because the expenditures are quite exorbitant in many respects. It is a pity that the Chief Justice has to write them to fulfil their duties which they should be doing very willingly. There is more to it.

Looking at the spirit of the legislation and listening to Sen. Mark and the hon. Attorney General, we have to rethink—that is why I hope that the Family Court Bill will come when we have a fuller and more robust debate on this matter of family justice and mediation. We have to let the Chief Justice relax his grip on these matters. I wish to see the Executive take a more frontal and substantive role

in formulating both the legal framework and the objectives that are set out in such legislation.

It is not because other countries such as Europe and England have it. We have to get down to the level of having lay magistrates handle some of these matters, instead of magistrates and judges. We have to change the paradigm. The Family Court Bill had provision in several places for very experienced people to assist the court. When you look at the experiences that they were bringing, they were just as capable of adjudicating in the matter of mediation.

If the Attorney General wants to make his mark on developing jurisprudence in this country he should remove himself from the narrow shackles of legalism. He once rather cheekily replied to me that it has to be legalism because it is law—I was speaking of a broader conception of jurisprudence. He has to break the barriers; remove himself from the narrow paradigm and establish a system of lay magistrates to deal with family matters and mediation. It is an idea that is worth some consideration. This idea of a monitoring committee buried in the bowels of the Judiciary should be totally removed or supplemented by a wider array of personnel with broader experiences.

As we come to the actual hearings there is a growing tendency in the courts to have expert witnesses. From what I know, some professionals who appear as expert witnesses claiming to be one kind or the other are one stone's throw away from the obeah people. They have brought all kinds of people to give expert testimony. Sometimes it is a joke. They make a "pappy-show" of the trial. Some of them who are really experts, professional and retired, give evidence. I do not think that a court should allow such expert evidence to be given by one side and let the jury or magistrate decide for that side. If expert evidence is given by one side it should be given by the other side. In few professions do you get experts agreeing totally. Before the matter reaches a final outcome, this matter of expert testimony should be dealt with in a more balanced manner.

Child witness testimony or matters of child abuse are emotional issues. I believe that a panel of experts with proper credentials should be registered in the court from which experts can be drawn as one means of controlling any unfair bias. It seems to me that the magistrate is easily moved. The tests that psychiatrists use—those of us in the profession or close to it—are not all that reliable. They are effective in using drugs whether it is paranoia or schizophrenia. As you would know, psychiatry is a lame science. The MMPI or whatever measure they use that is produced in court as evidence is not all that reliable. It could shift

gears according to who interprets the results and the cut-off point for what scale is used. The dangers are quite serious. We can do much injustice if we rely on such evidence in the courts. It is something that we have to clean. If you are speaking as the legislation speaks to the welfare of children, custody, paternity and safety, the Family Court personnel, especially magistrates and judges, will have to look very carefully at this issue.

It is said, and I believed practised to some extent, that the words of a dying person are taken very seriously in evidence. The words of a young child are taken very seriously in evidence. These books, *The Child Witness*—I am sure that my distinguished colleague, Sen. Seetahal will know something about this—*Legal Issues and Dilemmas*; *The Suggestibility of Children's Recollections and Implications for Eye Witness Testimony*. It would be indiscreet of me to recite passages from the books. It will be enough to say, "Be warned! Children tell a lot of lies, not consciously but subconsciously and if the prompting is in a particular direction." There is another document which corroborates what is in this book. It delineates the number of times innocent people have been sent to jail, only to find later on the people who gave evidence when they were children, when they grew up, they made confessions of how they did an injustice to the person. There are many stories like this. The Family Court and what it purports to deal with are serious matters that need expeditious handling.

I forgive the Attorney General for the apparent leisurely approach in which the amendment was brought to us. I know that he is a meticulous person. I know him as a law lecturer and how seriously he takes his work. Perhaps, it hurts me to make these remarks. It is not a matter of insinuating anything unpleasant. I am making the contribution this way to encourage him to take it seriously. If I am not persuaded I would have reservations about supporting this legislation.

There are other issues. I can cite one or two in closing. This matter of leaving women undone is a serious matter since there seems to be little or no laws governing the extent to which men should leave women in distress, apart from paying maintenance which is another issue. The National Parent-Teacher Association claimed that many mothers are in distress because the women have children one after the other and the men leave the women unattended. We look at the woman as a single mother and let her carry all the blame and responsibility. There should be some curbs on such masculine delinquency. Perhaps, we can look at that in the legislation. I am not saying that you should jail men for maintenance. I have my reservations on that. It presents some of the dilemmas when we are dealing with family laws if we have to adjudicate on them.

Listening to what Sen. Mark said and he is not here, I hope that is no disrespect to my contribution, because I would like him to hear what I have to say about this in the case of judicial delinquency, such as the absenteeism of magistrates at a conference that they should have been at.

It is time to rethink the issue of leaving out the Judicial and Legal Service Commission from the oversight of Parliament. The hands of the Chief Justice are tied. There is a limit to what discipline he could enforce on his personnel. Transparency is a great corrector. If you bring before the Judicial and Legal Service Commission with some discretion before one of the Joint Select Committees of Parliament, these matters will receive attention in a proper and responsible way on behalf of the taxpayers. The archaic reliance on the separation of powers in its absolute sense can no longer hold up in a modern era democracy. We have to find ways creatively and responsibly to see whether we can monitor the efficiency of the Judiciary without too much interference.

Madam President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. Prof. R. Deosaran: In closing I think that is one of the more important points. It will also free the hands of the Executive. I am finding difficulty in understanding why the Executive does not show a more positive attitude towards supporting the parliamentary Joint Select Committees. It will help free their hands from taking direct action; put a mediating structure which is Parliament, the house of accountability, the home for transparency and the deliverer of fairness. This is an opportunity for us to start the march towards bringing the Judicial and Legal Service Commission to experience oversight by a parliamentary committee. I believe that the time has come. We can no longer live in the comfort and blind shadows of sterile independence and non productive separation of powers.

I hope that in this Divali season I have been able to produce some light to this debate. I hope that it was received in the spirit in which it was delivered. Finally, I must express my admiration for your sartorial excellence and those of the female Senators in Parliament. [*Desk thumping*]

Thank you.

Madam President: I was going to suspend for tea. Are you going to be five minutes, Minister?

Sen. Abdul-Hamid: No.

Madam President: Hon. Senators, we will suspend for tea and return at 5.05 p.m.

4.25 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

Madam President: Hon. Senators, we have been assured that the rest of the lights should be on in less than five minutes and that the recording can take place. It seems that we can continue. Minister you said that you are not going to speak again.

The Attorney General (Sen. The Hon. John Jeremie): Madam President—

Sen. Mark: I think that Sen. Montano wanted to speak.

Madam President: Where is he?

Sen. Dr. McKenzie: Madam President, in all fairness, I think that people think that there is no electricity and we were wondering whether the sitting would have been in progress. I suggest that in all fairness since we knew that Sen. Adbul-Hamid should have spoken and he is not speaking and we know that Sen. Montano wants to speak and probably, Sen. Dana Seetahal, if you would allow me, I will rush to the tea room to ask them to come in a minute.

Madam President: I agree with you. There was some doubt about the whole thing and therefore, somebody can hurry them. I am giving them one minute.

Sen. Robin Montano: Madam President, a thousand apologies. I knew that the power was gone.

Madam President: The only reason I decided to wait for you is that I knew that there was some doubt as to whether we would be starting. That is why I gave you the grace. Senators, in future, if you are not on time you would not be allowed to speak. Please continue.

Sen. R. Montano: Madam President, may I humbly apologize. I knew that the power was gone and we had emergency lighting. I did not know that we could continue to sit with the power gone. For that sin I beg this Chamber's and your forgiveness. I humbly apologize to you and everybody. I would not have done it intentionally.

As you know, I say this often. If you want to understand a problem, go back to basics. Does that mean that we are back to normal? Let there be light? Less than

a year ago, this year I believe, we debated and passed Act No. 2, 2004 relating to family proceedings. Less than a year ago we decided in this Senate for all the reasons contained in that debate, that we would exclude compulsory mediation. This afternoon, it seems silly to me to go through all the reasoning again. Surely, the collective short-term memory of this honourable Senate cannot be that short. Why are we spending time debating a matter which we debated before and we decided in a certain way before?

Senators, what has changed in the interim? Listening to the hon. Attorney General, I did not hear one thing of a significant aspect of the whole rigmarole that could justify the change, other than the Monitoring Committee. I have to ask a serious question. Who is the Monitoring Committee? The last time when the original Bill was piloted, I do not have the *Hansard* of the hon. Attorney General, so forgive me if I do not quote him exactly. He said that the Monitoring Committee comprised among other people members of the Judiciary and the legal profession. Do you know what is being said in the coffee shop of the Hall of Justice by legal practitioners? Lawyers who practise have been laughing and telling me, "Hey, Robin, you know they are going to change it. Why?" That is even before the Bill came up here. Members of the legal profession who are on this Monitoring Committee, so they say, are mad because you took away some work from them. "Really?" "Yes," they said. You took away work from them.

When you go to a professional mediator he or she charges about $500 or $600 an hour. That is the price of mediation. Many people were licking their lips and rubbing their hands with glee because they figured that mediation would take a long time, and it always does. Let me explain something to you.

We are not here dealing with matters of domestic violence or criminal matters, but strictly, with matters that fall under the purview of the Family Court. This court is dealing with divorce and at the end of the day that boils down to an argument over two things, money and children. The argument is always there. I do not know if you are aware. Do you know that there is one ground for divorce? That ground is that the marriage has irretrievably broken down. There are five ways to prove it. The five ways boil down to one ground. For the education and edification of this Senate, the five ways are that one spouse has committed adultery. Senators will be amused to know that adultery in itself is not a ground. If one spouse has committed adultery and the other spouse finds it impossible to live with as a result, the mere commission of adultery does not prove irretrievable breakdown.

The second factor proving irretrievable breakdown is that the parties have been separated for two years and both consent. For the record this is the cleanest, easiest and least expensive way of going about a divorce.

The next way is that the parties have been separated for five years. Nobody has to consent.

The fourth way is the old way of desertion. Then you have to be separated for two years before you can prove desertion.

The fifth way and I hate to use this word in the Senate and I apologize if it is unparliamentary—but it is the nastiest. It is one that I try to stay clear of. It is the old ground of unreasonable behaviour. One party has behaved so unreasonably that the other person cannot reasonably be expected to live with him or her. You get many arguments in there. Even when you go through all these factors and prove irretrievable breakdown, the fight comes over money and or custody as the case may be.

Coming back to mediation we argued in the Senate successfully and the Senate agreed with the argument then. I am waiting to hear why the argument should change now. We should not force an individual into mediation. I heard the Attorney General say that the High Court has that power. With great respect to the Attorney General, I am not aware of that, as a lawyer who has done 1,000-plus divorces. Do you like the number? It is more than 1,000. I have been in practice for over 30 years.

