SENATE

Tuesday, November 15, 2005

The Senate met at 1.30 p.m.

PRAYERS

[MR. VICE-PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I wish to inform you that the President of the Senate, Sen. The Hon. Dr. Linda Savitri Baboolal, is at present Acting President of the Republic of Trinidad and Tobago for His Excellency Professor George Maxwell Richards T.C., C.M.T., Ph.D., who is out of the country. During the absence of the President, the Vice-President of the Senate will preside over the sitting.

Hon. Senators, I have granted leave of absence to Sen. The Hon. Howard Chin Lee and Sen. Angela Cropper, who are out of the country.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Professor George Maxwell Richards T.C., C.M.T., Ph.D. and Her Excellency Dr. Savitri Baboolal, Acting President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ George Maxwell Richards
President

TO: MS. ROSE JANNEIRE

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, GEORGE MAXWELL RICHARDS, 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, ROSE JANNEIRE, to be temporarily a member of the Senate, with effect from 15th November, 2005 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 11th day of November, 2005."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President

TO: MS. ALTHEA ROCKE

WHEREAS Senator Angela Cropper is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALTHEA ROCKE, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Angela Cropper.

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 10th day of November, 2005."

"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: MR. NILEUNG ROLAND HYPOLITE

WHEREAS the President of the Senate has temporarily vacated her Office of Senator to act as President of the Republic of Trinidad and Tobago:

AND WHEREAS the Vice-President of the Senate is acting President of the Senate:

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 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NILEUNG ROLAND HYPOLITE, to be temporarily a member of the Senate, with effect from 15th November, 2005 and continuing during the period that Senator Dr. Linda Savitri Baboolal has temporarily vacated her Office as Senator.

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 14th day of November, 2005."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Rose Janneire, Althea Rocke, Nileung Roland Hypolite.

CONDOLENCES
(MR. GERARD MONTANO)

Mr. Vice-President: Hon. Senators, it is with a sense of sadness that I bring to your attention the passing of the father of two of our colleagues, Senators Danny and Robin Montano. In the circumstances, I ask a Senator each from Government, Opposition and the Independent Bench to bring condolences.

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Thank you, Mr. Vice-President. It is with some sadness that Senators on this side speak on this matter. It is a rather unique situation in which two sitting Members of Parliament have suffered a bereavement.

Mr. Vice-President, Gerard Montano's place in the history of the politics of this country is firmly entrenched. He was one of the group, who saw this

country's transition from colonialism to independence. He became a member of the Legislative Council as a victorious candidate of the PNM in 1956, and was a minister in that government, which was still part of our colonial history.

He went on to become a Member of the House of Representatives in 1961, in the constituency of San Fernando East, which he ably represented until he was replaced by our current Prime Minister, as representative of that constituency. The history of that constituency has only been two representatives—Gerard Montano and Patrick Manning.

As I said, his contribution to the politics of the country is well known and the country owes him a debt of gratitude. Not only has he contributed, but also, through his sons, has continued that contribution to this country.

I would like to digress a little and move from Gerard, the politician, to Gerard, the man, for those of us who have had the pleasure of knowing him, a most charming man. There is a side of him that I personally would like to place on record.

Gerard was a very close friend of my father-in-law, Lionel Seukeran, because they all came from that era and he spoke at my wedding. He remained close to Radica and me as a second father, when I came back from Canada with my family, two girls, in 1969. In 1970, Gerard left active politics as a member of the Legislature and was posted to Brazil. Before he left, those of you who know San Fernando know Montano's Drugstore on High Street. He called Radica and me and said: "You are a young couple. I know that you are interested in business. Would you be interested in my drugstore? I have a lot of offers, but I like you and Radica."

I went to see him and said: "Fine, but we are just starting and we do not have the kind of money to buy this." He said: "Don't worry, Lenny. Pay me whatever you can. Pay me the rest when you can. Take the drugstore and take an option to buy the property."

1.45 p.m.

Being embolden at the time, I said, "Would you also sell me your Mercedes Benz?" The point I am making is that he was prepared, notwithstanding all that he could get, to help a young couple start their life. Montano Drugstore, in 1970 became Saith's Drugstore and still remains in 2005, Saith's Drugstore on High Street. My wife and I owe Gerard a great debt of gratitude. Whenever we met Gerard, that warmth emanated from him. We have lost a friend. I suppose that

there are many people in this country who will repeat that story in their own way. He was very popular in San Fernando. He was very popular with the people who worked for him in San Fernando. I want to place on record the feeling of the Senators on this side and I am sure, by extension, the PNM, for the contribution that he has made. I am sure if there is a place where good people go, then Gerard is there today. Thank you, Mr. Vice-President.

Sen. Wade Mark: Mr. Vice-President, we too are saddened at the passing of this outstanding individual. Albert Gerard Montano was born in 1918. He was a former student of both the Naparima and St. Benedict's Colleges and, as you are aware, he became a very prominent San Fernando businessman.

He grew up in the period of the anti-colonial, anti-imperialist struggle, as well as the quest for national liberation. The era was one of political and constitutional independence, against the forces of oppression and exploitation. These forces, as you know, still exist today. He entered politics in 1954, serving as the Mayor of San Fernando, until 1956. He continued his contribution to this country, which had just gained independence, as the Member of Parliament for San Fernando East. The then Prime Minister, Dr. Eric Williams, made him Leader of Government Business in the House of Representatives. He served in the nation's first Cabinet, as the first Minister of Housing and Local Government, and later as the Minister of Home Affairs and was once Chairman of the Commonwealth Parliamentary Association. One of his colleagues from the first Cabinet, former Ambassador to Caricom, His Excellency Kamaluddin Mohammed, describes him as a very pleasant, affable and efficient man.

Maintaining his record of service, he was named Ambassador to Brazil in 1970 and helped to develop relations between Trinidad and Tobago and her regional neighbours. For his efforts, he was the first non-Venezuelan to receive the Order of Liberator, Simon Bolivar, Venezuela's highest award.

In 1979, Trinidad and Tobago also recognized the contribution of Gerard Montano in the public service, when he was awarded this nation's highest award, the Trinity Cross. He and his wife, as you would read, brought into this world three sons and one daughter. Two of his sons are well-known Members of this honourable Chamber. I wish to take this opportunity, on behalf of the United National Congress, the Opposition, to extend our profound condolences to my two colleagues in the Senate, Sen. The Hon. Danny Montano and Sen. Robin Montano and their respective families on the death of their father.

As soon as I learnt of their father's passing, I immediately communicated with both, extending my deep and profound sympathies and condolences. Gerard

Montano played his role. He played his part in the development process. He has passed on the baton to his two sons, who have continued to labour and toil in the political vineyard for ultimate national salvation.

May Almighty God provide eternal rest and peace to this son of the soil and may his soul experience lasting and perpetual peace.

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, when one notes, with sadness, the passing of a citizen of the likes of the late Albert Gerard Montano, one cannot help but recognize the difference that certain individuals have made to the political and constitutional history of Trinidad and Tobago.

Far too often, Mr. Vice-President, my dear colleagues, we tend to deal with institutions, be they the Parliament, the Cabinet, or even the church, unfortunately forgetting that it is individuals who make a big difference most of the times, not only to the causes which those institutions serve, but to the very institutions to which they either belong or, of which they are leaders. I say this because in retrospect, even as a young teenager, when I heard the voice of Gerard on the radio, emanating from the debates from the parliamentary Chamber, it was a very inspiring event for most of us growing up into the political culture of this country.

My colleague, Sen. Prof. Ramchand, reminded me of his own experience, that when he too was a student at Naparima College, what inspired him was the articulation and manner in which the late Albert Gerard Montano presented his views in the Parliament and more so, when he spoke on the elections platform of the People's National Movement.

These are things to remember, as I said before, because in the company of the late Dr. Eric Williams, Elton Richardson, Francis Prevatt, Kamaluddin Mohammed and Errol Mahabir, it was a force, not only of a party force, but a force that changed the history of this country, politically and constitutionally.

We would like to remember him for the tremendous contribution he made at that level and the other level, in terms of the political offices he held and the ambassadorial post he held in Brazil. It is not remarked here in the document, but he was also Chairman of Textel, at which he played a tremendous role in consolidating the communication system in the country.

Sen. The Hon. Dr. Lenny Saith is right, if you got to know him, there were things you would have seen even beyond the public service. One quality, for example, was his sense of humour. I had the great fortune and, perhaps, the pleasure some months ago to meet him at the home of another friend of mine and a former Senator, Gerald Furness-Smith. His name was also pronounced Gerard.

The late Gerard Montano told me—we were speaking about the court system and a number of other things such as his political career and what the current politicians today lack: a sense of gentlemanly conduct and courtesies, in his own view. It was very nostalgic. He said: "Let me give you an example of how the justice system has begun." There was a businessman who called his lawyer from another city and asked the lawyer: "How did my case go?" The lawyer said: "Justice has triumphed." The businessman said: "All right, file an appeal right away." He had a wry sense of humour. Notwithstanding the fact, he took a little while to recognize who I was because he was at that state of health which everybody knew. It was an expression of his personality and his gentlemanly nature at all times. He was very articulate. I think he was an inspiration to many of us who were growing up at the time.

There were many fathers to this country, if you look at it, people who played mentorship roles in different respects. I would like to feel, especially since he was there in the trouble times that this country faced in the late 1960s and 1970s—he was Minister of Home Affairs in those days—that he did father this country somewhat. In very turbulent times, when minority groups fell and were being marginalized, he took part in the constitutional debate that created a constitution that brought comfort to those groups who had fears, real or perceived. He was an architect of nationhood as well. Those are the few things that we should remember and cherish his memory for passing away. He has been a great citizen, an outstanding politician and a golden voice, as it were, to many of us.

On behalf of my colleagues on the Independent Bench, Mr. Vice-President, I wish to extend our deepest sympathy to his wife, three sons and daughter and family, particularly his two sons who are our colleagues here. Thank you very much.

Mr. Vice-President: Hon. Senators, I would like to join this honourable Senate in extending my personal condolences and that of the entire Senate, to the relatives and family of the late Gerard Montano. From what has been said by every speaker, we could tell that Gerard Montano's life was one of service. We heard about the business, but he was one who served in the political arena as local government representative. He served in the legislative council, in central government, as ambassador and beyond that, he served on many boards. His life was one of service. What is very interesting is that he was one who basically straddled several eras, from colonialism through internal self-government, to independence and even when we became a republic, he was still serving.

I really admire the sincerity with which the contributions were made. I thank the speakers and I extend my very sincere condolences to the family and other

relatives of the late Gerard Montano.

I ask that you please rise for a moment's silence in honour of his passing.

[*The Senate stood*]

Thank you very much.

PAPERS LAID

1. Annual audited financial statements of Trinidad and Tobago Mortgage Finance Company Limited for the financial year ended December 31, 2004. [*The Minister in the Ministry of Finance* (*Sen. The Hon. Conrad Enill*)]

2. Annual audited financial statements of the Youth Training and Employment Partnership Programme (YTEPP) Limited for the year ended September 30, 2004. [*Sen. The Hon. C. Enill*]

3. Annual report on the Freedom of Information Act, 1999 for the year 2004. [*The Minister of Public Administration and Information* (*Sen. The Hon. Dr. Lenny Saith*)]

4. Annual report of the Trinidad and Tobago Postal Corporation for the year ended June 30, 2004. [*Sen. The Hon. Dr. L. Saith*]

ORAL ANSWERS TO QUESTIONS

Unemployment Relief Programme
(Details of)

10. Sen. Sadiq Baksh asked the hon. Minister of Local Government:

Could the Minister provide the total amount of funds spent on the Unemployment Relief Programme (URP) on a monthly basis for the period January 01, 2002 to September 30, 2005?

The Minister of Local Government (Sen. The Hon. Rennie Dumas): Mr. Vice-President, the answer is not ready. Given the years, it requires a search over multiple accounting periods and some sources outside the Ministry. I have conveyed to my colleague and ask for a deferral of three weeks, by which the answer would be ready.

Question, by leave, deferred.

Community-based Environmental Protection and Enhancement Programme (CEPEP) (Details of)

11. Sen. Sadiq Baksh asked the hon. Minister of Public Utilities and the Environment:

> Could the Minister provide this House with the total amount of funds spent on the Community-based Environmental Protection and Enhancement Programme (CEPEP) on a monthly basis from its inception to September 30, 2005?