Sen. Yuille-Williams: You are a break down family man?

Sen. R. Montano: No. I am not. Good joke on my head, but not the truth.

The High Court does not have the power to order mediation without the consent of the parties. This is why we are looking to amend this Act. Let us look at the law and the relevant section 5(1). It 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."

We want to take out "with the agreement of the parties" and say, "the court may make the appropriate referral". Why? Because you know this will be good. For whom would it be good? In my professional experience, mediation does not

always help. Is mediation a good thing? Yes. Have I recommended it to my clients in the past? Yes. Will I recommend it in the future? Yes. Have there been instances where mediation has not worked? Yes. Will there be instances where I know that no matter how much money you spend on a mediator it will not work?

In fact, the Attorney General and I—the Attorney General did not have conduct of the matter. His firm and mine had a matter that was only dealt with this year. I am not going to call names.

Sen. Jeremie: Madam President for the record, I no longer have a firm and shares in a law firm. I would like that point clarified.

Sen. R. Montano: The firm of Alexander Jeremie and Company when he was there had a matter. It is not an important point. I am not hitting you.

Sen. Jeremie: It is an important point to me. On a point of clarification. The firm of Alexander Jeremie and Company has existed for longer than I have. It was formed by my father. I have no shares in the firm and I would like that to be placed on the official record.

Sen. R. Montano: I agree with all that. No problem at all. The case that I am talking about started when he was a partner in the firm. The matter finished only around February or March this year. In this particular matter I was for the wife, his firm that he no longer has shares in was for the husband. In this particular case money and the matrimonial home were jumping up at the end of the day. [*Interruption*] The case is over! Finished! Finito! Caput! Ended! Let me start again. It seems that some people do not understand so I will speak very slowly. The case is over. It finished in or about March of this year, 2004.

This was a marriage of 24 or 25 years. The matrimonial home was in the husband's name alone. The husband was adopting an attitude which he persisted in up to the end. He was not going to give the wife anything. Eventually, we got the appropriate order dividing the matrimonial assets. The attitude of this husband, unfortunately, is not untypical: "I worked for 24 years of the marriage and you stayed home and did nothing. You just looked after the kids; you fed me and cleaned my clothes. That was nothing and it should be "ETM", everything to me".

The husband refused at every turn. Eventually we got a judgment and an order. Finally, the parties have now broken. In this particular case mediation would not have worked. Have I had other cases? Yes. Have I had other cases work successfully with mediation? Yes. If the court had ordered this to mediation, the lawyer for the husband would have said, the wife had to pay half.

My client would have been stuck with a bill of $200 or $300 per hour and her husband would have run me to the ground. Let it go. My client would not have had the money to deal with it. In a circumstance like that, can the judge say let the husband pay? Yes. The judge will not necessarily do that. The lawyer for the husband will say that is not fair, why we are agreeing to this, that and the other.

5.25 p.m.

You would be surprised at the arguments that can be put forward on behalf of husbands. I have represented many of them and I know them all by heart, just as I know all the wives' arguments by heart. The point of the matter is who, at the end of the day—there was an old French expression usually used when talking about the breakdown of marriage, "*cherchez la femme*". Look for the woman when a marriage is breaking down. In this case, "*cherchez la dinero*". [*Laughter*] I know I have mixed my languages, but I have done it deliberately. Look for the money! Who is getting the money out of this? Who will benefit out of this? At the end of the day, nobody in his right mind is going to say: Hey, mediation is not a good thing. That is not what we are saying on this side. Nobody in his right mind is going to say that lawyers will not recommend mediation and agree for their clients to go to mediation when they see that it will genuinely work. That is not what we are saying. We are saying that it is unfair to persons to force mediation down their throats in circumstances that can end up being unfair to them, especially when you have persons who have been pushing from behind the scenes to get the thing passed.

Madam President, we can put it another way, you know. Let us support this legislation but let us add a clause in committee which says: No person or his firm who sits on this monitoring committee can handle any mediation for the next 10 years. Let us put that in and let us hear what these lawyers who sit on this monitoring committee have to say. Let us hear them say: Not just you, but your firm cannot represent anybody in mediation and you cannot go to mediation. You cannot be a mediator for 10 years. Let us put it on them because I smell a rat here, a big rat. It is a terrible thing, Madam President, because you are seeing the Family Court and the Judiciary coming under pressure almost every day. I have heard many statements here this afternoon from my colleagues, Sen. Mark and Sen. Prof. Deosaran, who spoke about the Judiciary and its shortcomings and I happen to agree with everything that they have said.

Unfortunately, as with so many things in life, there is a "but" and one of the "buts" is this. You will recall, Madam President, that we had a debate increasing the number of judges about a year ago or so. We argued—I believe it was Sen.

Seetahal and myself—that we should increase it to more than the number, but we were not taken on. My esteemed colleague's predecessor was in the chair of Attorney General at the time. She did not take us on. What is happening? My reports are that members of the Judiciary are suffering from what I am told is carpel tunnel syndrome, that is to say, that they have to write so much that their hands are freezing up. I know one particular judge; it is so bad with him that he wears a pair of white gloves to write.

Sen. Yuille-Williams: He needs therapy.

Sen. R. Montano: Yes, he does need therapy, but they are under pressure because they have to take notes in longhand, but unlike the practising lawyers who are at the bar—when we take our notes we only have to write what the witness says—the judges have to write both the questions as well as the answers. Let me tell you, Madam President, writing just what the witness says by itself is difficult, much less having to write both the question and the answer.

Do you know, Madam President, for example, that in San Fernando there are three courts in the High Court: First Court, Second Court and Third Court? Do you know since the beginning of this law term there has only been two judges sitting in the three courts? One judge has been taken out and put in the Family Court: Justice Tam, and he is doing a very good job but he is getting rapidly overworked and overloaded. You now have the judges sitting there, and there is a backlog taking place.

Madam President, let me give you an example of the kinds of backlogs that are taking place in, admittedly, non-family matters, but it affects the Family Court because it affects the Judiciary. Look at this: High Court Action No. 2271 of 2003 between Chandresh Sharma and the Attorney General of Trinidad and Tobago and the Integrity Commission. The matter was filed on August 18, 2003 and the matter was deemed fit for urgent hearing during the court vacation. Basically, what happened to this matter? This matter involved a challenge to the system because the tenure—[*Interruption*] I am not discussing the case.

Sen. Jeremie: Madam President, may I speak? The Senator is going perilously close to the sub judice rule, if he is beginning to discuss the case. I wish to draw that to your attention, Madam President, and ask you to be particularly vigilant on it.

Sen. R. Montano: Madam President, with the greatest of respect, I want to refer you to a number of cases. I have no intention of discussing the merits of the

case, which is a sub judice rule. I only intend to report to the Senate, very briefly, what the case is about and to point out to you how the delays—

Madam President: Can I suggest then that you do not call the names or refer to the persons involved, but rather just give us your example?

Sen. R. Montano: Very well, Madam President. In this particular case, the matter was filed when the tenure of a certain commission headed by a certain retired judge had expired and the Government failed to appoint a new commission, as required by the Constitution. The case challenged the failure of the State to appoint a new commission and the failure of the Government to table certain regulations in Parliament for affirmative resolution. The case dragged on and since it had started in August 2003, the State subsequently appointed a new commission and the regulations were subsequently filed and so on. The point of the matter is that there was a gap of about six months when here was a case deemed fit for early hearing. It was not heard expeditiously, and justice was not served because it was not heard expeditiously.

Madam President, let us take another one. Again, this was during the court vacation of this year and the matter was deemed fit for urgent hearing and leave was granted by the hon. Justice Peter Jamadar in the public interest. Again, this was in the summer, here we are now in November, this particular matter was deemed to be in the public interest and it was deemed urgent, fit for vacation, awaiting a trial date. Why? Because of a lack of judges. Here is another one and again the story is similar. Here is another involving the Freedom of Information Act and again the story is similar. Here is one dealing with leave for judicial review involving certain persons and the question of appointment of certain persons as directors of certain organizations. Again, the matter is deemed urgent but it has not been heard; it is awaiting a trial date. This is my point. I am not discussing the merits. Another one again filed in January this year challenging the non-appointment of a certain board by the Government. That matter has come up several times before the court but it has constantly been adjourned due to the un-readiness of the State and the fact that the judges cannot push it forward. There are other pending matters before the courts: the freeing of the two Barbadian fishermen and the failure of the State to appoint a criminal injuries compensation board. Leave has been granted in these matters in the public's interest. There have been adjournment after adjournment.

We have too few judges; there are too few resources; matters cannot be dealt with; the Magistracy—Take a look again, we used to have what we called petty civil matters, that is to say, matters below a certain monetary value, which go into

the Magistrates' Court and into the Petty Civil Court. Anything over a certain monetary value goes into the High Court. The amount of money that involved petty civil matters was $5,000. It was increased to $15,000. Well, the argument was that their increasing it to $15,000 would take much burden off the High Court, which it did. Many of the matters are relatively simple so they could have been shoved downstairs to the Civil Court, which is true. But—and here is where we always come up with the "buts"—can you imagine how many civil disputes there are involving less than $15,000? Would you accept from me, Madam President, that it is a lot? The number is large.

Now, when you go into the Magistrates' Court like that and you have taken this large number of disputes, from $5,000 to $15,000—it used to be $5,000 and now you have increased it—and you still have the $5,000 disputes—that is up to that limit—so you have zero to $15,000 going into the Magistrates' Court—I know it is more than quadruple but I am not sure of the number—you have multiplied by a huge factor to load on the Magistracy in the Petty Civil Courts. But!—and for the sake of *Hansard* that should be a capital B, capital U, capital T—"BUT", you have not increased the Magistracy, or the resources available to the magistrate in order to handle those problems. So what do you have? Gridlock! You now have the Magistracy on the criminal side having to deal with—I am sure Sen. Seetahal knows the numbers better than I do and, of course, I am exaggerating when I say a thousand cases a day before one magistrate, but you understand the point I am making when I exaggerate like this.

Madam President, you have so many cases now coming before the Petty Civil Court in the Magistracy; you are increasing their load but you are not doing anything for the magistrates so that they are buckling under the load—magistrates sometimes take two, three or four hours just to go through their cases to adjourn them—we then come here and criticize the Judiciary.

I agree—and I think the point was made by Sen. Prof. Deosaran—that the Judicial and Legal Service Commission is not a sacred cow. I am one of those who would stand in public any time, anywhere, whether in or out of this Chamber and say: Yes, they ought to be brought before a Joint Select Committee of Parliament and they ought to answer. I am one of those who would agree judges are not sacred cows. I admire the American system whereby justices of the Supreme Court—and I believe the Federal Court, but I stand subject to correction—are hauled before a Senate committee and grilled, so we would know the quality of the person that we are getting as opposed to what goes on in private. I am all for openness in the society but, I would have to be the first one to stand

and say that at the end of the day, we are overworking our Judiciary; we are overworking our Magistracy; we are not giving them the tools and we are spending time—All of this, incidentally, is not an argument for saying, take out the court may: "with the agreement of the parties" because this is a good way of lightening their burden.

We must lighten their burdens in a professional manner. We must lighten their burdens by giving the Judiciary and the Magistracy the tools with which to do the job. We must not lighten their burdens by allowing them to shed their responsibilities, like the person who goes before the gates of the temple and sheds himself of his responsibilities by crying COBAN. No, we do not lighten their burdens by doing this. They are paid by the taxpayers in this country and it is unfair to the ordinary persons and to the litigant, to say to him: In addition to the expense of your having to go to lawyers, you must now engage in the expense of having to go to mediation. Let us face it; the mediator will have to be paid. By whom, Madam President? The court can turn around and order me to go to mediation but I cannot afford it. I do not mean me personally, Madam President. [*Interruption*] Before I get teased again, this is the way I talk. I do not want to go to mediation because I cannot afford it. As far as I am concerned I put my faith in the court and that is it. You decide on the issue, madam judge or mister judge. Win, lose, or draw, I am prepared to take my chances with you. Give me a good reason why I should go.

The point of the matter is we must always keep our eyes on the ball. We must not turn around and tell people: Oh well, you must do as you are told because you are a little child; you have no say in this. Why do we want to curtail our freedoms? Why do we want to take away the rights of our citizenry in this manner? Why must I be forced into mediation when I do not want to go? What happens, too, if I go and the Attorney General can stand and say: Oh, well, you know you can go to mediation and look at the mediator and say: Mr. or Mrs. Mediator, I do not really like you. I do not want to stay here.

Madam President, 5(3) in the substantive Act says:

> "Any expenses incurred under subsection (2) shall be borne by the parties or either of them as the parties may agree.
>
> (2) Parties to any proceedings may, with the approval of the court, agree to retain the services of a private mediator, counsellor or other professional."

But 5(1) now, if we pass this the court will be able to refer it:

"…to the unit responsible for social services in the court or to some other professional…"

The court will have the ability to refer it to a private professional and even if I object, by us taking out these words: "with the agreement of the parties" the courts are going to have that power to make the referral—over my objection. What happens when I go to mediation and I do not like the mediator, so I am rude to the mediator and I say to the mediator: Look, I do not want this mediation and I am not taking it.

Madam President, 8(1) in the substantive Act says:

"A report shall be made to the court as to whether or not the mediation resulted in agreement."

What happens if the mediator is annoyed with me for basically saying to the mediator: "I do not like you; I do not trust you; and I refuse to cooperate with you?" The mediator writes a report saying: I wish to report to this court that the mediation could not proceed because Robin Montano said that he did not like me; he did not trust me and I cannot proceed like that. The judge now gets annoyed with me—

Sen. Seetahal: Could I just say something, if I may? I think we discussed that when we passed the Mediation Bill. Under the Mediation Act the mediator cannot disclose those things. Remember we discussed this at length. That is just for ease of reference.

Sen. Jeremie: Thank you, Senator.

Sen. R. Montano: But he still makes a report and what is there to stop the mediator from saying behind his back, the judge telephoning the mediator—And do not tell me it does not happen because it does happen. We can do all of this. I am well aware of what we passed, but I am also well aware of how this country works! This is a small country. Most of the judges come from private practices. All of the judges come from the profession. All of us either went to law school with each other or did our articles around town, if we are old enough. We have trained with each other. We all know each other. [*Interruption*] Of course, it is difficult. Do you think that a judge is not going to phone a mediator and say: Mr. or Mrs. X, what happened to the case of Y versus Y? Well, Mr. Justice A, do not quote me but that husband or that wife, as the case may be, really is an impossible person. Really? Okay, I will deal with him. And he or she, as the case may be, will be dealt with. That is the reality, Madam President.

Sen. Jeremie: On a point of order. Madam President, Standing Order 35(8): "The conduct of—[*Interruption*]

Sen. R. Montano: Madam President, if I did or said anything wrong I apologize! I withdraw it, right! I will withdraw anything that you like! Let us not get technical! This is not a court of law! I am trying to deal with real and substantial issues! I agree with your objection!

Madam President: Gentlemen, please!

Sen. Jeremie: Madam—

Madam President: All right, I got your point of order.

Sen. Jeremie: I am on a point of order.

Madam President: And I am on my feet. All right, let me hear your point of order now.

Sen. Jeremie: Madam President:

> "The conduct of the President of the Republic, members of the Senate or of judges shall not be raised except on a point of substantive motion."

[*Interruption*]

Madam President: Personally, I take that to mean if you are probably referring to a particular judge, which I do not think he is in this case. However, I would suggest, Sen. R. Montano, that you move off that topic.

Sen. R. Montano: Thank you, Madam President. I agree. You are correct. I was not trying to bring anybody into disrepute. I was not referring to any particular person. I was trying to refer to reality. Madam President, let us understand something. It is one thing to get up on these lovely points of order and all the rest of it. But if we do not say it here, believe me, it is said outside. [*Interruption*] It is not all right if it is said outside and we cannot say it here. When it is said outside people pay attention and when we appear to be being muzzled by archaic rules and old fashion interpretations, then people would say: "What the heck is going?" Now, I apologize if "heck" is unparliamentary. Withdraw it! Strike it from the record! But my point does not—[*Interruption*] Do you want to say something? [*Interruption*]

Madam President: Minister, please! Continue, Sen. R. Montano.

Sen. R. Montano: Thank you, Madam President. My point is simply this, referring a matter to arbitration without agreement of the parties is like taking a

horse to the water and ordering him to drink. That is the point. You are not going to get what you want. It will be money wasted. It will not achieve what you want to achieve. It is, in fact, going to assist the more wealthy litigants, which is usually, though not always, the husband who will get his lawyer to argue. At least, in 50 per cent of the cases the lawyer would argue convincingly and in the other 50 per cent of the cases where the wife's lawyer is able to convince the judge that the mediation should be paid for solely by the husband, the wife will look to run the husband into the ground on the mediation. She will say: Ha, ha, ha, you are the one paying for it now.

Madam President, you do have the cases. I have never seen a divorce where it is more than 51/49, on one side or the other. That is the reality and most lawyers would tell you in private that there are always three sides to the case: his side, her side, and the truth. But you have to understand that at the end of the day divorce is something that is terribly traumatic. You have the breakdown of family life; you have children involved; you have persons feelings involved. In some cases there has been domestic violence. In some cases there has been plain down-right lust and greed. In some cases you have utter and complete contempt and selfishness. Madam President, that is not limited by gender.

In my experience I have had as many good wives as I have had good husbands, and I have had as many bad wives as I have had bad husbands. [*Laughter*] So you understand what I am saying. This is a very serious matter and I would ask hon. Senators to please listen to me seriously. This is not a matter we should allow trivialization of. The issue comes down, at the end of the day and it will always come down, to money. The cost of the mediation is a factor to which this honourable Senate must pay attention.

Madam President, without belabouring the point, I believe I have gotten my point across. If I have not, I do not think I ever will. [*Interruption*] No, I would not try again.

Madam President, I would like to say to this Senate that nothing has changed since we last debated this Bill. There has been no cogent arguments presented other than the monitoring committee wants it. But that monitoring committee, as far as I am concerned, is suspect to say the least. With the greatest of respect to the monitoring committee, I do not believe it is necessarily being influenced in the right way. I know that certain persons would like this to pass. I know that certain persons will make a lot of money out of this. It is not our job to put money in these people's pockets from people who are in a critical and always expensive

juncture of their lives. It is not our place to do that. Divorce is terrible. Divorce is painful. Divorce is traumatic for all the parties involved: the husband, the wife and the children. It does not matter who is right and who is wrong, it is always traumatic. It is not fair and we ought not, at this juncture, to be saying to these persons who have found themselves—if you want to say that it is their own fault they have ended up in divorce, yes, next point. So what, everybody makes mistakes; that is what we came down on the planet for, to learn. A life made without mistakes is not a life lived. It is not in our place, and it is not right that we should use our power here to say to them: well you have gone and made a mistake now I am going to add to your financial burden. It is not right. It cannot be right.

Madam President: Hon. Members, the speaking time—[*Interruption*] Are you finished? I am sorry.

Sen. R. Montano: Sorry, Madam President, I was about to say it cannot be right and—I forgot what I was going to say.

Thank you very much, Madam President.

5.55 p.m.

Sen. Dana Seetahal: Madam President, as I understand, from what I have heard from previous Senators, the two issues that seem to occupy them in terms of why they may not wish to support this amendment, is one, it suggests forced agreement and two, the question of cost.

Before I go there, may I just say at the outset that the Family Proceedings Act, as Sen. Montano has indicated, has nothing really to do with juvenile delinquency; the question of juvenile court; the question of domestic violence and matters of that kind. We have a Domestic Violence Act, and it is under that Act, we deal with the question of people who would have used force in their relationship and you need to get effectively an injunction to prevent that kind of violence and how you go about getting an order and so forth.

For the Juvenile Court, there is the regular Children's Act that you can bring up a child as it were, before the regular criminal courts and if a child is found guilty you can—and my colleague asked me to make a point very clear—make a parent, for instance, pay a fine if that child is found guilty. There are all these bits of legislation. There is a Juvenile Court in which I was privileged to sit both in South and in Port of Spain when I was a magistrate myself, a horrible experience, there are other legislation providing for these things.

The Family Proceedings Act is not a Family Court Act. I think we need to make that very clear at the outset. It is an Act providing for a special type of proceedings, and the way you go about the proceedings would be different from the regular procedures in the ordinary civil court. In a pilot project earlier on this year the Judiciary facilitated the movement of matters that were already in the Magistrates' Court and in the High Court that were filed there and would normally have gone to the regular Maintenance Court. There is a Maintenance Court in the Magistrates' Court in Port of Spain; that was the Ninth Court, and in the regular Tunapuna and Chaguanas courts there would be a Maintenance Court one day a week. In the High Court there is a Matrimonial Court so what was just said, okay, we would move these matters to be housed as it were, in the family court building and we would have the matrimonial judge sitting there and there would be these magistrates who would have been trained in the kind of proceedings that this Act envisages. That is what we have and that is why it is said to be the pilot project because, in fact, there is no family court.

So we are looking at this pilot project—"we" as in "we" in this country, to see how it is working out. We may have heard the Chief Justice talking about the wonderful facilities there. There are cribs, playrooms, lots and lots of lovely facilities. You can have a heart shaped or circular shaped table and it is all conducive to agreement and all of these things. And later on in the future you would have that kind of court system. But the point is this is a pilot project and it must be monitored.