National Housing Authority (Acceptance of VSEP)

12. Sen. Sadiq Baksh asked the hon. Minister of Housing:

(i) Could the Minister inform this House of the number of employees of the National Housing Authority that accepted the VSEP offered by the Government; and

(ii) Could the hon. Minister also inform this House of the cost so far?

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): The answer to questions Nos. 11 and 12 are questions which require a substantial amount of information. I have been advised that this information is still being collated and I ask that the questions be deferred for two weeks.

Questions, by leave, deferred.

NATIONAL LOTTERIES (AMDT.) (NO. 2) BILL

Bill to amend the National Lotteries Act, Chap. 21:04 [*The Minister in the Ministry of Finance*]; read the first time.

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Order for second reading read.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Thank you very much, Mr. Vice-President. I beg to move,

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

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

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

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

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

This Act came into force on December 14, 1899. Law, as a tool of social engineering, must, of necessity, reflect the hopes, aspirations and the realties of the society required to comply with that law, or else, by the effluxion of time, the law would become like a scarecrow and soon no one would pay heed to it. Law must keep pace with the changing social circumstances.

The Act expressly restricts deposits to, or investments in prescribed stocks, freehold land, or the Post Office Savings Bank. The reality is that the Post Office

Savings Bank was closed on August 31, 2001. Today also, the court no longer invests in stocks or land because of the uncertainty of the markets and the costs and charges incidental to these methods of investment. In fact, for more than 50 years, the High Court has not made any such investments or has simply deposited court funds into the Treasury.

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

The Commission consulted with the Judiciary and the Judiciary is in agreement with this approach.

Sen. Prof. Deosaran: My apologies. I thought you were moving with a good tempo. I am really thinking about making a contribution, but first I want to know, hon. Minister, through you, Mr. Vice-President, whether you can give us an idea of what kind of moneys are being paid. Are you referring to fines? What is the range of moneys being paid to the court and also whether it draws interest or not? To what use is this money put normally, as far as your knowledge goes?

Hon. F. Hinds: It certainly would not include fines. These would be moneys deposited in respect of commitments of one party to another, deposited into court for collection later, such as elements of wills and other such matters. In terms of the quantums you are talking about, I am uncertain, but that could be provided at a later stage. Thank you very kindly though, Professor.

The proposed amendment to the Supreme Court of Judicature Act would give the High Court power to invest moneys paid into court, in securities authorized by Rules of Court or any other written law, or in an interest bearing account, in a financial institution, as defined by the Financial Institutions Act, No. 18 of 1993, to be precise. Under section 2 of this Act, a financial institution is defined to mean a company which carries on or used to carry on all or any aspects of banking business or business of a financial nature. The term "banking business" is defined under section 4(2) to mean the business of receiving of deposits of money from the public or on current account, or deposit account, which may be withdrawn on demand by cheque, draft, order or notice and the making of loans or the granting

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

The term "business of a financial nature" is defined under section 5(2) to mean the collection of funds in the form of deposits, shares, loans, premiums and the investment of such funds in loans, shares and other securities and includes the performance for reward of the functions and duties of a trustee, administrator, executor or attorney, as well as the types of business set out in the First Schedule, but does not include the business of banking. This, therefore, means that a financial institution includes all our commercial banks, mortgage lending institutions, the Unit Trust Corporation of Trinidad and Tobago, trust companies and the like.

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

Mr. Vice-President, Rules of Court are made by the Rules Committee of the Supreme Court under section 77 of the Supreme Court of Judicature Act. The Bill, therefore, seeks to amend the Supreme Court of Judicature Act, to give effect to the decision as has already been outlined in the Kirvek case, where the Privy Council held that the court had a duty to ensure that moneys paid into court are properly invested and interest credited to the account of the depositor.

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

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

Clause 3 provides for the insertion of two new sections, 24A and 24B, in the Supreme Court of Judicature Act to empower the court to engage in new forms of investment.

The proposed section 24A seeks to give the High Court the power to invest moneys paid into court in securities as authorized by the Rules of the Supreme

Court or any written law or in interest bearing accounts in any financial institution, as defined under the Financial Institutions Act, 1993.

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

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

This Bill, therefore, represents the continuing work of the Law Reform Commission, to give effect to its statutory mandate, to reform our law continuously and obviously for the benefit of our entire society.

Mr. Vice-President, with these few words, I beg to move.

Question proposed.

Sen. Wade Mark: Mr. Vice-President, may I welcome the Minister in the Ministry of National Security to this Chamber once again. This particular judgment, handed down by the Privy Council in 2002, could only be described as a landmark judgment. It is a judgment, in our view, that has a lot of merit, in the context of what the Minister outlined earlier in his presentation. Enlightened leadership, at the level of the Privy Council, led to this landmark judgment.

My information is that this matter was in fact taken to the High Court of this nation and it was thrown out. It was taken to the Court of Appeal and it was again thrown out and luckily for us, we still have the Privy Council. As long as we are here, the Privy Council will be there. It took English judges, at the level of the Privy Council, to address a simple lacuna in the system.

If you are called upon in a matter involving yourself and another person, to deposit with the court $500,000 and you win your matter five years later, it is wrong for you to be handed back $500,000. I deposited, through the court, $500,000 because the court demanded that of me and the court puts that money in something that is called the Court Funds Investment, it did not accrue any interest and at the end of the process, you are given the initial sum that was deposited. I think Anand Ramlogan and Fenton Ramsahoye must be complimented because they represented, at the level of the Privy Council, in Kirvek Management and

Consulting Services Limited versus the Attorney General. As independent-minded citizens and lawyers it, therefore, means that citizens in the future, under this amendment to the Supreme Court of Judicature Act, Chap. 4:01, will now be able to have some interest accrued on their deposits.

As you would see in clause 3, section 24A:

> "…subject to the Order of the Court or a Judge or Master of the Court, may be invested—
>
> (a) in securities that are authorized by the Rules of the Supreme Court or by any written law for the investment of moneys under the control of the Court;
>
> (b) by depositing such moneys in an interest bearing account in a financial institution as defined in the Financial Institutions Act, to the credit of an account in the name of the Registrar of the Supreme Court or in such name as a Judge or Master of the Court shall order, with the addition of the words 'in trust'..."

This amendment to the Supreme Court of Judicature Act has to be welcomed. Nobody can object to this amendment. We think it is one that is very long overdue. I really would like the hon. Minister of Finance and Minister in the Ministry of Finance to take cue from this particular judgment, because I would like the Minister in the Ministry of National Security, who is piloting this Bill in the name of the Attorney General, to impress upon the minds of the personnel that are responsible for bringing to this Parliament the Heritage and Stabilization Act, because the same kind of difficulty that clients are experiencing before this amendment, is the same challenge and difficulty that 1.3 million people are experiencing, where we have, at the Central Bank, approximately $7 billion accruing nominal interest, if it is accruing interest at all, in something that is called an Interim Revenue Stabilization Fund.

I ask the Minister in the Ministry of National Security to put in forward gear, action. We want action on this particular Bill that is outstanding in this country and which we have been promised over and over. Could you imagine, with this amendment before us, the kind of interest, given the framework that has been outlined in the legislation, in which deposits can be invested? You can invest $500 or you can deposit $500,000 and if your case takes five years, you may end up with $50,000 or $60,000 on your $500,000. At least you would accrue some interest on your deposit, via investment. One wonders if the Government of Trinidad and Tobago had invested in a legal framework, the $5 billion to $7

billion that we now have in the Interim Revenue Stabilization Fund, we would have accrued hundreds of millions of dollars for the people of this country. Why is the Government taking so long to bring to this Parliament the Heritage and Stabilization Bill?

I applaud the Minister for bringing this measure. I think it is a measure that would work in the interest of clients and persons who have to deposit funds at the level of the court. You have to invest that money. When it is deposited and whatever interests accrue shall be credited to your account. That is only natural, to me and it is just. I would like the hon. Minister in the Ministry of National Security and my good colleague and friend, the hon. Minister in the Ministry of Finance, to move speedily to bring this Bill to Parliament. I have asked for this Bill. We have called for this Bill. We have been told that this Bill would have come here since last year. We are now at the end of 2005 and we were promised this Bill in 2004. All we have coming from this Government are promises that never materialize. That is what the PNM stands for: promises that never materialize. All I am asking is, just as we can bring an amendment to the Supreme Court of Judicature Act—I demand, on behalf of the citizens that the Government of Trinidad and Tobago, that—through the Attorney General's office, and brought here by the Minister of Finance, or his representative—we bring to this Parliament posthaste, the Heritage and Stabilization Bill, so that it can become an Act before December 2005. Let us put our billions of dollars into proper investment opportunities, not only in Trinidad and Tobago but in the Caribbean and international communities, so we can earn great levels of interest. That is my limited intervention today.

Again, this is a very important piece of legislation. I think we have to recognize its importance and I believe that persons who appear before the courts of this country and are called upon by the courts to deposit moneys, they now, as a result of this amendment, would be entitled to some interest at the end of the period. I think it is a very positive step forward. I ask the hon. Minister in the Ministry of National Security to indicate to this Parliament whether it is the intention of the Attorney General to bring to this Parliament a Bill, before the end of this year, to put into legal effect what is called the Heritage and Stabilization Bill. I thank you very much.

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, my intervention would be very, very brief but knowing the Minister as I do, I am quite sure he would be very happy to leave with something useful on which to follow up, so as to develop his own Ministry’s capabilities.

I speak of an ancillary condition to the Bill before us. It is true that people deposit money in the courts, but there are people who deposit money through fines. I would want to see, for the Cabinet's consideration, that the people who pay such fines, which have some indirect bearing on the Bill, some of those moneys be put into a public safety fund so that it can help develop our crime prevention programmes and rehabilitation programmes. It is an idea whose time has come, so that those who commit evil should perhaps continue to pay to help those who are good, to become better. That connection could be amenable to some public policy formulation. For example, I do crave your indulgence in these few minutes but I want to make sure the Minister leaves here with something useful. With respect to the traffic tickets, I think the income from such could be used to hire traffic wardens and, perhaps, make the city and those traffic congestion areas safer and, of course, the income could come from such derivations.

I stand for these few minutes to give the Minister something to leave here with. I am quite sure he would find it useful for further deliberation. Thank you, Mr. Vice-President.

Sen. Mary King: Thank you very much. I have two questions relating to the Bill before us. Of course, I congratulate the Government for bringing such a Bill. It is long overdue. I would like to know whether there is a time frame whereby the court must do this investment. The Act is silent on that.

The second thing is whether the Rules of the Supreme Court which are mentioned in clause 3, 24A(a), will come before the Parliament for noting or whether they will come before the Parliament for debate, meaning whether they would be by a positive or negative resolution? What is the position with the Rules of the Supreme Court? Thank you.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitrgerald Hinds): Thank you very warmly, Mr. Vice-President. In Sen. King's question as to when the kinds of investments recognized in the amendments would take effect, it is obviously from the passage of the legislation and its proclamation. As it now stands, the moneys are put where I have described they are put. I imagine as soon as this becomes law, that new process would formally begin.

Sen. Seetahal: There is no need for proclamation.

Hon. F. Hinds: Sorry. As soon as this Bill is amended and it becomes formalized, it would be effected by the Supreme Court, no doubt because it is

quite clear to all that this is a matter that has been outstanding and the rectification is now here.

Insofar as the issues around the Rules of the Supreme Court are concerned, it is not a matter that is immediately before me but I will bring it to the attention of the Attorney General and he can respond to the hon. Senator at a later stage.

The comments coming from Sen. Prof. Deosaran are ideas worth exploring. I am sure that they will be explored in prompt order.

Permit me very briefly to comment upon some of the sentiments expressed by Sen. Mark. The Minister in the Ministry of Finance has heard the comments and the question of the heritage and stabilization legislation is entirely a matter for him and I am sure that he would address that. I simply wanted to say that I note the commendation extended by the Senator, to the lawyers who took that case to the Privy Council. I want to point out to the hon. Senator that there are many other cases that had gone to the Privy Council and I would hope that he would remember to compliment attorneys as well, particularly those who managed to get the Privy Council to agree that a certain statement was libelous and found liability against someone that the Senator knows very well.

Apart from that, I appreciate the sentiments expressed from the other side and with those very few comments, I beg to move.