One of my colleagues asked about the monitoring committee and how come there is no provision in the legislation because we do not have an Act for a family court. We are talking about a procedure and we are monitoring this procedure to see if it can work and, therefore, there is an ad hoc committee that would look to see how it is functioning. So it is in that context this Family Proceedings Act was passed and the Act really is to move out of the regular courts, physically as it were, just to the building of the family court with its special facilities for children and so forth; divorce matters. Sen. Montano went on about that at length very entertainingly, if I may say so. We are talking about property matters, also maintenance matters, custody matters, adoption matters, all of these things that pertain to a family in that sense, not criminal, like domestic violence or where children commit offences. That is for another time and another place. Here we are talking about a relationship, it is breaking up, what you do. What about property? There are children from this relationship, whether it is by marriage or outside, what is happening with them and that is why you wanted to have that kind of scenario where things will not be adversarial. Someone only calling another

person a "B" or the "B" words and the "W" words, that kind of thing which all too often happens and it happens right now.

Madam President, it happens so much that people who get divorce sometimes they do not speak to each other in any kind of civilized manner. I know many cases for 15 to 20 years and they use the child as a kind of bargaining tool, toys. They do not want to give the child something. They would say go and ask the mother or your father and that kind of acrimonious relationship and moving them into the family court, with its special type of proceedings, is supposed to free you from that. And that is why the legislation talks about mediation, counselling, all of these things that did not happen before because the judges, the magistrates could not decide or as it were, to order those parties to seek that kind of attention. All you had was conciliation documents signed by a lawyer.

When I used to do those matters years ago I knew what it was. It was a form of reconciliation. You would have to certify that I did or did not attempt reconciliation between the parties and whether you did or you did not make any difference. Most of the time if you were honest, you would say I did not, because you are appearing for one party and somebody else is appearing for another. How could you attempt any reconciliation? It is only if the parties, as it happens, could come one day hot and sweaty, they want a divorce, "dey" this, the children and if you say come back next week and we will sign the statement by then they would call you and say they made up so that is some kind of reconciliation. But we are talking here about more hardened matters. And so it is in that context we are looking towards counselling and so forth.

Madam President, the current legislation as it is now, provides that if parties agree, the court can make a referral, not only for mediation, because people have been talking about mediation, and that must be by agreement, but it is for mediation to be referred to the unit responsible in the court for social services or some other professional which would include a counsellor. In other words, right now in this family court setting to which these proceedings apply, the court can say, okay, you are before me, you are arguing about property; who would get the house or the car, or the children or whether the father should have access more than one day a week, or the property, or whatever it is you are arguing; how much you should pay towards the mortgage, that kind of thing, well, okay, I would refer you to the unit in the Ministry of Social Development and Gender Affairs or I would refer you to mediation or a psychologist.

As it is now, that must be by agreement with the parties. The problem there is that if parties come before the court at the initial stage with that kind of acrimony,

who is going to agree? And if that does not happen and nobody agrees, you then go back to the ordinary system and you have the affidavits flying back and forth, he did this, he had a woman, she did not cook for me. All of these ridiculous things. Or she withheld sex when she should not have—all of that you know—and she turned the children against me. So you have all of these things and it goes back in the same way. What is the point of a family court? What is the point about talking about civilized behaviour and movement in that way?

So it seems to me at that stage sometimes you have to do what is best for the people and if the court says at that stage—I am not talking about mediation—the court is saying in the interest—it does not say the court *vaille que vaille*, could just say I order mediation. The Act says, and this is something that is common in many pieces of legislation. If we do not trust the Judiciary and the court to make proper orders then we might as well abandon the whole system. If we are saying that judges would do this, it is the same thing like saying the Executive or Parliament will do it. Are we to say each one of us has in our bosom all of the ethics or anything? The point is you can have bad or unethical behaviour anywhere. The point is right now, the courts have powers to make various orders and many times it is stipulated to be in the interest of justice and as it is now it states:

> "Where in the opinion of the court the interest of the parties…may be better served if the matter or any aspect..."

It may not be the whole matter. It could just be the property matter is referred for mediation or to a unit responsible, or to some other professional; the Court may make that referral.

Madam President, that is not inconsistent with what happens with arbitration in the Industrial Court. You make a referral, you go to arbitration and if it does not work out you come back in the normal course of things. And may I venture to say, if that order is made early enough, after some passage of time, you might find the parties more and more disposed to whether it is mediation or some kind of counselling or some other way of resolving their family-related dispute than if at the earliest stage they say we cannot agree, no we are not agreeing, and then you go about it in the normal way and you miss all opportunity for counselling, for mediation for anything. That is why I support this amendment because I have heard how it operates.

We have been doing a lot of work for the *Journal* of the Law Association on what is happening in the Family Court and there are reports not only from judges,

not only from the court administrators, but persons who practise there. I know persons who practise there and what has happened. And many times they would tell you that they do not bother to go or take their matters to the Family Court because their parties do not want it. They want to go on the normal way and have this separation as it were.

The second point, and this was raised by Sen. Montano, the question of cost. It is true that section 5(2) says:

> "Parties to any family proceedings may, with the approval of the court, agree to retain the services of private mediator, counsellor or other professional."

Subsection (3) talks about:

> "Any expenses…incurred"

thereunder

> "shall be borne by the parties.."

or one party. The payment is not when a reference is made by the court. If one reads it very carefully, subsection 5(1) talks about where the court, in its opinion, makes an appropriate referral. It can make it to "the unit responsible for social services" or it can make it for mediation but (2) talks about when the parties want—and I remember our discussion earlier on, their private mediator, they pay, and that is the only thing in the Act talking about they pay.

In respect of a reference under 5(1), if it is referred to the unit responsible and in the Ministry, then there is no payment by the individual. That is the first case. That is where the court refers the matter to the unit responsible. There is no payment under 5(1) by the individual if there is a referral to the unit responsible for social services or some other professional. There are counsellors and people of that nature employed with the Government department.

Sen. R. Montano: Madam President, there is no argument. Obviously, if it goes to the unit the individual litigant does not pay but the wording is, "or to some other professional". It does not say some other professional engaged by the court or some other professional in the public service. It says some other professional and there is no distinction in 5(3) as to a private professional or anything like that. Unless you come around and amend 5(1) in such a way that makes it quite clear that a referral under 5(1) under no circumstances would the litigants pay, then allright. I would agree if you put that in the law, then a lot of my argument comes out although my argument as to why

you would want to force it through still remains. But the argument about payment would come out if you made it absolutely clear and in my view this is not clear.

Sen. D. Seetahal: Thank you very much, Sen. Montano. As I was saying, my interpretation of this section is that clearly (3) which talks about the expenses to be paid by the parties refers to (2), and (2) talks of a retainer of a private mediator. Now separate and apart from that—we are putting aside (3) which talks about the parties paying and putting aside (2) which talks about you having your private mediator. The corollary or other side to that is one which is not a private mediator, one where the court refers it and in the absence of any requirement your payment would seem to me, the court.

Secondly, if it is a unit responsible under the Ministry of Social Services, clearly that is a government unit and there is no payment. Now, if we are talking about a mediator, and if it is that the parties do not want a private mediator then it must be a court-appointed or a court mediator. And again, it comes back to my original point, then that would not be something that you will have to pay for. If it is at this point, the Attorney General, in his response, wants to make it clear what 5(1) talks about—and I think it is clear enough that it is not something for which the parties have to pay—he may say so; or it could be said that any payment under this could be borne by the Legal Aid and Advisory Board. That is a second point. I think that really would be all that I wanted to say about this.

Finally, people are talking about the question of imposing this old system and this is not what it is all about. I mentioned that it is only the mediation and as I understand it, it is something that usually comes voluntarily. The other aspect could be something that is imposed. The arbitration is imposed and so forth but there are too many pieces of legislation. We have the Community Services Orders Act, we have the Plea Bargaining Act, we have the Probation Act, there are many, many Acts that are alternatives to the normal dispute resolution and they are not being utilized. Parliament spends hours talking about community service and how valuable it is; hours talking about plea bargaining. Lots and lots of times we go through it, we talk about it but what happens is that it is not being utilized because people go back to their old adversarial way because there is this choice there, there is an option and they choose the easiest old option and go back to the adversarial system. We are not plea bargaining, we are not consenting to community service, and we do not get on.

Madam President, we are not progressing. We are not getting on in a civilized way to resolve our disputes by paying with community service or by having

mediation or counselling or anything of that kind. Something which I strongly recommend for other things, like, for instance, drug addiction. We are going through the whole old thing of hitting people hard on the head and just not getting on.

Sen. Mark: Madam President, through you, could I ask my hon. friend if she did not support this measure in November and is she now saying she is supporting the Attorney General, changing it? I want to find out if this is what she is saying because I got the impression when the hon. Senator was in the debate she supported it. I want to know if she is changing her mind.

Sen. D. Seetahal: If it is flip-flopping, I am like Sen. Prof. Deosaran who agreed this year with the Summary Courts (Amdt.) Bill where he had agreed earlier on with something else in the previous year. But if I may go on and answer Sen. Wade Mark, we can get wiser. My point is at the outset, yes, when we were talking about it—and Sen. Montano brought up the point in the previous debate about mediation and that it should be with the agreement of the party. Yes. I am saying, however, that since then, in my capacity as editor for the *Lawyer*, I have had cause to receive reports about the family court from the different parties and I will go back from the judges, from the court administration department. There is a whole feature in the *Lawyer* coming up this month, how the court operates and I have heard about the difficulties in getting the parties to consent to this. I am saying that is reminiscent of many measures we have put in for the well-being of the citizens and they are not being used. It is in that context I am saying that I think that this is a good measure and I am also answering the question of cost as I see it.

Sen. Mark: Madam President, which is the problem. The hon. Senator has information, maybe based on her situation, that we do not have and that is why we have asked the hon. Attorney General to provide us with that information as well. Some people have privileged positions and we do not have it.

Sen. D. Seetahal: Madam President, having regard to all of those matters, and the concerns expressed which I think are not valid reasons, some of them anyway. The cost, is not a reason for concern. I support the measure. Thank you very much, Madam President.

Sen. Dr. Eastlyn McKenzie: I did not intend to say a word but having listened—and over the weekend I spoke to someone who, in fact, was in charge of the mediation centre in Tobago. I asked her what the experience of the centre was. She mentioned the problem between the Judiciary and the mediation centre and so forth.

One of the things I tried to find out about was what the type of cases were. She said most of the cases were people who were dishonest with each other. I took something from you and promised to pay you back and I did not pay you back. The next one was people who had disputes. My father left this amount of land for four of us and one wanted to take more than the others and that type of thing. I asked what was her experience about family matters and she said people were very reluctant and unwilling to come to deal with intimate family matters like divorce and relationship matters because of the fact that Tobago, being a small society, everybody knows everybody else.

So if I am married to Mr. Hamilton and I go there, they say boy, you come up in front of me, I know your father, mother, this and that. You grew up in a family in church and so forth. I am just drawing that as reference. They knew each other so well and because of a small community that people were unwilling to go to these people who knew them too well and would know their business and as a consequence, she said she did not believe that over the time they had even three matters, that even when the magistrate or judge would suggest to them that, "I think you all should take some time, go for mediation; go for counselling and so on", they would say, "I do not want to go there, Mrs. Duncan would know my business". She would think that although we are happy and looking happy and nice with each other and we are out holding hands, and when you see me, and ask how everything going, and you would say fine, nice and now I am going to her with the truth and this is what I do not want to come out. And, therefore, there was an unwillingness to co-operate with the order, or the suggestion or the persuasion.