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. Seetahal: There is one issue. In section 24A the fifth line, should it not be: "subject to an order of the court"? I do not know if there is reference somewhere to order. If there is no previous reference to an order, you cannot say subject to the order of the court. That would suggest some kind of conflict. I tried to get the main Act, but I have not. Should it not be "subject to an order of the court"?

Mr. Hinds: I am advised that it should remain "the order" because it makes reference to the particular order in relation to the matter.

Sen. Seetahal: What order is that? It is more than one orders. I am looking at section 24 of the parent Act. Maybe it was amended before. It talks of execution of instrument by order of the court. It says at line 2, "judgment or order" and later on in line 5 it talks about ordering with respect to conveyance. There are different types of orders. As a matter of drafting, I want to know if it is right or it is definite that you want "the order". If that is so, that is fine.

Mr. Hinds: Again, I am being advised that "the order" is what is intended. Thank you.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Mr. Hinds: Mr. Chairman, I have had an opportunity to seek some advice in respect of the second question that was posed by Sen. King in the course of the debate, in relation to the rules and I have been advised that yes, they will be brought before the House for a negative resolution.

Sen. King: Thank you very much.

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

Senate resumed.

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

2.45 p.m.

FAMILY PROCEEDINGS (AMDT.) BILL

Order for second reading read.

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

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

Mr. Vice-President, hon. Senators would recall that on November 09, 2004, the Family Proceedings (Amdt.) Bill, 2004 was debated and passed with an amendment before us in this Senate. In that debate, the hon. Senators Wade Mark,

Prof. Ramesh Deosaran, Robin Montano, Dana Seetahal and Dr. Eastlyn Mc Kenzie made very valuable contributions, as always.

The Family Proceedings (Amdt.) Bill, 2004 and the amendment made in the Senate were introduced in the House of Representatives on November 26, 2004, however, the Bill lapsed with the prorogation of the Parliament and it has now been reintroduced in the Senate.

Hon. Senators are already aware of the need for these amendments to the Family Proceedings Act, but for the record, the facts should be repeated.

Hon. Senators would recall that the Family Proceedings Act, No. 2 of 2004 was formulated as a result of concerns expressed by the Judiciary and other stakeholders with respect to the proceedings relating to the Family Court. One of the concerns expressed 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, or judges in the matrimonial jurisdiction of the court, 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 the High Court and its judges in certain matters. The lawyers would recall, among others, the strong words of the Privy Council, in the Chadee contempt matter relating to the issue of 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 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 from all reports, particularly 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, some of whom I have identified before, without the present ambiguity that now applies. This would mean that the courts would now have an expressed and, therefore, legislative 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 rationale for the project which seeks to resolve disputes by taking them out of the usual court procedure rather than having the usual adversarial rules which apply in litigation proceedings, to matters governing these family proceedings.

Clause 5 of the original Bill that was later enacted as the Family Court Proceedings Act, No. 2 of 2004 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 the parties should not be compelled to go to mediation since the whole concept of mediation is based on voluntary participation.

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

Mr. Vice-President, the Family Court has been open and in operation since May 2004 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 the 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 was appointed to review the performance of the Family Court since its inception in May 2004 expressed very strong views on the amendment which was made to clause 5. The committee has since proposed that the Act of 2004 be amended again to reflect the original wording, that is to say: "by deleting the words 'with the agreement of the parties'". In effect, that brings it back to what clause 5 would have been in the original draft.

One of the arguments put forward by the Monitoring Committee was 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, for the purpose and spirit of the Family Court may not be attained.

The point is that the whole objective of the new arrangement of the pilot project is to bring an alternative dispute resolution as a means of resolving which are usually and can often be acrimonious family disputes.

One of the ways that the Monitoring Committee has identified to achieve that objective is to have trained mediators—persons who are trained in alternative dispute resolution—available to the court to, at least, encourage the parties in the early or the initial stages to consider mediation. Whether or not they go through with the process is an entirely different question. Clearly, the intention was to encourage them very early in the proceedings to the process of mediation. The outcome would be determined from the actual events therein.

Mr. Vice-President, at this point, I would like to draw a distinction between forcing the parties to mediation 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 and, in my view, this is quite simple and uncontroversial in nature.

We recognize that mediation is a voluntary activity and referral to mediation does not necessarily result in mediation. In this regard, there are those who hold the view that the rights of the party will remain 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 in the normal way and continue to hear the action.

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, rather than have them use the inherent jurisdiction of the court which the Privy Council cautioned against and recommended legislative formality, a power which they have, as I said, under the inherent jurisdiction, and giving the High Court the power, as it were, to take possession and control of all matters within their purview.

As I have said, the High Court judges already exercise an 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 now have that expressed power, to refer parties to the social service professionals, which is a group that is now being brought in by the related Mediation Act.

With regard to the amendment that has now been circulated—one was circulated this afternoon—I would like to remind hon. Senators that at the committee stage of the debate on the Family Proceedings (Amdt.) Bill, 2004 which was on November 09, 2004 the Government agreed to accept an amendment proposed by Sen. Robin Montano and supported by Sen. Mary King. This is exactly what is reflected in the further amendment which is now being circulated.

Essentially, this amendment seeks to make it very clear that if the court refers parties to mediation or other social service professionals, it will be at no expense to the parties. So, in effect, there are two amendments that are before us in respect of the Family Proceedings Act, No. 2 of 2004 and, therefore, we are seeking the support of this honourable Senate. These amendments are to amend section 5(1) of the Act by deleting the words "with the agreement of the parties" and inserting at the end of the word "referral" the words "at no expense to the parties". Mr. Vice-President, I am therefore asking hon. Senators to support these two very simple amendments to which we have all agreed in principle.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Mr. Vice-President, thank you. This six-line amendment Bill represents a gross insult to the intelligence of this honourable Senate and, by extension, the intelligence of the nation of Trinidad and Tobago. It is offensive; it is unreasonable; and it invades the rights, powers and privileges of this honourable Senate. We take strong umbrage and objection to any outside agency or committee directing this honourable Senate on how to make laws; how to draft laws; how to amend and when to amend laws, and we have the Minister in the Ministry of National Security piloting this unreasonable amendment to this honourable Senate.

I would like to find out what is the role of the Attorney General in this matter? Is the Attorney General a messenger or a postman for this so-called Monitoring Committee? Mr. Vice-President, who is this so-called Monitoring Committee to tell this honourable Senate that after we have been engaged in extensive deliberation, dialogue and conversation why we do not want this particular initial amendment, section or provision incorporated in the parent legislation? Who is

this Monitoring Committee to tell the hon. Minister that? Imagine, they have expressed, according to the Minister, strong views on these amendments. Who are these people?

Mr. Vice-President, I would like the Minister to tell us who these people are. I want them to come before a joint select committee or a select committee of this Senate and tell us parliamentarians and lawmakers, how we must go about making laws. Their task is to implement the law and if they have a problem they could take the matter to the courts, but they cannot—after we have spent long hours debating a very critical Bill—tell the Attorney General and, in this instance, the Minister in the Ministry of National Security, who should have more work to do on crime and take up their time to bring a six-line amendment and tell us in this honourable Senate that they object to our amendment. That is insulting! We want to know the names of these persons! We want to know who gave them the power to tell this Senate how it must conduct its affairs. Mr. Vice-President, we take strong objection to that. We would not support any amendment as proposed by the Government in these six lines that it has brought before us. This is an insult to the people of this country.

Mr. Vice-President, what is mediation? Is mediation not a voluntary process where you and I have a dispute and we sit in the presence of a third party and come up with a decision? It is voluntary. So when the Minister says that the magistrate must now have the power to refer these matters to mediation, I want to ask the hon. Minister if he is aware of the constitutionality of what he is proposing here. You have already lost one matter in the court with the Judicial Review Bill which you should have resigned on, and now you brought an amendment that is going to infringe on the rights of the people. This is an infringement on the rights of the people! Does this amendment not require a special majority?

Presently, the magistrate does not have this power and that is what the Minister referred to earlier, re the Privy Council judgement. So the Privy Council is saying that the High Court and the judges of the High Court have this inherent power but the magistrates do not have it.

So, if you are going to force me into mediation, are you not infringing on my rights? If you are infringing on my rights, do you not require a specified majority for this particular amendment that you have proposed here? Mr. Vice-President, this so-called Monitoring Committee is misleading the hon. Minister in the Ministry of National Security, and they have come to this Parliament to attempt to mislead us. I am going to tell you why.

Mr. Vice-President, I want to draw to your attention that the Minister came here to deal with these matters. I would have thought that the hon. Minister, in making his case and advancing his position, would have told this honourable Senate the challenges, the problems, the successes and the failures of this so-called pilot project. What are the challenges of this pilot project? Why do they want to force people into mediation? What is the basis? Is the Family Court experiencing challenges and difficulties to resolve family disputes? If that is so, could the hon. Minister not provide this Senate with some statistics to tell us, for instance, what is the reality? We have received no statistics; we have received no facts on the matter, but we are told that this so-called Monitoring Committee which is headed by some big "sawatee" in the courts of Trinidad and Tobago wants to make amendments to the Family Proceedings (Amdt.) Act. We do not like these amendments. We are going to call the Attorney General into our offices and say: "We do not like these amendments and these amendments are going to humbug this 'one stop shop Family Court' and, therefore, the Monitoring Committee instructs the Attorney General to go back to the Senate; go back to the House of Representatives and tell them fellows in the Senate that we want this thing changed because we, the big Monitoring Committee, have an objection to the amendment." Who are they? Who are these people to insult our intelligence by proposing this absurd amendment?

Mr. Vice-President, if the Minister in the Ministry of National Security, who is piloting this particular amendment here this afternoon, does not know the reality, then let me indicate to him the reality. Mr. Vice-President, are you aware that these so-called trained mediators who have done courses with the Chamber of Commerce or with the University of the West Indies and have graduated as trained mediators are now unemployed? These trained mediators are looking for work. So they come to this Senate to mamaguy us and to tell us that this pilot project will not work without this amendment.

Mr. Vice-President, this so-called big "sawatee" Monitoring Committee is telling us that this pilot project called the Family Court will not work if they do not have this amendment. What is the evidence before this honourable Senate to convince us that the pilot project will not work? The Minister has brought no evidence! Do you know what he has done? He has brought an amendment.

I want to let the Minister know that when Sen. Robin Montano made the case that the State should bear the cost of mediation it was on the basis of voluntarism; it was not on the basis of forced mediation. So when you come here and stick in this and tell us that when the magistrate refers a matter to these so-called trained mediators, they are now saying you do not have to pay—but I would have to pay.

If there is a land dispute, we would go before the courts—they are saying that you do not have to pay and I do not have to pay—but do you know who is paying? The taxpayers are paying for that.

This amendment really amounts to an attempt by the Monitoring Committee to create and guarantee jobs for the PNM boys and girls who have been trained as mediators, and they are coming to us here to support it. How can we support this?

Mr. Vice-President, let me draw to your attention the following information. I would like the hon. Minister in the Ministry of National Security, who has piloted this particular amendment, to refer to the address of the Chief Justice, the hon. Mr. Justice Sharma, at the opening of the 2005/2006 Law Term. I want to take some time and quote this section. Mr. Vice-President, they are trying to hoodwink this Parliament. They are misleading the Minister in the Ministry of National Security and the Attorney General.

Mr. Vice-President, I want to refer you to page 13 of the hon. Chief Justice's report at the opening of the law term. There is a heading "The Family Court—A Success Story". Here is the Chief Justice promoting the Family Court and saying in his address at the opening of the Law Term 2005/2006, that the Family Court is a success story. I would go further because I want to engage you in more details later on.

Hear what the hon. Chief Justice said in his opening statement.

"During the last year of operations…"

That was in 2004 or the term of office—I think it was in September or October. Hear what we were told by the hon. Chief Justice:

> "During the last year of operations a total of 6,405 matters were filed at the Family Court of which 4,746 matters were determined."

Mr. Vice-President, may I repeat this for you? The hon. Minister in the Ministry of National Security has brought an amendment to give us the impression that this so-called "one stop family shop" cannot work and it cannot function without this amendment, and without this amendment the Chief Justice of this country is telling the whole world that the Family Court is a success story.

He went on to demonstrate statistically, unlike my colleague who came here without a camouflage—

Sen. Dr. Saith: You are repeating yourself.