I am saying this is what makes—I feel very reluctant because I think we may be spinning top in mud by saying, "I want to suggest to you that instead of going through with this, I want to refer you to another matter." I think we might get the reverse at times depending on the people and the situation because if they feel, I am going and they are going to send me to the family court building to this mediator, this psychiatrist or whoever you are sending me to, I am not going to any court at all.

I think we need to be extremely careful and I think culture will play a very great role in how people accept the proposal and how people would really access it, not because they do not see the good in it but because of a cultural thing inside, that in our Tobago society, we do not want to expose it and probably in some of high society too. They do not want you to know they are having a conflict. Go to court, finish the matter or we would stay in abeyance. We are not going to be very unwilling.

PROCEDURAL MOTION

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, in accordance with Standing Order 19, I beg to move that the Senate continue to sit until the conclusion of the debate on the Bill before us.

Question put and agreed to.

FAMILY COURT (AMDT.) (NO.2) BILL

Sen. Dr. E. McKenzie: Madam President, another thing I feel is that according to the gender of the person sending you—let us say my husband and I have gone to the normal Magistrates' Court or to the High Court, and the judge says, I want to refer you to wherever or whoever, or division or whatever. As the woman in the matter, I feel he is only saying that because he does not want to solve the thing because he knows I have rights and he is sending it there because he wants to give him an edge over me.

Madam President, these are some of the things that we have to take into consideration and we have to couch this in a language that would make people feel they have an option and a comfort. Thank you very much.

The Attorney (Sen. The Hon. John Jeremie): Madam President, if I can begin with the contribution of Sen. Dr. McKenzie, at present, the court as you know, it is a pilot project and it is confined to the St. George West area. But I appreciate the point that there are cultural sensitivities which need to be taken on board and I shall ensure that the monitoring committee does take these cultural sensitivities on board. If I could just move on to what I perceive to have been the main complaint this afternoon about the suggested change.

Madam President, I think that in my initial contribution, and I must apologize to my colleague, Sen. Prof. Deosaran, I was particularly brief in opening the debate on this Bill. The reason for that is because I felt I had been on my legs at least four times on this particular matter and that my positions—both in the other place and in this place—had been fairly set out in *Hansard,* but for the sake of completeness, I will go over some of what I did say.

I think a great deal of the confusion which, with respect, I have heard this afternoon, has stemmed from the fact that there is the perception that the amendment which is proposed is going to force mediation down the throats of persons who are before the courts. That is not, in fact, the case.

In my initial contribution I attempted to draw a distinction between forcing the parties to mediation and forcing them to consider mediation, which is all that

is sought in the amendment now being referred to. Referral to mediation is quite distinct from mediation itself. Mediation itself is governed by the Mediation Act. It is a process. The process begins with a referral to mediation and it ends there and then if the parties do not agree. At present the referral to mediation and that first initial introduction to what mediation is all about, takes three hours. It occupies little in terms of time, effort, resources and cost and, perhaps, that is something which I neglected to elaborate on.

6.25 p.m.

That is all that is sought at this point in time—to give the magistrate power, which he now has, to refer to probation officers. We felt that probation officers did not possess the skill set which this new class of persons that we have created in the Mediation Act would possess. That, in essence, is what is at the heart of the amendment. I thank Sen. Seetahal for elaborating on this point.

It is not flip-flop for us to have come a few months ago and to have agreed to consider something and, on reflection, to go back and have the monitoring committee, which is charged with overseeing how the project works on a day-to-day basis, make recommendations to us and for us to run to the Parliament, after having considered these recommendations, given the limited time span that the pilot project has and given the will which we as an Executive have expressed, to ask the Parliament to give the court the power it does not now have or which, in the case of the Supreme Court, it possibly has by way of argument in terms of the inherent jurisdiction.

Having moved off that main problem, I wish to address, out of respect for my colleagues, some of the other points which might not have been directly relevant to the debate, but which were raised here. The first point, which I propose to deal with, is one that Sen. Mark raised in relation to court resources. Over time, the Executive has attempted to devolve responsibility, with respect to the maintenance of court buildings, to the Judiciary.

The reason is that we found, as an Executive, it was difficult for us to schedule work around the timetable of the court. The court, as you know, goes on vacation at a particular period. The Ministry of Works and Transport is not able to be sensitive enough to their needs and we felt that, at least, as a first step, we ought to devolve responsibility in respect of renovations to the Judiciary.

I must say that the Judiciary has only had this power for three years and they have done very well with the power. I say that in relative terms because the

Executive was not doing a good enough job. That is not to say that there have been no problems. The problem that Sen. Mark referred to in relation to the San Fernando Court is an illustration of the problems that my colleagues in the Judiciary are experiencing. The Executive is prepared to assist the Judiciary in the exercise of this new power. I have been in communication with the Chief Justice and I have expressed my wholehearted support for his efforts to refurbish the court and to do what is necessary to bring it up to speed in as quick a time frame as possible.

If I can move off that, on a related point, the problems with respect to the San Fernando Court are no excuse for us not ploughing resources into the Family Court. Both ought to be done and we are attempting to do our part in relation to what we have jurisdiction in respect of, that is the Family Court.

The Senator raised the issue of the Mille Fleurs property. I can cross-reference this with a comment which my colleague and friend Sen. Prof. Deosaran raised in relation to my fraternal ties with the Law Association. I have said this on a number of occasions. I have been with you for just about a year. On that occasion I gave an oath and that oath had nothing to do with the Law Association and everything to do with the people of Trinidad and Tobago. It is in the exercise of that oath that I gave advice to the Ministry of Works and Transport and the Ministry of Works and Transport took the action they did.

My style is not to engage in public confrontation, but I should like to take this opportunity to tell this Parliament what actually transpired in relation to that matter. First of all, the Law Association had no lease to repudiate. It had possession to be recovered. There were three meetings leading up to the Ministry of Works and Transport taking possession of the property. This was not something that was done in the dead of night. It was not something that was done unexpectedly. It was not something that was done in a high-handed fashion. It was not something that was done because I beat myself on the chest and said that I am the Attorney General and I have the power.

There were three meetings—one between the Minister of Works and Transport and the President of the Law Association; one between the Attorney General's Office, that is me, and the past President of the Law Association; and one between the Prime Minister and the past President of the Law Association.

There was a series of letters—five or six—going back and forth between the Association, the Minister of Works and Transport and the Attorney General on this matter. The Law Association was told that, given the state of the property, the

Ministry of Works and Transport was going to take possession at a time certain. Prior to that, locks were placed on the Mille Fleurs property. No locks had been placed there before that. As a matter of fact, the Ministry of Works had, the week before—and this was during discussions with the Law Association—placed materials on the property and a watchman.

In circumstances, which I prefer not to discuss now, the watchman of the Ministry of Works and Transport, notwithstanding the fact that materials of the Ministry of Works and Transport were on the property ready to begin urgent work, was removed from the property and locks were placed. I must add that the Law Association had no offices on the property and was not in occupation of the property. The property was in a deplorable state. It had been in that state for three years.

Madam President, all that was required to be done in law—this was done in accordance with due process—was that possession had to be had of the property. When officials of the Ministry of Works and Transport first went to the property after the eviction of their watchman, to see to the materials and to begin work, they were met with a bolted gate, which was padlocked and they were told by the watchman—I do not know on whose instructions—that he was not to allow anyone on to the property, including police officers.

In those circumstances, Madam President, the State had no option. Police officers went there. [*Interruption*] They did not do anything which resembled a display of force. All that was done was that the locks were removed. The Ministry of Works and Transport went in and started the work which it was supposed to start, which included the placing of doors. The property was without doors and windows. They placed doors and windows on the property and stabilized the cantilever floors. I am no expert; I do not know what they are. I am just recounting what transpired.

Sen. Prof. Deosaran: May I interrupt you for just one minute?

Sen. The Hon. J. Jeremie: May I just finish. I will not give way, but at the end I would be prepared to answer. I am just recounting what transpired.

As I said, all of this took place in accordance with due process. If I can move quickly pass the Mille Fleurs incident—

Sen. Prof. Deosaran: What prompted the decision to give such a building to such a powerful professional organization?

Sen. The Hon. J. Jeremie: That is an excellent question. Unfortunately, I am not in a position to answer because the decision was taken in 2001. The President

of the Law Association at the time, although I have had discussions with him, was not in a position to explain why such a valuable building had been given to such a "powerful organization", as the Senator put it. What I can say is that his Vice-President, at the time, Mr. Douglas Mendes, was not in the know. That is all I can say. That is all I prefer to say on that matter for the time being.

Sen. Seetahal: May I ask a question just for clarification? The question was asked *sotto voce* just now, and I would like to know. Was there not an agreement for a lease? Secondly, what about the $400,000 spent by the Law Association? I declare my interest. I am a member of the Law Association, being a lawyer.

Sen. The Hon. J. Jeremie: I am happy, but I would have been equally happy whether or not you had disclosed your interest because I know that you are a woman of integrity. Our advice is that there was no agreement for a lease. There was a Cabinet decision—without going into the details because I understand the State is under threat of litigation—which was premised on the prior restoration of the building. Now in the three years which have elapsed between the Cabinet decision and the time possession was taken, there has been no restoration and I believe no attempt at restoration.

On the question as to whether or not the Association spent any money on the building, I have heard various figures mentioned from $100,000 on the one hand to $500,000 on the other hand. In the correspondence which has gone back and forth, I have offered to reimburse the Association—not that they require it—for whatever out-of-pocket expenses they have incurred. [*Crosstalk*]

If I may be allowed to continue, I am speaking to Sen. Mark's contribution, which I said at the outset, in deference to him, I would speak to as many of the things he raised which—

Sen. R. Montano: Would you take a question, Mr. Minister?

Sen. The Hon. J. Jeremie: I would not at this time. I would like to continue.

Madam President, I was asked some pointed questions on the membership of the monitoring committee. The Chief Justice appointed the committee and that committee comprises the following persons: Justice Smith; Nafeesa Mohammed; Robin Mohammed, a Registrar of the Court; Mark Wellington, a magistrate; Rhonda Thomas; Joanne Julien, a representative of the Law Association; Leslie Ann Lucky-Samaroo, another representative of the Law Association; Claire Blandin, who is the Chief Probation Officer and Stephanie Daly. Those are the members of the monitoring committee.

In relation to another question which was asked by Sen. Mark as to whether or not an official report has been provided by the monitoring committee, the answer to that is no. The reason for that is that the monitoring committee has been sitting for some six months so that it has not yet provided an official report. What it has done is to collaborate between the Attorney General's Office and the Judiciary and the other members of the committee who are non-judicial, with respect to how the work of the court has been progressing.