Sen. W. Mark: You do not tell me that I am repeating myself. I am dealing here with the Chief Justice.

Sen. Dr. Saith: It is a rerun.

Sen. W. Mark: You could say what you want. You know what trick or tricks you are up to. Mr. Vice-President, sorry about that. I want to repeat for the record what the Chief Justice told this country in 2004. He said that 6,405 matters were filed at the Family Court and 4,746 were determined. Mr. Vice-President, imagine more than 70 per cent of these cases which were filed, were determined by the Family Court in 2004/2005, but here we have a Minister coming to tell us that the Family Court is stalled; it cannot move forward; and it ran out of gas.

Hon. Senators: He did not say that.

Sen. W. Mark: The inference is there. When the gentleman, the hon. Minister told us that the Monitoring Committee expressed strong views on these amendments, he went on to say that this particular pilot project is going to face a lot of challenges because of the failure to effect this particular amendment. In essence, this is what he said. I am challenging the Minister in the Ministry of National Security, who is piloting this matter, that if he is aware that there is conspiracy involving this so-called Monitoring Committee to use him and this Parliament in order to satisfy their own selfish agendas within that framework of the Family Court, and whether he is aware that there is a selfish agenda on their part and they are using him and the Attorney General to get through with their selfish agenda? That is what it is. I would like him to investigate this matter.

In fact, I call on the hon. Minister in the Ministry of National Security, who has piloted this particular amendment, to withdraw this amendment. This amendment cannot fry; this amendment has constitutional issues; and just as we challenged them with the Judicial Review Bill and the Anti-Terrorism Bill, if you all pass this Bill this afternoon, we are going to challenge it in the High Court of this country. We are going straight up to the Privy Council with this matter. You cannot impose and force mediation on parties without the relevant specified majority when we know that mediation is a voluntary process. I find this matter quite interesting. I cannot support this.

Sen. Dumas: Senator, are you aware that your political leader supported it?

Sen. W. Mark: Who?

Sen. Dumas: Your political leader supports it.

Sen. W. Mark: You can bring the evidence for me. I do not want any "ol' talk". Mr. Vice-President, may I address you. If the hon. Minister is not aware, let me inform him that these so-called trained mediators would receive from taxpayers, the sum of $1,200 to $1,500 per session. That is the amount of money that these so-called trained mediators are lining up for per session.

Mr. Vice-President, could you imagine that a trained mediator, who has been imposed on a family that is seeking to have a matter resolved voluntarily, is being given $1,500 per session? So, if in one week a person has five sessions—in a month that would be 20 sessions—so this man would be going home with more money than the Minister in the Ministry of National Security.

Sen. Dumas: How much money Ramlogan is making in a session?

Sen. W. Mark: Mr. Vice-President, I am talking about a situation in which taxpayers' moneys are being raped. They are raping the Treasury. This is what the trained mediators are going to do. They are going to rape our Treasury.

I want to suggest to the hon. Minister that rather than give to trained mediators, at taxpayers' expense, $1,500 per session, I call on the hon. Minister and the Government of Trinidad and Tobago to train magistrates and judges in mediation and let the judges and magistrates carry on mediation in their courts as they are now doing. Why do you want trained mediators to intervene in this matter? Why do you want that? Let us invest in our judges—employ more judges and employ more magistrates—and train the magistrates in mediation. Let them be in a position when they are hearing matters and disputes, to engage the parties in mediation and pay them properly. We cannot support and will not support the amendment that is before us. The United National Congress will not support the amendment that has been brought to this honourable Senate today. I am saying that this is an imposition and the Minister is being used by the Monitoring Committee to insult our intelligence. We call on the Minister in the Ministry of National Security to withdraw this amendment.

Hon. Senator: Are you finished?

Sen. W. Mark: No, I want to quote extensively from the Chief Justice's report to put a lie to this position that has been advanced here through the Minister, by the Monitoring Committee that this Family Court cannot function without this particular amendment. Who are they fooling? They are not fooling us here. They might fool the Minister and the Attorney General, but not us in the Opposition. [*Interruption*] Mr. Vice-President, I am being reminded that it is Justice Smith. Well, we should haul Justice Smith before a select committee of

this Parliament and let Justice Smith tell us why he is seeking to dictate to this Parliament how we should go about doing our business. Why is Justice Smith interfering in our affairs?

Mr. Vice-President, let me indicate to you that on page 14 of this report—it is unbelievable; it is incredible that this Government, in the face of the Chief Justice's report, painting the Family Court as a success story, saying that 80 per cent of the matters before it have been solved, you have a so-called monitoring committee telling this Parliament that the court cannot work because it does not have trained mediators and they cannot force people into mediation. How can that be right? Let me continue.

Mr. Vice-President, hear what the hon. Chief Justice had to say in his report on page 14. He said that the level of efficiency now being achieved at the Family Court is indicative of the following. Imagine, the Chief Justice of our country is saying in black and white that the Family Court is highly efficient. We have an amendment before us telling us the opposite and saying that the only way it can become efficient is to force people into mediation.

Listen, I want you to look at the amendment. Let me just read the amendment. This was the original amendment and when we delete the words, let me tell you how it is going to read. That is clause 5(1):

> "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 refer the matter or the court may make the appropriate referral."

When you delete the words "with the agreement of the parties", what are you telling us? If this is not forced mediation, why are you deleting the words "with the agreement of the parties"? If this is not forced mediation, why is the Minister seeking to delete these words? He is seeking to delete these words because he wants these persons to be sent like cattle before mediators.

Mr. Vice-President, I have rights and every single citizen who goes before the courts in this country has rights. You cannot infringe my rights without the consequences, as they have just experienced at the level of the High Court where they were defeated. They were seeking to impose a judicial review amendment in order to deny ordinary persons the right to take the Government to court and the High Court— [*Interruption*] The matter was thrown out.

3.30 p.m.

Sen. Dumas: You do not want me to comment on that.

Sen. W. Mark: "Yeah, it is now appeal, ah hear yuh appeal it, so I would not go further."

Sen. Dumas: He in-between, he does not know what he is saying.

Sen. W. Mark: Mr. Vice-President, I am very clear. If the Minister and the Government are not clear, they are pretending not to be clear. They know what they have done; they know what they have brought here; they know they are seeking to impose forced mediation on people in this country, when mediation is a voluntary process, and this amendment in its present form requires a specified majority because it infringes the rights of citizens in the context of court proceedings. So, I hope that the hon. Minister would read—if he does not have a copy I would make a copy available to him.

Hon. Hinds: Would the Member give way?

Sen. W. Mark: You want to say something?

Hon. Hinds: Would the hon. Senator—as I contemplate his thoughts on this matter—indicate clearly, which of the constitutional rights is being infringed?

Sen. W. Mark: I am suggesting that that is a matter that I am leaving to the court. [*Laughter*] You pass this; we take it to court, and then the court will tell me and you what areas of the rights of the people you are infringing. I am not to determine that for you. But, Mr. Vice-President, may I continue, may I continue, may I continue? The more I read this report of the Chief Justice, it becomes like "Alice in Wonderland, curiouser and curiouser". Why did you bring back this amendment? Who is forcing the Government into this amendment? Who? Justice Smith?

Sen. Dumas: A judge.

Sen. W. Mark: Anyway, I would move a motion at the appropriate time about judges. May I continue? I want to repeat, on page 14—this is the Chief Justice speaking, not Wade Mark:

"The level of efficiency now being achieved at the Family Court is indicative of the following:

> Prior to the establishment of the Family Court, a matrimonial matter could take anywhere between one year and several years to have a first hearing date at the Supreme Court. Despite the increasing volume of matters filed

> at the Family Court, all High Court matters are given their first hearing within eight (8) weeks…"

Mr. Vice-President, they have now moved from one year and several years to a matter of a matrimonial nature going to the High Court, being heard within eight weeks of filing. We are being told by a so-called monitoring committee that the Family Court is not working! Therefore, the only way the Family Court could work is if we amend the law to allow trained mediators into the picture, to force people to be referred by the magistrate to trained mediators. It goes on, he says, in the case of the Magistrates' Courts these matters can be heard within a three-to four-week period.

What more level of efficiency you would want to have? What is the role of these mediators? Mr. Vice-President, may I inform you, mediators do not exist in this report. You know who exist? Probation officers. Probations officers, along with the court, operating at maximum efficiency, according to the Chief Justice, and we are being told by the Minister in the Ministry of National Security that the court "eh wuking", the court is inefficient; the one-stop family shop "cyar" function, because they do not have trained mediators. The one-stop family court "cyar" function because parties are not being referred by magistrates. This is utter nonsense. It goes on:

> "The scheduling of matters within these given time frames has allowed the court to achieve one of its overriding objectives, which states 'matters must be heard expeditiously.'"

I want to refer the report of the hon. Chief Justice to the mover of this particular Bill today, because I am very, very doubtful that he has had a chance to read the section dealing with family court, a success story. Had he read that matter, he would not have brought that Bill here this afternoon. I am saying the reason it is here, is because there is a giant conspiracy to have so-called PNM trained mediators.

Sen. Dumas: Government trained.

Sen. W. Mark: So-called PNM trained mediators employed. At what, Mr. Vice-President? Fifteen hundred dollars per session. At whose expense? Taxpayers.

Hon. Senator: [*Inaudible*]

Sen. W. Mark: I think it might be the Monitoring Committee. This monitoring committee has real power, you know. This Monitoring Committee

tells the Minister and the Government: "I do not like these amendments", and the Minister and the Government come to this Parliament and say: "You know what happened? The Monitoring Committee tells us that these amendments 'ain't' good, and we now have to bring it to you all." That is the kind of stupidness and so on—sorry, Mr. Vice-President—that is the kind of foolishness we have in this Parliament. How can we sit here and allow the Government to hoodwink us? This is a whole "pappy-show"; this is a carnival band. Let me continue.

He went on because they did surveys:

> "The comments on our service from our customers are note worthy."

It goes on, that is the Chief Justice:

> "Such comments include..."

Mr. Vice-President, listen to the comments coming from people who are not forced into mediation. These are people who are involved in voluntary mediation at the level of the Family Court. Hear what the comments of those people are: "service is excellent". Why do you want to change that Minister? The people who are involved in the courts—and over 4,746 matters were determined, over 70 per cent success story. Hear what they are saying about the Family Court: "service is excellent." It goes on:

> "maintain present standard…"

What do you understand by that? They say hon. Vice-President, that the Monitoring Committee should maintain the present standard, and the Monitoring Committee is coming to this Parliament and telling us they want to change the standards, when the people are saying maintain the standard. It goes on, it is a "highly professional system"; that is what ordinary people are saying. They have experienced the efficiencies of the Family Court, and they are saying, it is a highly professional system. It goes on:

> "keep doing good work, it is perfect, environment is very good, 100% satisfying…"

Dr. Saith.

> "service is very comfortable and the environment is clean, and there should be more than one court like this."

These are some of the comments coming out of a survey in which out of 6,405 matters, 4,746 were resolved. Mr. Vice-President, within a year? This is a success story. Within one year, close to 80 per cent of the cases that went before the

Family Court were resolved and determined. You are coming here with an amendment today telling us to turn the clock back. "Nah man", we have come too far to turn back now. [*Laughter*] We have come too far to turn back now.

Sen. Dumas: Be careful what you are saying, you know.

Sen. W. Mark: I am telling you. [*Interruption*] Do not worry. Mr. Vice-President, he goes on. Hear what he says:

> "Attorneys have commented that they welcome the change from the old system, that the court operates in a prompt and efficient manner and that it took the bitterness out of the breakdown of marriage."

Hear what the court—hear what people like the hon. Minister, who is an attorney-at-law are saying: "It is reducing the bitterness." When you force people—Mr. Vice-President, could you understand this? They are seeking to force you and me into mediation. "We are going to be bitter." They are saying that without forcing these people into mediation, it is reducing the level of bitterness. You now want to introduce forced mediation so that you can now increase the level of bitterness. I think this Government is standing on its head. This Government does not know what is happening in the country. The Government is being misled. [*Interruption*] May I go on?

This contribution of the Chief Justice should go down into the annals of history. It is a rich contribution that puts a lie completely to the bogus arguments that have been submitted here today—bogus arguments! Hear what he said:

> "The high quality of services provided by the Family Court has resulted in an increasing demand on our human resources, and as a consequence staffing at the Court has to be revisited."

Mr. Vice-President, what the Chief Justice is asking this Government to do, is to provide more backup staff. He wants more human resources. He never said in this report that he wanted trained mediators. He never called for trained mediators here. So, I think the Government needs to revisit this matter that is before this honourable House.

> "Word about the operations of the Family Court, its innovative, effective and efficient system, procedures and operations have not gone unnoticed."

Mr. Vice-President, hear the language being used by the Chief Justice of this country. He said that the operations of the Family Court, based on its innovative approach, the efficacy, the efficiency, the procedures and operations have not gone unnoticed. The hon. Chief Justice is saying, the Family Court in its present

structure and its present arrangement is highly efficient. You do not need an amendment to make it more efficient. This is efficient without the amendment.

He goes on to say:

"We soon began receiving requests…"

So efficient has this family pilot become, that the courts of this country have begun to receive requests:

"from agencies locally, regionally and internationally to visit our facilities."

It goes on:

"These visitors included Judicial Officers, Administrators and Public Servants from as far as the Netherlands, Bahamas, Jamaica, England and Ghana. One visitor from the Caribbean region has made the comment that it is good to know that there is a model within the Region that can be used to effect improvement within regional court systems."

So here it is we have a model, without referring people.

Sen. Dr. Saith: [*Inaudible*]

Sen. W. Mark: Dr. Saith—anyway, let me address you, Mr. Vice-President. The contribution of the Chief Justice is extremely rich, and I want to share those ideas with you.

Mr. Vice-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: Mr. Vice-President, I have always learned from my trade union experience and from my experience as being in charge of proceedings, that when you have silence, it indicates agreement. [*Laughter*] I have always learned that. I have always known that silence also means consent, so I have no problems with that. So, if my colleagues choose to remain silent, I am very happy, they have given me total consent to proceed. Thank you very much.

Mr. Vice-President, I continue on page 15 of this very instructive report on the Family Court, a success story by the Chief Justice of this country. He goes on:

> "It was with great courage of conviction that the judiciary of Trinidad and Tobago embraced this new concept of resolving family related matters. We can boast that we now have a better understanding of the need to change not only the way we think but also the way we conduct business in this new paradigm. The Court's philosophy of encouraging…"

Mr. Vice-President, I want you to listen very carefully to the words of the Chief Justice.

> "The Court's philosophy of encouraging…"

Encouraging, not imposing; not forcing.

> "of encouraging parties to resolve their family disputes themselves, with specialist assistance and support wherever necessary speaks to the empowerment of our people, as an essential ingredient if we are to continue to pursue a path of people development, while at the same time preserving the integrity of justice and the rule of law."

I wonder if the hon. Members understand the language and the meaning behind the language of the hon. Chief Justice.

> "The Court's philosophy of encouraging parties to resolve their family disputes themselves…"

Themselves; voluntary mediation, not imposed mediation, and they are getting support, assistance from specialists wherever necessary, speaks to the empowerment of our people. So, Mr. Vice-President, I would like to commend this report to the mover of the Bill, if he has not read it.

This report tells you and me and all Members of this honourable Senate, that the Family Court in its present form, without the amendment proposed, is working efficiently, effectively and it is delivering professional services to its clients. That is what this report on the Family Court says. And as I said, Mr. Vice-President, I do not think the hon. Minister in the Ministry of National Security could come better than the Chief Justice.

Hence the reason, he could not quote one statistic; he could not provide us with any facts as to why this absurd and insulting amendment should be accepted by this honourable Senate. He has brought no argument; he has brought no evidence; he has brought no facts; he has brought no statistics to justify why this amendment must be supported by this honourable Senate—none, none. He is a lawyer and he would know that if your evidence is weak in a court of law, your case is thrown out. He is a lawyer, he is trained.

So, Mr. Vice-President, lagniappe, they call this one lagniappe. They are saying to us, listen, you see we want to delete "with the agreement of the parties". But you know what, we "gihing yuh" some sugar in the tea; is a little sugar; he put a little cream, and say listen, "ah go put a sweetener here for yuh"; I want you to delete the words "with the agreement of the parties", and then he say, listen, for doing so, loyal servants of the PNM on the Opposition Benches—that is how you view us, as loyal servants of the PNM—at no expense to the parties.

The Minister provided us with no information on the projected cost of this exercise. When this moves from a pilot at Nipdec House to universal coverage in Trinidad and Tobago, would the Government be able to sustain this cost? What is the projected cost of this exercise? How long is a pilot project, Mr. Vice-President? When is the pilot going to crash? When are we going to complete this pilot project? The Minister gives us no answer, and he comes here and expects us to support this measure. We cannot.

We understand—and I would like you to investigate this matter—that the court administrator has a lot of family members and friends who have been trained in this thing they call mediation, knocking at the court administration doors—[*Interruption*] forget court administrator—but knocking at the doors of the court administration, seeking jobs. We would like the hon. Minister in the Ministry of National Security to investigate this matter. I would like the hon. Minister to indicate to us, what system is going to be put in place to ensure that there is not nepotism, cronyism, favoritism and discrimination, as it relates to the employment of mediators. What system are you going to put in place?

The reason we would not progress, is that the Government continues to pad critical institutions with their cronies; people who are not trained and are not qualified, but because they have a party card, they are able to get employment. How long can you continue with that? A country cannot progress on the basis of discrimination. France is in flames today because of discrimination against their own citizens. They got fed up and they "bu'n down" France. Do not wait until it happens here. Take action now.

Sen. Yuille-Williams: It is not the same.

Sen. W. Mark: I know, you charge Abu Bakr—your friend—for sedition, I am smarter than that.

Mr. Vice-President: Sen. Mark, please.

Sen. W. Mark: And I am doing it in Parliament, Bakr does not have the privilege of Parliament. I have it. Bakr and the PNM, I would deal with that on another day.

I ask my honourable friends, bring the evidence; bring the facts; convince us that there is justification for this amendment before us. [*Interruption*] I think you want to go family—what is the thing, is the Best Village tonight? Oh, I thought it was Best Village and she fed up and she wants to go. I want to excuse her, with your leave. Okay, thank you.

PNM is tired, you know, Mr. Vice-President. They bring bills here, but they expect us not to debate them. When I come here, I come to debate, you know; I come to expose the PNM; I come to get rid of the PNM. That is what I come here to do, not to make you all look good. Just remember my role is to get rid of you all, as quickly as I can. [*Interruption*] No, it would be very shortly. [*Interruption*] [*Laughter*] I want to ask the Attorney General.

Mr. Vice-President, I want to ask you and maybe the hon. Minister could tell us. There is a report that was tabled in this Parliament, I would like to know when the Government intends to refer that matter to the Director of Public Prosecutions. We want to know when the Government of Trinidad and Tobago and the Attorney General, in particular, is going to refer the Landate Commission of Enquiry to the Director of Public Prosecutions, because it has jail for people there. [*Desk thumping*] I want to know why the Government is pussyfooting on referring this matter to the Director of Public Prosecutions. I thought I should inform the hon. Minister because it is an area I have an interest in.

Sen. Dr. Saith: Well ask a question.

Sen. W. Mark: Oh, I would bring a motion on this matter, very shortly.

Sen. Dumas: Inappropriate behaviour.

Sen. W. Mark: Inappropriate, very appropriate.

Sen. Yuille-Williams: At least in the headline.

Sen. W. Mark: No, no, no, Joan you are in this thing a long time. [*Interruption*] I do not have to look for headlines, girl, I am headline. Wade Mark is headline. What you talking about, I do not look for "dem" things. I have had so many years of experience in this Parliament, when I rise alone in this Parliament, I am headline. So, I do not have to make headline, I mean to say. I think you are insulting me here.

Mr. Vice-President, may I continue. I make it very clear, very clear. You see the first Bill, we had no problem, we cooperated. You see this—is war! This is war! The Government is seeking to impose a measure on the population that is illegal, unconstitutional, null and void, and therefore would have no effect. We call on the hon. Minister who has piloted this measure this afternoon, to do the honourable thing, not to resign as yet, I would call on him at the appropriate time. But I call on the hon. Minister to withdraw this measure. This measure is insulting; this measure is unreasonable; this measure cannot stand the scrutiny of this Parliament, and the Parliament has deliberated on this matter; we have taken a decision on this matter, and I do not see any reason for the Opposition, in this instance, to review its position on this matter. We stand very firm on our original position.

We oppose the amendment; we cannot support this amendment, and we call on the Government to do the honourable thing. We call on the honourable Senate, through the hon. Minister and through your good self, Mr. Vice-President, to withdraw this measure. This measure must be withdrawn; we do not support this measure. We call on the hon. Minister to withdraw. I want to issue a word of advice and warning.

Sen. Yuille-Williams: Sen. Montano—

Sen. W. Mark: Listen, be sympathetic to the brother, his father died. You keep calling this man name.

Sen. Yuille-Williams: In his absence—

Sen. W. Mark: No, well leave him, "nah man", he is in deep grief now, let us be sympathetic to him.

[*Interruption*] You do not tell me who back to turn on.

4.00 p.m.

Mr. Vice-President, I call on my dear friend who has done very well in his first encounter, you see, your second encounter, "eh" good; withdraw this Bill. I want to warn the Government if you pursue as you have done with the Anti-Terrorism Bill which will be struck down as unconstitutional, illegal and null and void and therefore of no effect; if they pursue with their majority and they get this Bill passed today we shall contest this matter in the High Court to the point of the Privy Council, if you pursue with the passage of this illegal and unconstitutional measure that is insulting. And I want to issue a word of advice to this so-called Monitoring Committee: No committee, monitoring or otherwise, can dictate to

you and dictate to this honourable Senate how we go about formulating laws in this country, and therefore, the Monitoring Committee is totally rude and out of place to tell this Parliament how it should go about conducting its affairs.

Mr. Vice-President, we cannot, we will not and we shall not support this nefarious, offensive piece of legislation that will impose a kind of duty on the people that is not supported or guaranteed under the laws and under the constitutional freedoms and rights that we currently enjoy.

I thank you very much, Mr. Vice-President.

Sen. Dana Seetahal: Thank you, Mr. Vice-President. My recollection of this Bill that is before us is that it was passed in November 2004 and much of what Sen. Mark said now, he said then, and of course, it is his right to repeat himself as he has shown and done it again and again this evening.

The point, however, is that I would like really, an explanation as to why this Bill was permitted to lapse for some 10 months, as I understand it. I think the Government owes us an explanation for that. It is not good enough to say that it lapsed, there must be some reason. It is a Bill with one clause, essentially, the one clause dealing with the deletion of a phrase and the substitution of another. So what was the big deal about it that could cause it to spend so much time getting to the other place and not being passed, and that really, I think, should be the matter of concern for Senators this afternoon.

Mr. Vice-President, the original Act is not a 2005 Act, as I see listed here in the short title to the Bill, the Family Proceedings Act, 2005. It is Act No. 2 of 2004, passed in January 2004 and it was at that time that the suggestion was made that it should be, "with the agreement of the parties" that the court would refer persons in family proceedings matters where it was thought that mediation would be appropriate. In January 2004 I supported that, "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", et cetera, "the court may with the agreement of the parties". In January, 2004 we said that the agreement of the parties would be required seeing that mediation was a two-way street and that parties ought to agree to that to make it effective.

Now, Mr. Vice-President, when the matter came up in November 2004, by then, we had the Monitoring Committee whose function it was and is, to monitor the operations of the Family Court reporting. And I said then and I say again, that my knowledge, the information from that committee, was that in instances where there were contentious matters before the Family Court many parties, at the outset

would not agree to mediation. In other words, even though it might be in their interest to go to mediation because the matters were contentious, involving, probably, maintenance issues or contentious divorce issues, there was a difficulty in that. The Monitoring Committee and lawyers, I then said in November 2004 were of the view that the court—if the interest of the parties so demanded—may refer the parties to mediation. And that seemed to me, to be a workable thing.

It is not a forced mediation, because the court has the discretion and that discretion is guided by the interest of the parties. So I do not think, with all due respect to him, that Sen. Mark's concerns are valid and in particular, his concerns, as to the constitutionality of the amendment. Because, once there is a safeguard of the court in respect of any power, the safeguard of the court itself protects the constitutionality, which is my understanding of the law. When there is no safeguard then something can be deemed to be unconstitutional, as has been held in many, many cases, so I think his concern is a little exaggerated there.