In relation to the Judiciary, Sen. Prof. Deosaran made some pointed comments on the Judiciary and on the Family Court Bill. The Family Court Bill is not going to be promulgated until such time as we have been advised of the results of the project. I must add that this is a new way of our passing legislation in this country. What we have done so far is simply copy legislation from other jurisdictions. That has been our experience. We are attempting to gain some experience as to how things are working in this jurisdiction before we attempt to fashion a family court bill for us in Trinidad and Tobago. That is a novel approach and it is one which I endorse fully and one which, I think, all Senators ought to commend the Monitoring Committee and the Family Court committee for having adopted.

Madam President, in respect of Sen. Prof. Deosaran's comments on my relationship with the Chief Justice, I wish to comfort Senators by saying that I understand full well that the Chief Justice is not my boss. I go right back to constitutional responsibilities. I have said enough about my oath of office.

However, I want to say that a good relationship with the Chief Justice and the Judiciary is essential, especially given our recent history. It is far better to have a good relationship with the Judiciary than an acrimonious relationship which is—I hope this is not unparliamentary language—defined by cussing each other every Monday morning. My relationship with the Judiciary has been a beautiful one and it is one which is categorized by mutual respect. The Chief Justice is alive to the issue of removing matters from the courts—and I urge Sen. Prof. Deosaran to at least listen to this point—and he has no vested interest in keeping in the Judiciary matters which have hitherto been the sole province of the Judiciary. His is a desire to improve the lot of the ordinary person in this country, and that is a desire that I share with him.

Now, I speak on a few other matters which were raised by Sen. Mark. The building at NIPDEC House is owned by the National Insurance Property Development Company (NIPDEC), that is to say NIB. The refurbishment work was shared. The NIB paid $8 million for certain building items and the Judiciary, not the Executive, paid a further $6 million to $8 million for the customization of the

court. Now that is a budgeted amortized figure, as I am told by the Judiciary, which is to be spread out over a period of five years.

With regard to the referrals to mediation, which is another specific question asked, from May 17 to July 31, 52 matters were referred to mediation. I am told that only this afternoon Justice Tam, who perhaps as we speak is on his legs in the Convocation Hall in the Hall of Justice, has said that 400 matters have been dealt with to date by the Family Court and more than 50 per cent of those matters have been resolved.

That tells us that mediation is a good thing and alternative dispute resolution is a good thing; and that three hours work in relation to compelling parties to understand the benefits of mediation, which is all that we seek to do this afternoon, is not wasted in the overall scheme of things.

In concluding, I reiterate the point that the Bill does not seek to force persons to mediation, which is the point Sen. Seetahal made, but it allows the courts the power to refer the parties to the benefits of mediation.

Sen. Mark: Madam President, before the hon. Attorney General—just a point of clarification.

Sen. The Hon. J. Jeremie: I am not prepared to give way. I am almost at the end.

Sen. Mark: And you tell me you are not a politician?

Sen. The Hon. J. Jeremie: I was just about to finish.

Sen. Mark: I find you arrogant you know, brother. I just want to ask the Attorney General, Madam President, through you, whether the members of the Mediation Board have been appointed and whether he can provide us with any information relevant to the panel that makes up the mediators and whether he is aware that the cost has been determined per session. I understand that it is between $2,000 and $3,000 per session. Is that a fact?

Sen. The Hon. J. Jeremie: The Mediation Board has not yet been appointed. I am to prepare a Note for Cabinet which will contain all the recommendations from all of the various stakeholders. The board shall be recommended quite soon. I fail to see the importance, given the significance of section 5(1), which we pointed out on a number of occasions provides for free mediation. It is a three-hour session and no cost will be incurred by the parties at that stage.

If I may just be allowed to wind up, all I am saying is that the power we seek this evening is the power to refer parties to mediation. That is not the power to

compel the parties to go through with the mediation process under the Act. In most instances, after hearing about the process, the parties agree to subject themselves to mediation, but that is entirely up to them. They may say they do not wish to go to mediation, in which case Sen. Mark's question about the $2,000 or the $3,000 or the $300,000 would be absolutely irrelevant.

I beg to move.

6.55 p.m.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Sen. R. Montano: Madam Chairman, I am against clause 3 as it is in the Bill. However, if the Attorney General and the Government insists on clause 3 going on, I have two amendments that I would like to add to clause 3. I would like to add a new clause 5(4) and a new clause 5(5), in accordance with what I have circulated which is as follows:

Add new clause 5(4):

"No person who was a member of the monitoring committee at any time or a member of his firm may act as a mediator or take part in any mediation…"

I would like to amend that further by saying:

"…in any related proceedings under this Act for a period of ten years from the date of his demitting office as a member of such monitoring committee."

Add new clause 5(5):

"If the Court refers any matter to mediation without the consent of the parties or either of them, then the parties shall not have to pay any costs related to such mediation or such referral."

Madam Chairman, as I said, I am opposed to the word "agreement" coming out. However, if the word "agreement" has to come out, then in order to cover the

matters, which I believe are very important, let us see if the Government really wants to put its money where its mouth is.

First of all, I do not want any costs to be related to any referral under clause 5(1). Secondly, I do not want any member of the monitoring committee to make any money out of this clause. That is the basic philosophy behind these two clauses.

Sen. Jeremie: Madam Chairman, I think that the Bill, as drafted, makes the amendment which is now clause 5(5) irrelevant. The Government is not prepared to change it, and the Government is not prepared to change 5(4).

Sen. R. Montano: Madam Chairman, in other words, let us understand something here. First of all, how does the amendment to clause 5(4) take care of the point in 5(5)? The fact of the matter is that if you take out the words "with the agreement of the parties", people are going to have to pay. If you are saying that the parties do not have to pay then let us make it absolutely crystal clear. The Government is not going to lose anything in supporting my amendment or some version of it. Let us make it crystal clear.

If the Attorney General is saying that the professionals on the monitoring committee are not pushing for this because they want to make money then let them put public service before self, and let them say that they are happy to do this. After all, we do not need them. There are other persons in Trinidad and Tobago. Let us make it crystal clear that no one is going to profit in this case.

Sen. Mark: Madam Chairman, I would like to support the amendments and to indicate that there is, in fact, a Mediation Unit comprising five persons who are on contract. At the moment, in the absence of the Mediation Board, they cannot be rostered for any job. This proposed amendment is going to ensure that these persons will be provided with employment opportunities. That is why I raised the question with respect to the sums of money that are going to be paid by the State, as it relates to these mediators. They are there; they are in a Mediation Unit; they are on contract by the State; and they are only waiting for this amendment so that matters could be referred to them, and they would get between $2,000 and $3,000 per session. This is really about jobs for the boys and girls.

Out of an abundance of caution, we are asking to ensure that there is integrity in the process. We have advanced these two amendments for the Attorney General's consideration and for inclusion, to ensure that there is no corruption; to ensure there is no link between those mediators and key officers; including members of the monitoring committee.

Sen. R. Montano: All I want to say to the Government is either it agrees with the principles or the statements that are being made sotto voce that are not on record. If what Sen. Seetahal said is correct or is not correct, that is to say that it is not the intention of the court to refer any matter to mediation under 5(1), as amended, and that the parties are not going to have to pay, let us make it crystal clear. This is not costing the Government anything to make it absolutely crystal clear. Is the Government willing to take a chance that may be wrong? Suddenly persons would be getting charged because you know, as well as I do, that the *Hansard* is not allowed to be looked at in interpretations although a recent case has changed that.

Sen. Jeremie: That is not true.

Madam Chairman: May I interject here? Sen. Montano, I was just discussing the amendment with respect to how we are going to word it. You did say here to "Add new clause 5(4)".

Sen. R. Montano: I made a mistake. That is a typo. It should read: "Add new clause 5(5) and new clause 5(6)".

Madam Chairman: What we are saying is that the Bill before us has only three clauses.

Sen. Montano: Add new clause 4 by amending section 5 by adding new section 5(1) and new section 5(6). The Act is amended in section 5 by adding new section 5(5) and new section 5(6).

Madam Chairman: Hon. Senators, let us now vote on clause 3 of the Bill that is before us.

Sen. R. Montano: Madam Chairman, my support with respect to clause 3 is conditional upon the Government supporting my new clause 4. I would be quite happy to vote for clause 3 if the Government indicates that it is going to support clause 4. If the Government is not going to support clause 4, I would not support clause 3. I would respectfully ask, before you put the vote on clause 3, if we could find out what is the Government's position with respect to clause 4. Once we know what is the Government's position then we would know how we are voting.

Sen. Jeremie: Madam Chairman, may I repeat that my position has not changed. With respect, Sen. Montano has just repeated himself. All that I am prepared to say is that I think that section 5(1) is crystal clear and adequate. The Government's position is that it is not prepared to alter that clause.

Sen. R. Montano: Madam Chairman, with the greatest of respect, it is not crystal clear. The clause, as amended, says that the court may make the appropriate referral. The court could make the referral "to the unit responsible for social services in the court or to some other professional". Now, "to some other professional" is as wide as the day is long. It should read "to some other professional engaged or employed by the court". What I am trying to do is to make this crystal clear because it is not clear. If the Government's attitude is that the individual would not have to pay: why can we not turn it around and make it specific? What is the objection? As I understand it, you agree that the person should not have to pay, then say that.

The second point is that there is a suspicion that persons are pushing for this because they want to make money out of it. Okay, let us say that these persons do not want to make any money out of this then let us make sure that they cannot make money out of it. I know that mediation is expensive.

Madam Chairman: Is there anyone else who would like to make a comment?

Sen. King: Madam Chairman, if what the Attorney General is saying is, in fact, true, then we could have the same conditions that Sen. Montano is doing by his amendment included after the words in section 5(1) "…make the appropriate referral at no cost to the parties". We could accept that.

Sen. Montano: I agree with that suggestion.

Sen. Mark: Unless the Attorney General knows something that we do not know.

Sen. Seetahal: That would make sense, especially in section 3 where you have "…expenses incurred under subsection (2) shall be borne by the parties". Section 5(1) would make it clear. It would be a contrast.

Sen. R. Montano: I would accept that and I would withdraw my amendment if that is acceptable, because this would deal with the two points that I have raised. This is a classic case why non-lawyers should sit on committees such as this. [*Laughter*]

Sen. Jeremie: Madam Chairman, I am advised that the Government is not able to agree to that suggestion because the Mediation Board may accredit persons, and we do not know the persons who would be accredited mediators. [*Interruption*]

Sen. R. Montano: Madam Chairman, here the Attorney General is taking advice from a monitoring committee chairman who may have a financial interest in this matter.

Sen. Mark: The Attorney General wants to stamp out corruption—

Madam Chairman: Senator, one minute please.