What I understood then, in November, was that Senators felt that the demand that parties, or if a court demanded that parties go to mediation or made an order, why should the parties bear the expense, if the mediator were to be someone outside of the Ministry. And Sen. King would bear me out in that. At that time no amendment was made to that effect, but now that it is brought back this is what is happening now, that "it is to be at no expense of the parties", which would mean that the court's funds would go towards paying for that mediation; and it seems to be the only reasonable thing in the circumstances. So, I am in support of the amendment. Clearly, there is no doubt that I am in support, I have said it. I said it then and I said why, and I really have not changed my position. But my concern is, why have we waited so long? I think we definitely need an explanation about that.

Insofar as the question of the Family Court is concerned, Sen. Mark referred to the annual report of the Chief Justice which indicated that 74 per cent of the 6,400 matters were determined. Now this attests to the success of the Family Court as the Chief Justice said, but most of those matters were non-contentious matters, involving uncontested divorces and maintenance matters that were fairly trivial. Those are not the matters that, by any stretch of the imagination, would require mediation or anything of that kind.

In the present day, how it operates: if there are contentious issues, the court would suggest to the lawyers of the parties, try and settle this. And they would try and settle it without any assistance and then come back months after—and some divorce maintenance matters take years. What can happen is that with the

Family Court where everyone is around one table, it is not a judge, as the Vice-President sits above us, and that we the lawyers and the litigants are in the back, it is all around a table. It is a round-table discussion in which the parties are engaged and there at that kind of consultation an order would be made to refer the parties to mediation and the parties would have an opportunity to talk. It is not an order handed down for settlement, so there is a better chance of it working in this way. But what happens right now is that there is some kind of hamstringing of the court, because at the first stage, the first meeting under the current law there must be agreement of the parties to go to mediation. That is like restricting the functioning of the court in contentious matters.

Finally, with respect to the Monitoring Committee, I happen to know some of the members and I know Mrs. Daly as one; Mrs. Mendez-Bowen my colleague at the law school is another; and a couple of judges. I do not think it is fair to suggest that the Monitoring Committee sat down and conspired to say that we needed an amendment which would require or which would give the court the full power to refer for mediation just so that they can benefit, which is what the natural conclusion is from Sen. Mark's statement, so that they can earn $1,500 an hour.

First of all, I do not know that there is any evidence, or anything has been provided to us that $1,500 an hour is what mediators in general earn, and these mediators in particular, or either of these ladies or anyone has benefited in any way from the court's orders. So I think that until and unless you can show that, these kinds of comments are unfortunate and regrettable.

Sen. Mark: Mr. Vice-President, just let me clarify the point. I made the point that information has reached me that the range is between $1,200 to $1,500 per session; if you have information otherwise you can put it on the table. That is the information I have.

Sen. D. Seetahal: As I was saying, Sen. Mark did say it is $1,500 an hour. I said that is not my information and he had not said his source. The sessions are not anywhere near that from my information. But more importantly, I am saying to suggest that the Monitoring Committee is benefiting from that kind of recommendation is regrettable given the type of people; the people that I know who are in that committee. That there should be that suggestion that they made that recommendation is really regrettable for want of another word.

As to the court administrator's relatives and friends benefiting, I do not know if Sen. Mark knows that the court administrator is a Mr. Kelly and I do not know that he has friends or relatives benefiting from orders for mediation. So, again, we

need to clear up these matters because mere assertions are being made about people and they will reach the press and there will be headlines, and people have families and children and to have these kinds of assertions made which are unsupported, these allegations are really not fair.

The "court administrator", I believe, is what I have here, maybe it is the "court administration", which is even worse. In any event, the point is, if I may say, that as I see it, much of this debate has already taken place in respect of this Bill. We went through this a year ago and I think that a lot of what was said today, was said then, and really, what we need now, is just for the Government to explain why the delay.

Thank you very much. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Thank you, Mr. Vice-President. I have a brief contribution. I have to say I am very confused by the debate and by the amendment, so I am just going to confess what I understand and show up my confusion and hope the Minister would try to clarify it.

From what I understand, according to the present law, "the court may, with the agreement of the parties refer a matter…or aspect of a matter…to mediation". When the debate took place last time, I agreed with that, "with the agreement of the parties". We now have an amendment by which it is being proposed that it can be done without the agreement of the parties and the justification for that is that the court is a judge of what is in the best interest of the parties, even though the parties ought to be granted the right to decide what is in their best interest. You could tell me what is in my best interest, but, I am the judge of what is in my best interest and nobody can judge that my interest is otherwise, and tell me what to do.

Hon. Senator: Then go to the criminal court.

Sen. Prof. K. Ramchand: Jail me, if I am on a criminal offence. This is a matter where we are talking like human beings; you are telling me to go to mediation. If I tell my son, look, it is in your best interest to stop smoking—[*Interruption*] I cannot force him to stop.

Hon. Senator: Well go before the court. [*Crosstalk*]

Sen. Prof. K. Ramchand: I put it as a piece of advice to him. [*Interruption*] So if the court advises me, I feel it is in your best interest to go to mediation, I would say, "I could see your point but I do not want to go." I feel I have that right to say, I see your point but I do not want to go. Anyway, whatever that is the

situation we have, where it can go without my agreeing.

I want to know what penalty or punishment can be imposed upon a party who says, "I am not going"; and if the person goes to the mediation and never says a word, what are you going to do to him? Can there be a report on the mediation? Therefore, if a person refuses and is not going to cooperate, why bring in an amendment which says: "We go send you anyway." What is the point?

Sen. Dr. Mc Kenzie: No, no, no he just told you "but you ain't bound to go". You could go back to the normal court. [*Crosstalk*]

Sen. Prof. K. Ramchand: A chance that he is going to change his mind.

Sen. Dumas: Try to convince him to go. [*Crosstalk*]

Sen. Prof. K. Ramchand: "Nah", we are not dealing with little children. If I say, "I object to mediation, I do not want mediation, I want the matter to run its course here"—

Sen. Dr. Mc Kenzie: That is it.

Sen. Prof. K. Ramchand: —do not force me into mediation.

Sen. Dr. Saith: They cannot force you.

Sen. Dr. Mc Kenzie: Nobody will.

Sen. Prof. K. Ramchand: But this is what this thing is saying.

Sen. King: It says, "may", it did not say, "shall". [*Crosstalk*]

Sen. Prof. K. Ramchand: But, it was always a case of "may". That is what we have at present [*Crosstalk*] "May" is nothing new. What people are afraid of is that means "shall". From the time you remove "without the agreement" your "may" is driving in the direction of "shall". [*Crosstalk*]

As far as I understand the word "mediation", mediation means there is a spirit in which I say yes, "let's talk" and you say, "let's talk". It would be absurd to have a mediation where the two parties say, "we do not want it", it would also be absurd if one party says that they do not want it. Once they say they do not want it, why bother? Why bother to come here and say, "the court may refer without the agreement…"? Because if they do not agree it comes to nothing.

Sen. Dr. Mc Kenzie: It is a referral? It goes—

Sen. Prof. K. Ramchand: But why waste our time with that kind of referral?

Sen. Mark: It is jobs for the boys and girls. That is what it is all about.

Sen. Prof. K. Ramchand: Anyway, Mr. Vice-President, on the grounds of pure logic and common sense, [*Crosstalk*] I feel that a mediation to which one party objects is an absurdity. A mediation in which one party does not cooperate, in fact, it cannot have mediation, but supposing they say, "Well, you do not want to cooperate but we are having the mediation", that could lead to an injustice.

Sen. Mark: That is jobs, boy. That is what it is about. [*Crosstalk*]

Sen. Prof. K. Ramchand: That is what it is sounding like. The law at present says, "the court may refer it, with the agreement of the parties". That is good enough for me. If the parties disagree, that is it. So, why come with this amendment? You are not improving the law, you are not changing the law, according to you. So what is the point? I find this is a pointless amendment, which is a waste of time, whose only reason could be, you want to say it lapsed so long and we did not bring it, but the reason we did not bring it for so long is because we had an amendment, we were not happy with it. To me that is just—

Sen. Dumas: Mr. Vice-President, he is imputing improper motives to us and I feel he should withdraw that. [*Crosstalk*] He should withdraw that statement, Mr. Vice-President. [*Crosstalk*]

Mr. Vice-President: Sen. Prof. Ramchand, I would ask you to be more moderate in your language, please.

Sen. Seetahal: Thank you.

Sen. Prof. K. Ramchand: Okay, I am a very mild fellow; I did not know I was not being moderate. Anyway, if I said what I thought that this was a cover-up for the thing having lapsed so long, I apologize and I withdraw it. But my position is that this is not needed.

Thank you, Mr. Vice-President.

Sen. Carolyn Seepersad-Bachan: I would not be long, just five minutes. Thank you, Mr. Vice-President, I do not intend to be more than five to ten minutes. I just want to add to the point that Prof. Ramchand is raising about the whole issue of mediation.

When this Bill first came I remember that we were very adamant that we wanted the clause inserted, "with the agreement of the parties", the reason for that being that the basis of mediation is that there must be a commitment by the two parties. The mediation process comes to nothing, unless you have that commitment between the two parties; a commitment to resolve the issue. Even though you may have the commitment as well, it is not necessary. It does not

guarantee that the outcome will be one that does not require you to go back to the court.

I listened to what the Minister was saying, and he said when he went back to the *Hansard*—I gathered that it was the *Hansard* that he was referring to—he was talking about, this is not "forcing" mediation which is the point we raised at the time when we said we wanted, "with the agreement of parties", is that you did not want to force parties to mediation. He said, this is to force you to consider mediation, and I listened to Dr. Saith just now in the crosstalk and he was saying, that if you send the parties to mediation, the judge says, okay, I send you to mediation if there is a possibility.

But you see, Mr. Vice-President, what I have a problem with, is that you want the parties, probably, to go to a little education seminar and look at a tape and say, "Okay, this is what mediation is all about". There is this possibility that if you pursue mediation, you may be able to resolve this issue without the acrimony and so on. And probably lead to a speedy resolution to the issue to expedite the process. But if that is the case we do not have to—what I am saying is, the process is that you do not have to have the judge refer the matter. What could possibly happen here, this is either an informal process, where you expose the parties to mediation or some sort of information, some informed session, or if that is not possible, then somewhere within the clause itself, you have to indicate at what point in time; if the parties are not amenable to the mediation, they are not willing to mediate and you inform them, then what may happen is that you have to determine at what point in the process that it must be returned. Because you do not want to go through a whole long mediation process, wasting resources when there is no commitment on the parties' part, that there is no willingness. If you just have two parties, at least one of them—it just takes one, not the two, it just takes one. One may be willing for mediation, but the other side will say nothing. You could say what you want, the court could say what it wants, the other party says, "I am not willing". I have seen that, they are just not going to go to mediation.

So at some point we need to understand that you do not go through a whole long mediation process, waiting for the one party to break it down or the two parties to break it down and then say, "Okay, it goes back to the court", because all it is going to lead to is a wastage of resources, time and money when the thing should be before the court in the first place. So, Mr. Vice-President, Sen. Seetahal is saying, it is in section 8, "a report shall be made to the court…" But a report could be going to the court and you are saying, "Yes, discussions are taking place", but at no point in time—you will not know the outcome, unless you

understand the intent of the parties, and until the parties actually indicate to you that I am going to break it down, until you understand or reach to the point where the negotiation itself or the mediation process itself, breaks down.

That is the point that I wanted to make. It is either that they do it informally, that you may want to inform them, educate them, just in case, in the event that the parties would become more receptive now and agree to mediation, so when the judge advises or suggests that they go to mediation, that they would proceed along that path. Or, we have to have some point early in the process which would be able to determine whether this will go through mediation, and if so, then report back to the judge. That is my suggestion on the issue.

Mr. Vice-President, I just wanted to raise one other issue. When this Bill was brought before the Parliament, it came together with another Bill, which was the Community Mediation Bill which we had a lengthy debate on and which went to a select committee. And I am raising the issue because we are talking here about mediation, and just the same way I see the Government so intent on insisting on mediation, we have really had no success. We have had no outcome or what I would say, nothing has happened, Mr. Minister, through you, Mr. Vice-President, since the recommendations of that select committee were laid in this Senate.

If I could recall the recommendations, the Community Mediation Act was repealed and the Community Mediation Centres were cancelled. Those Community Mediation Centres, you would note, that in recent submission by the Trinidad chamber, well, the business associations, they recommended that those Community Mediation Centres be reinstituted, because they served a purpose at the time, especially for first-time offenders. When we went to the select committee, Senators would recall that the government indicated, through the Attorney General, they recommended and it was actually stated, it was clearly outlined, that they would be looking at the reform of the prison system, and through that they would be looking at some form of mediation. Mr. Vice-President, nothing has happened. To me, if the Government is so intent now and so insistent on mediation, that is where we need mediation. So I want to suggest that the Minister follow up on these recommendations.

Just the one other issue "at no expense to the parties". When this came in November, 2004 I heard the Senator indicating that colleagues on our side agreed with the amendment. What we agreed to was "at no expense to the parties", because we were saying, if you are going to insist that this be done without the agreement of parties, then you cannot force cost on the parties, and this is why we indicated "at no expense to the parties". In fact, this should have been in the original Bill when we first debated it and it did not happen.

So, Mr. Vice-President, on that note I want to say thank you for allowing me this small contribution and I look forward to the response by the Minister.

I thank you. [*Desk thumping*]

Mr. Vice-President: Hon. Senators, we shall take the tea break now and resume at 5.00 p.m. The Senate shall now be suspended for tea.

4.28 p.m.: *Sitting suspended*.

5.00 p.m.: *Sitting resumed.*

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Thank you very much. Mr. Vice-President. I want to begin my response by reading what the amended version ought to be. We are talking about section 5 of the parent Act, Family Proceedings No. 2, 2004, and it should read at the end of this process.

> "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."

Very, very simple statement of law recognizing on the one hand that the court from its tremendous experience in dealing with the matters before it, dealing with a matter brought to it by two parties who would probably for the most part be coming to that formality, that process for the first time—some cases more than once and that sort of thing—but generally with much less experience than the court, the court recognizing that the best interest would be served may make the appropriate referral. In essence, that is it.

Mr. Vice-President, in the conduct of these proceedings, there obviously tends to be a tremendous amount of emotions, emotions run high; anger sometimes; and it is precisely in that kind of atmosphere that better judgment is impeded. The court is the neutral arbiter of all of this, taking a calm, mature, paternalistic or maternalistic view on the situation with the interest of the State, with the interest of the children paramount in its objective mind, so to speak, whereas both parties are seeing not necessarily the big picture but they see their own interest in this. Therefore that kind of posture from the court is critical. The court taking that kind of posture may consider that the issue or some aspect of the issue should go for mediation and the interest of the parties and the public interest as well would be better served. That essentially is what the thing is saying.

Let me therefore proceed to respond to Sen. Prof. Ramchand, what I consider to be an objective attempt at analyzing the provisions before us. I want to assure the goodly Senator, and in fact Senators, that there is no suggestion of force here and the use of the word "may" really brings that out. It does not say "shall", it says "may". I had also indicated in my opening comments that the term "may" demonstrates that the provision is not mandatory, but rather it is discretionary. That tells you immediately that it is not in all cases the court may consider mediation to be helpful. So there is no question of force and I want Sen. Prof. Ramchand to appreciate that.

Based on the comments offered by the Senator, I want to indicate that even when there is voluntary mediation, where the two parties agree to mediation, they may not necessarily come to an agreement in the mediation process. They may not. Demonstrating yet again that mediation whether you force it, if you say so, or voluntarily is not an end in itself. It may work, it may not. When it does, the ethos, the ethic, the philosophy of the Family Court is met. It has been quite successful as has been indicated by Sen. Mark. There is no doubt about it and all the statistics he asked of me, I have them. I had them when I spoke, but I really honestly felt the measures before us were so logical, so simple, they would have been easily digestible, intellectually and otherwise and there would have been no trouble dealing with them. But clearly, the hon. Sen. Mark choked on a minor matter, so now I must find time to put him straight.

Sen. Mark: Just remember you are a guest here. [*Laughter*]

Hon. F. Hinds: Mr. Vice-President, when the mediation works, as I said, the philosophy of the Family Court is well and truly met and we are happy about that, but when it does not work, whether it is engendered voluntarily or on the discretion of the court as we are trying to achieve now, when it does not work, then you go right back to the normal trial process with all the acrimony, and to use my friend Sen. Mark's comment, the bitterness that we are trying to avoid. But Sen. Mark was able to turn a simple intellectual argument on its head, missing the mark completely and embarrassingly so. [*Interruption*]

Sen. Mark: No apology.

Hon. F. Hinds: Because he was saying that we are now going the other way around. The Chief Justice was praising the operation of the Family Court and it is all perfect, according to him, without the amendment that we are offering. Therefore, there is no bitterness and when we offer this amendment it will create the bitterness. I really, really was amazed at that, if you like, distorted, contorted, intellectual flip-flopping from my friend. [*Crosstalk*] But I understand that those

who reside here, those who frequent here Tuesday after Tuesday have become immune to that. [*Laughter and desk thumping*] But having for the first time been exposed to that intellectual virus, I am troubled by it.

Sen. Mark: Boy, I tell you, you are a stranger in this Chamber. I would not interrupt you, but if you provoke me I will.

Hon. F. Hinds: In commenting on Sen. Prof. Ramchand's contribution, I thought that it was objective, it was meaningful and it was not inspired by the usual mischief that is known to some of us. Senator, it is not a waste of time. In fact, attempting to inspire persons or to encourage a better choice of word, to use the mediation process is in keeping with the philosophy of the Family Court on the one hand and secondly, it is not a waste of time trying to do that, because in offering it to people who may not be aware of it and who come to court with the acrimonious posture that they tend to come with, some may accept the mediation. [*Interruption*]

Sen. Prof. Ramchand: Mr. Vice-President, I wonder if the hon. Minister would allow an interjection here. A suggestion or a procedure that was implicit in what Sen. Seepersad-Bachan was saying and one that I agree with, could we devise a procedure whereby before the judge proposes mediation or offers it, he would say to the parties: "I want to suggest mediation, but before I propose that to you I would like us to have a break, suspend the proceedings and I am sending you to talk to somebody about how mediation works and so on. Then after you have seen it and you understand it, you come back and I would put the proposal to you and you could say yes or no"?

Hon. F. Hinds: That is precisely how it is done.

Sen. Prof. Ramchand: After that if the person says no, what do we do?

Hon. F. Hinds: Then you continue in the normal mode you see, as it now stands. [*Crosstalk*] No, no that is not correct.

Sen. Prof. Ramchand: Mr. Vice-President, if I may just, so then I am quite satisfied with the present procedure.

Hon. F. Hinds: Now let me move on swiftly to the comments of Sen. Seepersad-Bachan who considered in this debate that if you force and I demonstrated I hope convincingly that there is no force, but according to the Senator, if you force someone to mediation, then it would be tantamount, if they are unwilling, to a waste of resources. I want to assure the hon. Senator from my own knowledge and from the reports that I have before me on these proceedings,

the proceedings in the Family Court, that the real time wasting comes not from the mediation process, but from the acrimonious bitterness in the normal run of things. In fact not normal, in the usual, in the traditional, in the old run of things, in the run that we are now trying to divert from. So there is where the resources are wasted because you now have lawyers on both sides, fees to be paid to them. Sometimes you know it is said, perhaps wrongly, that the only beneficiaries are the advocates because at the end of the day—I have seen it—there is a whole lot of squabbling over five dollars difference in a maintenance payment or some kind of thing. There is where the waste of time comes.

From the reports of the Chief Justice and the Monitoring Committee, which I shall come to very shortly, it is precisely the element and proliferation of the conduct or the business of mediation in the Family Court that has—it is less painful, it is far more private, it is less wasteful in terms of money and all the emotions and all that surrounds it. So this is really the progressive way. This is the way forward, really.

Sen. Seepersad-Bachan: Mr. Vice-President, I thank the Minister for giving way. But just two points Minister, the first one that Sen. Prof. Ramchand raised. You are saying that the procedure right now, the procedure as it is, is that the judge recommends the parties to go to some session which informs them about mediation and so on and then afterwards they come back and ask them, I would like to refer the matter to the mediation—

Hon. F. Hinds: The magistrate.

Sen. Seepersad-Bachan: The magistrate, if so, then why do you then need the amendment? Because the whole process is to get people to agree to go to mediation. Once they agree, at least you know there is a commitment to get it resolved.

The second issue is, based on what you are saying, we know if they are determined that they want to go through the court process and they do not want for whatever reason—parties take that kind of position sometimes, one party in particular, then you know, I mean why I am saying it is a waste of resources because you will still have to go through the acrimonious court battle. So that was my point.

Hon. F. Hinds: In practice, you know, what really happens in practice, is that both sides are talking. The lawyers are talking on behalf of each of them and there is in fact a process of mediation taking place you know, in real terms. It is when that fails—because most times lawyers come to court and say, we have a position

and offer it to the court, there is an agreement and that is the end of it. So there is that informal process taking place and that is what we are trying to encourage, people talking and this is what an offer of the mediation process without force as you think it is, this is what makes it so useful, but let me continue.

I really appreciated Sen. Dana Seethal's intervention, not because it found consonance with the position we offer here with these amendments today, not only for that reason, but the tone, the texture—[*Interruption*]

Hon. Senator: You answered.

Hon. Hinds: I have. I am moving on. I think Sen. Seepersad-Bachan and Sen. Prof. Ramchand said really about the same thing, I have responded to that. I want to answer the question as best as I could from Sen. Seetahal, in terms of: Why did the Government allow the measure to lapse? I must say quite frankly, it is not my responsibility; I belong to a team, the Leader of Government Business dictates the parliamentary agenda. I also want to say I am aware, and I could say without fear of contradiction, that I am aware that we had a very hectic schedule in the other place dealing with criminal measures, and all of that and that may be partly, if not wholly the reason for the lapse. But I am not in a position to speak authoritatively on it since I will be, if you like speaking in— [*Interruption*]

Sen. Mark: Incompetence.

Hon. F. Hinds: Yes, you can say that. But I understand full well Sen. Seetahal is a well-schooled, well-trained lawyer and I am a lawyer. I suspect the language that she spoke today and the language that I am speaking might be a little foreign to you, hon. Senator and you may find some of it esoteric, so I should take my time as I attempt to set you straight, get you back on mark.

Mr. Vice-President, I turn my intention very briefly to Sen. Mark. I understand full well and I saw it manifest at its optimum here today, the psychology of opposition. I mean I just thought about our six years in Opposition, the pain and the agony of being there, particularly when things seem so gloomy around you. I understand full well. I understand Sen. Mark's position and his utterances today in the context of the fact that, you know, he is in opposition, destined to be there for a long time. He now has two leaders; he seems to have difficulty which of them he would go for, because one dead and the other dying. You choose. It is clear as well, that he is suffering from what we call in the other place PEST. That is the acronym, Mr. Vice-President, [*Crosstalk*] I will show you in mediation.

Sen. Mark: Mr. Vice-President, on a point of order.

Sen. Seepersad-Bachan: What is the relevance?

Sen. Mark: Mr. Vice-President, on a point of order.

Sen. Seepersad-Bachan: Irrelevant.

Mr. Vice-President: You cannot both stand at the same time.

Sen. Mark: On a point of order. Irrelevance, Sir. I would like you to rule on irrelevance. He seems to be attacking my person, directly, and that is not allowed under the Standing Orders.

[*Laughter*]

Mr. Vice-President: Hon. Minister, I should ask you to just refrain from going there please.

Hon. F. Hinds: Not P-E-S-T, P-E-S-S, Post Election Stress Syndrome. [*Laughter*] That is the recent internal election. Mr. Vice-President, I want to read from our Constitution, because the Member did make several passing references to the Constitution, threatened that they would take these measures to court if we passed them with our majority and that sort of thing. I made a brief intervention and I asked the Member as I was contemplating my response to him, however erratic he may have been; I asked the hon. Member to identify precisely which of the constitutionally entrenched rights that the measure we propose today may have infringed or arrogated. He said that the court would decide.

Again, the whole business of law and constitution is esoteric to the hon. Senator. But I just want for his own benefit, since he raised the question of the Constitution, to identify to him, that the only rights that we can infringe when we speak of the Constitution, they are all well known. They are written from (a) to (k) in the Constitution of Trinidad and Tobago and I still challenge the hon. Senator to show me one of them that the measures we propose today would infringe, by, according to him, forcing someone to go. I would not trouble him to read them because I know he has several copies of these getting cobwebs somewhere at home from the day he came to this honourable Chamber, not having opened it once.