Sen. Jeremie: Madam Chairman, the objective of section 5(1) is to ensure that the parties do not pay for mediation. Now, the structure of section 5 is to allow, where parties wish to have private mediators, to be able to select from a panel which would be settled by the Mediation Board, and for them to be able to pay, as the case may be, with respect to that panel.

Madam Chairman: I am trying to understand whether these words could be put in section 5(1).

Sen. R. Montano: I am going to vote for it.

Sen. Jeremie: Let us have the specifics.

Madam Chairman: Okay, let me try to read what it would sound like. Section 5(1) would therefore read:

> "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."

That is how I see it.

Sen. Jeremie: Madam Chairman, the Government would have no problem with those words. [*Desk thumping*]

Sen. R. Montano: So, it would read: "the court may make the appropriate referral at no expense to the parties."

Sen. Jeremie: Could you read the amendment.

Sen. R. Montano: Madam Chairman, I would say that clause 3 should read: "The Act is amended in section 5(1) by deleting the words "with the agreement of the parties" and inserting at the end those words "at no expense to the parties".

Madam Chairman: Hon. Senators, the question is that clause 3 be amended 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 Senate.

Senate resumed.

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

ADJOURNMENT

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, I beg to move that this Senate do now adjourn to a date to be fixed.

Madam President: Hon. Senators, there is a matter to be raised on the adjournment.

Sen. Mark: Madam President, we have two matters on the adjournment. We were told that they were all going to be addressed today.

Sen. The Hon. J. Yuille Williams: Madam President, I informed Sen. Mark that we are going to deal with one matter and that is the matter for Minister Narine. The Senator is aware of that. I spoke to him about the matter.

Madam President: I was informed that we were going to deal with one matter, because the other Minister is out of the country.

Sen. Mark: Madam President, I have two Motions on the Adjournment and one of the matters concerns the United Nations Development Programme (UNDP) which involves the Minister of Planning and Development and the Minister is out of the country. Sen. Sadiq Baksh has a matter with respect to the Piarco Airport and that matter was approved. Minister Khan is supposed to be here to deal with that matter. The acting Leader of Government Business cannot determine for you and for this Parliament that there will be one Motion on the Adjournment.

Madam President: Senator, as far as I could see, there is one Minister here and let us continue. If the other Minister comes we will do the other matter.

Sen. Mark: I do not know why the Government is hiding the Piarco Airport matter.

Transfer of Functions
(Commissioner of State Lands)

Sen. Wade Mark: Madam President, my Motion deals with the transfer of all functions vested in the Director of Surveys to the Commissioner of State Lands. Legal Notice No. 122 issued on June 03, 2004 reads as follows:

This Order may be cited as the transfer of functions, Commissioner of State Lands Order 2004. All functions vested in the Director of Surveys by virtue of Legal Notice No. 89 of 1980 are hereby transferred to the Commissioner of State Lands.

Madam President, on May 16, 1980 the then government—that was the PNM—at that time, transferred all functions in the hands of the Commissioner of State Lands to the Director of Surveys. So, again, there was a flip-flop. In 1980, the Government transferred all State lands responsibility to the Director of Surveys and here we are in the year 2004, they are doing it again, but this time it is from the Director of Surveys to the Commissioner of State Lands.

Under the State Lands Act, section 5 says:

"There shall be in the public service a Commissioner of State lands who shall have the functions vested in him by this or any other Act or by any Order made under section 4(2) and who shall perform his functions in accordance with this Act, any Regulations made under section 4(3) and any directions addressed to him by the President."

Section 6(1) says:

"The Commissioner shall have the management of all lands of the State…"

So the Commissioner of State Lands should have the management of all lands of the State:

"and shall be charged with the prevention of squatting and encroachment upon the same…as the President from time to time directs."

Madam President, I have a Cabinet Minute dated November 06, 2003 from the Ministry of Agriculture, Land and Marine Resources where Cabinet agreed to the transfer of the functions of the Director of Surveys to the Commissioner of State Lands and for the Attorney General, to cause to be prepared, the necessary order to give effect to the decision recorded above. This was dated November 03, 2003. As I indicated earlier, on June 03, 2004 the Legal Notice was issued transferring the functions of the Director of Surveys to the Commissioner of State Lands.

Now, I want to let you know that there are some very serious issues that are involved here. The Government of Trinidad and Tobago, without any consultation with the Parliament, and without any consultation with the stakeholders, has proceeded to transfer the functions of the management of lands of the State which has been executed, for the last 24 years, by the Director of Surveys. They have now given those functions to the Commissioner of State Lands.

I do not know if the Minister of Agriculture, Land and Marine Resources could assist me with respect to this matter. The Government Compensation Plan is supposed to have the Office of the Commissioner of State Lands detailed in Range 67. Is it there?

Hon. Narine: Yes.

Sen. W. Mark: Madam President, the question that we have to pose is: Why the sudden change? We did not do it. The UNC made an attempt but we never effected it. The PNM has 77,000 acres of Caroni (1975) Limited lands under its control. We are very concerned about the shenanigans of this regime, at they relate to what they could do. Under section 6(1) of the State Lands Act, the Commissioner of State Lands takes direct orders from time to time from the President. In this instance, the President is the Cabinet. There is where we have a concern. We would like to know why the sudden shift. Why was this done so secretly? We know that like a thief in the night, this was tabled in the Senate, and without the sharpe eyes of the Opposition, it may have passed us—like how they sneaked the Freedom of Information (Exemption) Order through the Parliament, taking the National Entrepreneurial Development Company (NEDCO), the Unit Trust Corporation, First Citizens Bank, the Agricultural Development Bank and a number of other institutions from under the purview of the Freedom of Information Act.

What is even more alarming is that this Order was issued on June 03, 2004. Madam President, because of the incompetence of this regime, the Director of Surveys continued to sign documents during the months of June, July, August and September, and he was only informed at the end of September that he no longer has the powers or jurisdiction in these matters.

I would like to know what is going to happen to all those documents dealing with land matters that were signed by the Director of Surveys prior to this Order. Does this mean that we would have to come to the Parliament seeking an amendment to the State Lands Act in question? How are we going to correct this deficiency? Why was the Director of Surveys not informed of this development? They are worried because this Government is a very slippery government. This Government operates by itself—it moves like a thief in the night and takes over things. Therefore, this is why we are concerned about this matter. We want to know why this sudden rush to take the functions away from the Director of Surveys.

I would like to know from the hon. Minister what has happened insofar as this new office is concerned. We know that the office was created. The Minister has

admitted that the office is in the Government's Classification and Compensation Plan in Range 67. Is the office of Commissioner of State Lands filled? Is the office still vacant? Do we have a Commissioner of State Lands? What is the name of the person? My understanding is that there is no Commissioner of State Lands. We understand that interviews were conducted but, to date, no one has been appointed to the office. We would like to know what is happening to the citizens of this country who are involved in land matters.

The Commissioner of State Lands "shall have the management of all lands of the state" whether it is Central Government or local government or the state enterprises sector. The Commissioner of State Lands has the responsibility for all state lands. At this time, we do not have anyone in the Office of Commissioner of State Lands. If the Director of Surveys was signing matters relating to land up to September of this year, and a Legal Notice was issued on June 03, 2004, what is going to happen there? We are concerned about these matters. You see, ordinary people get caught up in the bureaucracy and, therefore, we would like to know what is taking place. We want to know what is happening with Caroni (1975) Limited lands, and whether the Commissioner of State Lands would be used as a tool or a stooge by the Cabinet, in order to distribute lands to its friends and family. We want to know what safeguards there are to ensure that the person who is appointed to the Office of Commissioner of State Lands is not manipulated by the Cabinet of this country. We know they manipulate many public officers.

Madam President, I mentioned earlier that a Permanent Secretary led the charge in scaling the fence at Mille Fleurs. That is what we were told. To date, no one has denied that! [*Interruption*] Madam President, insofar as state lands are concerned, we would like the hon. Minister to indicate what is the Government's position. We want to know why the haste in this matter; why the secrecy; and what guarantees we can get from the Government that this particular office holder would not become a tool or a stooge of the Cabinet and so forth.

Madam President, as far as I am concerned, persons have approached us on this matter. We believe that it is our responsibility to get some information from the hon. Minister so that we could know what is taking place with this matter, so that we could, in fact, be given the assurance that this particular exercise is not manipulated by the Cabinet and by the PNM in order to distribute lands to their friends, families, girlfriends and boyfriends. We want to ensure that public property is protected, safeguarded and defended. Therefore, we look forward to the hon. Minister clearing the air on the number of issues that I have raised in the 15 minutes that were allotted to me.

Madam President, thank you very much. [*Desk thumping*]

Sen. Yuille-Williams: Madam President, I told the hon. Senator before that the Permanent Secretary, Ms. Cheryl Blackman, did not scale that fence.

The Minister of Agriculture, Land and Marine Resources (Hon. Jarrette Narine): Madam President, thank you very much. I know that the Motion by Sen. Wade Mark reads that the transfer of all functions vested in the Director of Surveys to the Commissioner of State Lands, and I wish to advise that by Legal Notice No. 122 of 2004, all functions vested in the Director of Surveys by virtue of Legal Notice No. 89 of 1980 have been transferred to the Commissioner of State Lands.

You will agree that there is a substantial difference between the two statements. The fact is that the functions being removed from the Director of Surveys are only those functions of the Commissioner of State lands.

Madam President, I wish to make it clear that the events took place since 1979 via the State Lands Act, Chap. 57:01. The Legal Notice No. 89 of 1980 was to transfer the functions of the Commissioner of State Lands temporarily to the Director of Surveys, which meant that the Director of Surveys now has two jobs. The reason for this was, at that time, the permanent establishment of the public service catered for no one in that classification as Commissioner of State Lands. In the absence of that the President had to sign every land transaction that took place in Trinidad. It was inconvenient for the President of the country to be placed in that position. Therefore the transfer of the Commissioner of State Lands authority was given to the Director of Surveys in addition to his job of surveying and directing the surveyors of the ministry.

7.40 p.m.

By Legal Notice No. 19 of 1980, the Director of Surveys was given that responsibility as the hon. Senator has said, in 2004. The matter was laid in the House of Representatives on June 09, 2004 and in the Senate on June 15, 2004. I am certain that the hon. Senators would have seen it. It did not come here by any fly-by-night arrangement, and nothing was hidden. It went to Cabinet, which took a decision, it was laid in the Lower House and then in the Senate. The Order was published as Legal Notice No. 122 of 2004 as rightly said.

In 2001, for the Senator’s information, the position of Commissioner of State Lands was advertised and interviews were held in that year. Not Christmas Eve Day 2001, that was the day the people of Trinidad and Tobago were liberated

from the clutches of the election. [*Crosstalk*] It happened before that and I wonder who was in office because this was advertised in your time, the interviews were held during your time, and the position—[*Interruption*] "I will come to that, yuh hurry?"

Madam President, I will attempt to answer all the questions by the hon. Senator, but that position was advertised and interviews were held in 2001.

Sen. Mark: According to you.

Hon. J. Narine: Because the Director of Surveys had the additional responsibility for the administration of state lands which meant that he held two jobs—and I need to compliment him—and was paid for one. It is not like your Member in the other place who was getting two salaries for doing one job; he was getting one salary for doing both jobs.

Over the past years we have had a backlog not only from June this year, but from the past years and I will draw some examples: In 1997, 104 leases were passed by the Cabinet, in 1998, 79; in 1999, 76; in 2000, 112. It meant that because in your time they were doing so little, and because this person was doing two jobs there was a backlog of thousands of applications and every day I have people calling at my office making appointments saying that lands that they had occupied for 25 years are now coming to Cabinet. Some have not come to Cabinet over the last 15 to 20 years.

So in order to clear that backlog, you need to get the Commissioner of State Lands to do that particular job and free the person who has to do surveys. In 2000, from 76 leases it was 112; in 2001, 119. This benevolent Government has taken the decision to go ahead and fast-track the leases because you know the implications.

If someone has been occupying lands for the last 20 years and has no lease, he/she cannot get the farmer's badge, therefore, is not entitled to any incentives given by the ministry. They cannot use the lease to go to the Agricultural Development Bank or any other lending agency to use as collateral, so there are many implications.

As a matter of fact, there are people who died and their transfers are now coming to me where they had made some legal documents, some as old as 15 years to transfer to their children, and I can show you these things if you would like to see them.

In 2002, there were 152 leases; in 2003, 168. I can tell the hon. Senator that I became Minister of Agriculture, Land and Marine Resources in November, 2003, and I paid particular attention to this and 396 leases were passed by Cabinet.

I can assure the Senator that the Commissioner of State Lands will be responsible for the renewal transfer of leases, change of land use, monitoring compliance with the terms of leases, collection of rental payments, and prevention of new squatting because that is what is happening. People have occupied lands for so long and after a couple of years, they have applied and up to this time have not gotten their leases.

As a matter of fact, the question asked by the Senator as to what will happen between June and the period that the Director of Surveys was not aware and was signing. Of course, you are an experienced Member of Parliament and should know that we will have to do a validation bill and validate the period he was not in authority to do so.

The Director of Personnel Administration is the one to tell us who is the person recommended for the job since it was done four years ago under circumstances that some persons are not comfortable with; the Director of Personnel Administration has to make that appointment.

When you were doing 17 leases per year, it was like having nobody, so that at this time, if there is a lapse of about one or two weeks, obviously, if we are having additional difficulties, we have the option to rescind that situation, validate what was taking place between that period, and place the Director of Surveys back into that position. We have options to do that. At this point in time, the Director of Personnel Administration is yet to appoint that person in the position. As soon as the person gets there, I will accelerate and we will have more leases done for the underprivileged people of Trinidad and Tobago, particularly persons who do not have money to get collateral to do agriculture. [*Interruption*]

Madam President, if the Senator would ask a question, I will certainly answer.

I thank you, and it was my pleasure to answer.

Divali and Eid ul-Fitr Greetings

Madam President: Hon. Senators, since we are in the Divali season I am sure you will want to bring greetings, so I will allow the Leader of the Government side to start and then you can follow suit.

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, hon. Senators, I take this opportunity to express greetings to the Hindu community on the occasion of the celebration of Divali on Thursday, November 11, 2004.

As Members of the Senate, and members of the society at large, we must be committed to the preservation of this tradition which transcends the boundaries of ethnicity, class, race, religion, or other social considerations.

Although Divali belongs to the Hindu tradition, it has now gained national prominence. The illuminated deyas attract the attention of persons from all walks of life on Divali night. It is a very pleasant sight to witness streams of persons on our streets enjoying the festival of lights.

The symbolism of the festival also touches the psyche of the national population. Consciously or unconsciously, we are influenced by the pervasive ideals of the triumph of light over darkness, good over evil, justice over injustice, and knowledge over ignorance. These are noble ideals which our Government helps to propagate.

We have recognized the significance of festivals in our cultural landscape. As a consequence, we have been providing resource support to numerous national and community organizations for activities aimed at preserving our multicultural identity. Quite recently, you would have seen us as we provided assistance to the Ramleela and also to the other organizations for the celebration of Divali 2004.

As a multicultural society, we must always thrive to exist in a conscious state of enlightenment to increase knowledge and understanding. This is the only way we can build a harmonious and progressive nation. This is the basic requirement for surviving in a knowledge-based society which is moving towards the goal of developed status by 2020.

May I therefore, on behalf of the Government Senators, extend Divali greetings to Members of this honourable Senate, and members of the Hindu community. May the blessings of Mother Lakshmi and the purity of the festival of lights illuminate the lives of all citizens to recognize and share the Divali message.

Shubh Divali to all.

Sen. Wade Mark: Madam President, we too, the Opposition United National Congress, the alternative Government of the Republic of Trinidad and Tobago, join you and our colleagues in extending Divali greetings which is to be celebrated on Thursday, November 11, 2004, and of course, our Muslim brothers and sisters, who would also be celebrating Eid ul-Fitr next Monday.

Madam President, on the occasion of Divali and Eid ul-Fitr, we in the UNC extend warmest greetings and congratulations to both the Hindu and Muslim communities in our country.

Divali as you know embraces all citizens. It is no longer a strictly Hindu observance, but it is celebrated by all throughout the country. Today our country faces many challenges: we are faced with the challenge of a spiralling crime rate, the erosion of our democratic ideals, the breakdown in law and order, the abuse of fundamental human rights, poverty and discrimination.

On the other hand, the holy month of Ramadan unites all Muslims the world over in fasting and feasting, worshipping, fellowship and prayer. It is a time for contemplation, spirituality, reflection and brotherhood. On this holy occasion, we must reach out to our friends and family, associates and acquaintances with warmth, love and respect.

Madam President, in the end good will triumph over evil and light over darkness. On behalf of the United National Congress, we extend to both the Hindu and Muslim communities in our nation a happy, warm, and blessed Divali and Eid ul-Fitr.

Shubh Divali and Eid Mubarak.

Sen. Prof. Ramesh Deosaran: Madam President, on behalf of my distinguished colleagues of different colours, ethnicities and creeds, I wish to extend happy and an enlightening Divali to my colleagues here, to the Hindus across the country, and the rest of the country at large.

Madam President, yesterday I had the pleasure of sitting in at a function held by the police service and the commissioner made a remarkable but brief presentation which captured the essence of what I will like to leave with this honourable Senate.

It was in his view the first time that a Divali celebration took place at Police Headquarters and he remarked how quietly, gently, but quite deeply the spirit of Divali was permeating all religions and classes across the country.

It occurred to me that one Divali after another—though its genesis is in the Hindu religion—how so many persons of other religions are getting immersed, not only physically by attending functions, but spiritually as well as psychologically. They are sharing in the food, the rituals, and as we are saying this evening, even in the exchange of sincere greetings.

He said that there is a development of mutual respect across the country in spite of some attempts to draw heavy lines of divisiveness among us, it seems like the virtue of Divali by having light conquering darkness, is really having its

positive effect in this country. I believe that is the way evolution works and this society is indeed evolving even though we are regarding multiculturalism.

It was indeed a pleasure listening to the hon. Minister of Community Development, Culture and Gender Affairs in the regard that she has for the occasion and the kind of support the Government is giving as well.

Madam President, it is with such a solemn duty that I bring these greetings but one last remark—he is not here, but I think in the spirit of Divali he has produced a remarkable example of what I mean by mutual respect.

We have had a robust debate in Parliament, but I believe in the end, everybody who spoke and voted did it as best as he/she should; fearlessly and frankly and in the end, the resolution of that debate to me reflected the true spirit of Divali by bringing wisdom into the realm of the debate and by his conceding in the end, what I believe was a pleasure for all of us to witness.

So it is in that spirit I bring you greetings and I wish that we continue evolving in such peace and mutual respect.

Thank you.

The Minister of Social Development (Sen. The Hon. Mustapha Abdul-Hamid): Madam President, thank you for recognizing me. It seems to me that the human being is enriched when we connect at various levels and we have that natural, inner desire to connect at the level of the family, the community, our nation and at the level of mankind.

Very often across religious barriers—if I may use that word—we connect because we all have a strong sense of sharing a particular occasion, and every Muslim, every Hindu and every Christian in Trinidad and Tobago will know what the Christmas spirit is, as we are coming to know what the Divali celebrations offer us, and as we are coming to know as a nation what Eid ul-Fitr is about.

There are four days left in the month of Ramadan so the Muslims are still engaged in their fast and I will like to acknowledge—I know there are at least four members of this Senate who have been fasting—Sen. Basharat Ali, Sen. Bro. Noble Khan, Sen. Sadiq Baksh and myself. It has been very difficult to speak during the fasting period so we avoided speaking during the daylight—[*Laughter*] and all our contributions during the budget were really after the breaking of the fast.

We are still in the month of Ramadan, we would not have a sitting before Eid and on behalf of this side, I extend wishes of a successful Ramadan to all the

members of the Muslim community here and outside, hoping that the month was successful and they would have in fact, achieved God consciousness, which is what the training of Ramadan is intended to achieve, and that the celebration is indeed joyful and cheerful as we expect it to be.

To all the Members of this honourable Senate who will find a way to connect with Eid as well, I wish you all a happy day, and a happy Eid ul-Fitr.

Madam President: Hon. Senators, I take this opportunity to join with Senators on both sides of the Senate in extending Divali greetings to each of you, your families and the Hindu community.

Let us accept the message of Divali into our hearts; light, knowledge, and love, and use it to conquer darkness, ignorance and hate. Let us use this message to permeate our daily actions and influence our interactions with others of various races, religions, and even political differences. Let us carry this message throughout the year in our lives.

Too often we build walls and allow our differences to divide us. Let us use the message of Divali to unite this beautiful country of ours. May Mother Lakshmi empower you and your families with health, wealth, love, success, peace and unity.

I also extend to the Muslim community and Members of this Senate and their families Eid Mubarak as their period of fasting comes to an end this weekend. During Ramadan, you have prayed and fasted together as whole families, as communities and as a nation. The spiritual vibrations from such activities can only redound to the benefit of the whole nation.

Let us join therefore, with our Muslim brothers and sisters in celebrating the joyful season of Eid ul-Fitr.

Eid Mubarak to all.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.05 p.m.

WRITTEN ANSWER TO QUESTION

Copy of Agreement (Details of)

2. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Could the hon. Minister provide this Senate with a copy of the twenty year agreement signed between Point Fortin LNG Exports Limited and the U.S. based El Paso Merchant Energy LP to supply LNG from Atlantic LNG's trains II and III to Elba Island regasification terminal with effect from January 01, 2004?

The following reply was circulated to Members of the Senate.

The Minister of Energy and Energy Industries (Hon. Eric Williams): The information being sought cannot be given since the Government is not a party to the agreement. In these circumstances, the Government is unable to disclose information regarding an agreement between two private companies.