Sen. Mark: [*Inaudible*]

Hon. F. Hinds: The hon. Member was rather unkind that as has already been so gently pointed out by Sen. Seetahal in her contribution, very very unkind to those persons who offer themselves in public service to form the Monitoring Committee. I think it is rather distasteful, if I may say so. Sen. Seetahal identified a couple members of that very august body, servants of the public, people coming

forward to give public service, and you know, it troubled me when the Senator wanted to know their names and when you looked at his facial expression and you already know his heart as we do, Mr. Vice-President, you know it is only to challenge them, to vilify them and to call their name in the press and to really bring them into disrepute.

This Monitoring Committee was headed by the hon. Justice Gregory Smith. Other members included as we had heard Ms. Stephanie Daly, attorney-at-law; Mrs. Rhonda Thomas, a Behavioural Scientist, Specialist and Project Manager; Mr. Robin Mohammed, Deputy Registrar of the Supreme Court; Mrs. Joanne Julian, attorney-at-law representing the Law Association; Mrs. Leslie-Ann Lucky-Samaroo, attorney-at-law representing the Law Association and of course Mrs. Nafeesa Mohammed, Legal Consultant, Ministry of the Attorney General; His Worship Mr. Mark Wellington, the Acting Deputy Chief Magistrate and—

Sen. Seetahal: He is now appointed.

Hon. F. Hinds: He is now appointed, I am grateful to you hon. Senator and the Evaluation Team, Miss Donna Boucaud and present for some of these deliberations Miss Carla Herbert; a very powerful group of people offering themselves in public service.

Mr. Vice-President, you know what is most interesting? The Senator quoted the Chief Justice. He had a lot to say about the committee while praising the Chief Justice, but I want to let the Member know that that committee was appointed by the Chief Justice of Trinidad and Tobago as his ears, as his eyes in relation to the work of the Family Court and to report to him and they did. [*Desk thumping*]

I now want to quote from the Executive Summary of the Monitoring Committee from a document entitled, The *Family Court Evaluation First Year Report*, dated October 13, 2005. I am quoting for the benefit of the Member under the heading or the rubric "Introduction". It says and I quote:

> "The Chief Justice in 2004 appointed a Monitoring Committee. The role of the committee is to evaluate systems, coordinate data, coordinate feedback and make recommendations for change. This committee is assisted and guided by an (independent) Evaluation Team consisting of an international independent consultant, the Family Court Manager, and the Family Court Statistician with core funding provided by The Canadian International Development Agency (CIDA). (The full 245 page) This first year report of the evaluation team provides a detailed examination of the operations of the Family Court."

And this document provides a highlight of that report.

Now you see the kind of thought [*Interruption*]—that is not a problem—that has gone in, not just to the Family Court, but to take care to evaluate its work after its first year so that the Chief Justice, having sent these people who were effectively his ears and eyes in terms of the operation to report back to him, and having reported back to the Chief Justice, he accepted it as his own. But worst still, for a man—I am sorry—for a Senator with the experience of the hon. Sen. Mark, with the longevity, burdensome at times that he could boast of in this honourable Chamber, burdensome at times— [*Interruption*]

Sen. Mark: Boy you are a stranger, be careful.

Hon. F. Hinds: Mr. Vice-President, the Senator in his usual wanton and reckless manner, condemned the Monitoring Committee. Yes, I have read the newspapers time and time again after sittings. I mean I read, I am a member of the society. Reckless, because he condemned wrongly and made some serious aspersions against these people whom he did not even know; he wanted their names, so he had no test of their integrity, he just talked [*Interruption*]

Sen. Mark: And how did he respond, my brother?

Hon. F. Hinds: Well I am, but belatedly because you wanted the headlines and for God knows with the weakness of the media in this country you may have gotten it. All of the positive comments from other Senators here, including Sen. Prof. Ramchand, that will go unrecorded, but that is not the issue.

Mr. Vice-President, the issue is simply this, that when the Monitoring Committee was finished with its work and provided the Chief Justice with its first year report and the Chief Justice made that available to the Attorney General for the smooth running of our State—because you have the Executive, the Judiciary and the Parliament, and when we talk intellectually about separation of powers, there can be no hard separation of powers, there has to be an intermingling of all of them for the State to work smoothly.

There has to be collaboration, recognizing independence in terms of functions. Nobody could tell a judge what to do in a case; nobody can tell the Parliament what legislation to pass. It was not the Monitoring Committee that brought the amendments that came today; it was the Government, Mr. Vice-President. [*Desk thumping*] It was the Government, and there are many occasions in the history of this democracy and many others when private groups, private individuals make recommendations. In fact, if you do not take the recommendations of individuals and private groups and NGOs, you will be accused of not listening to the society.

We listen, [*Desk thumping*] because we do not man the courts; it is the magistrates and the judges who do it.

The Monitoring Committee—I have already read what their mandate was—on acting on that mandate, they made certain recommendations, they came to the Government; we are not the ones who man it. We accepted it because the logic is forceful and impeccable and we brought it here today. So there is no point criticizing the public servants, if you have to criticize, criticize us and we could defend ourselves, as I am doing on behalf of the Government now. [*Desk thumping*]

Sen. Mark: Can you get the report for us please?

Hon. F. Hinds: Do not trouble your heart, you will never read it. Let me continue as I get the mark right. The hon. Senator spent a considerable amount of his time wasting—oh, I am so sorry—deliberations in this matter. The hon. Senator spent a lot of time trying to convince himself, trying to persuade himself, trying to delude himself that what I had said in my opening remarks was that the system was not working. I never said that, never said that.

A brief reference to *Hansard* will defend me. Never said that! I know that the evaluating committee says that there was a 70 per cent success in some ways and 98 per cent success when they do their surveys. The public is all happy, but it is not perfect. It is precisely the business or the practice of mediation that has lent itself to the success that the Family Court can boast of as opposed to the traditional, adversarial, confrontational, acrimonious and bitter process.

5.30 p.m.

It is precisely the mediation process and, therefore, if the monitoring committee, as accepted by the Chief Justice, the Government and the Law Reform Committee, finds that the mediation process is working, then we should have more of the same. This is why we have come here, to encourage more people to approach situations by way of mediation, rather than in a bitter and acrimonious posture. I think that answers your question. [*Interruption*] I know; we will deal with that. Those are technical matters that with a small measure of competence we can work out.

Sen. Mark: Mr. Vice-President, I have just received this amendment; I will like to know if you would rule that debate commence on this particular amendment. I will like you to rule on this, Sir.

Mr. Vice-President: No debate will be undertaken.

Sen. Mark: I am guided, Sir. Hinds for better minds!

Hon. F. Hinds: Mr. Vice-President, Sen. Seetahal pointed out that debate began on these matters in January 2004. It came back to this Senate for debate on Tuesday, November 09, 2004. I have the *Hansard* for the contribution of Sen. R. Montano on that day. I was about to say, may his soul rest in peace, but he is not here today and we have commiserated with him; he is politically dead.

Sen. Mark: Why is he politically dead?

Hon. F. Hinds: I quote, Mr. Vice-President:

"Madam Chairman, I would say that clause 3 should read..." [*Interruption*]

Sen. Mark: You are attacking someone who is not here.

Hon. F. Hinds: I am quoting the *Hansard*.

"The Act is amended in section 5(1) by deleting the words 'with the agreement of the parties' and inserting at the end of those words, 'at no expense to the parties'."

This is Sen. R. Montano speaking on November 09. Should I read that again? [*Crosstalk*]

Sen. Seepersad-Bachan: You are taking it out of context.

Hon. F. Hinds: You know the context?

Sen. Seepersad-Bachan: Yes, I was here.

Hon. F. Hinds: I was not here then, but my understanding is, and I said so in my opening remarks, that there was agreement all around on these measures.

Sen. Mark: That is totally out of context.

Sen. Seepersad-Bachan: Mr. Vice-President, if the Minister would give way? [*Sen. Seepersad-Bachan stands*]

Sen. Mark: Minister, the lady would like to make a contribution; you are misleading the Parliament.

Hon. F. Hinds: No, no, no; let me wind up.

Sen. Seepersad-Bachan: Sen. R. Montano is not here and you are misleading the Parliament. [*Crosstalk*]

Hon. F. Hinds: Earlier today we circulated an amendment.

Sen. Mark: You are misleading the Parliament.

Hon. F. Hinds: We had circulated an amendment and I have been advised that—[*Crosstalk*] Just relax; we will deal with that in committee. [*Interruption*] We had circulated an amendment which said, "Notice is hereby given that the hon. Attorney General will move in the Senate the following amendments at the committee stage of the Family Proceedings (Amdt.) Bill 2005, 'First column, clause 2; second column, 'extent of amendments'". I quote:

> "In subsection (1) delete the words 'with the agreement of the parties' and insert after the word 'referral' the words, 'at no expense to the parties."

During the break, listening and taking advice from those who are paid by the State at the Chief Parliamentary Counsel's office, I was told there ought to be a correction to this. That amendment has now been withdrawn. I am giving Senators notice and a fresh amendment has been drawn up, which reads as follows:

> "Notice is hereby given that the Minister of State in the Ministry of National Security will move in the Senate the following amendments at the committee stage of the Family Proceedings (Amdt.) Bill 2005: 'First column, clause, Long Title, extent of amendments.'"

That takes into account "delete the words, 'two thousand and five' and substitute the words, 'two thousand and four'" as indicated by Sen. Seetahal; this demonstrates how we listen. [*Laughter*] Secondly, "Insert after the words, 'with the agreement of the parties', the words 'and inserting after the word'...."—[*Interruption*]

Hon. Senators: That does not make sense. [*Crosstalk*]

Hon. F. Hinds: Just now. Insert after the words, "with the agreement of the parties"—[*Interruption*]

Hon. Senators: That should be deleted. [*Crosstalk*]

Hon. F. Hinds: It appears there are some typographical errors. All I can say, hon. Senators, very simply is that when we get to the committee stage we would tidy that up. What we intend to do remains firmly in place, that is to say, to amend section 5(1) to exclude the words "with the agreement of the parties," thereby giving the courts the discretionary power to direct parties to a process of mediation and, secondly, to insert the words "at no expense to the parties"; that remains unchanged.

Mr. Vice-President, with those comments, I beg to move.

Sen. Mark: Oh, God Fitzy!

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.

Mr. Hinds: Mr. Chairman, the second amendment that I circulated, stands. I am advised that what we are amending today is not the parent Act, section 5(1). We are amending clause 3 of the Bill that is before us. If you look at clause 3 of the Bill, you would understand the context in which it was drafted. We have accepted the question of deleting "two thousand and five" and substituting "two thousand and four", but in respect of clause 3 it should read:

"Insert after the words 'with the agreement of the parties' and"— [*Interruption*]

Sen. Seetahal: There should be no inverted commas there or quotation marks.

Mr. Hinds: This is correct, because we are amending clause 3 of what is before you.

Sen. Seetahal: I understand what you are saying, but after the words "the words", those open quotation marks do not make sense. [*Crosstalk*]

Mr. Hinds: That is correct; that is absolutely right, Senator. It should read:

"Insert after the words 'with the agreement of the parties' and..."'

Sen. Seetahal: Well, then there is a problem, because in clause 3 there is no word "referral". The word "referral" is in section 5(1). That does not make sense. [*Interruption*]

Mr. Hinds: The Act is amended in section 5(1) by deleting the words "with the agreement of the parties" and inserting after the word—

Sen. Seetahal: Actually, it makes sense, but you have to have double quotation marks. Going back to the original clause 3 that we have here, it should

really read, "The Act is amended in section 5(1) by deleting the words 'with the agreement of the parties' and inserting after the word 'referral' the words 'at no expense to the parties'." That is what we are trying to achieve in this amendment to that amendment. So he is saying, "Insert after the words in the Bill, 'with the agreement of the parties', the words…" and then there should be the quotation marks, "and inserting after the word 'referral' the words 'at no expense to the parties'." But you should have double quotation marks to make it clear.

Mr. Hinds: I know what you mean.

Sen. Seetahal: I think we could strike out these two amendments and amend the original amendment.

Mr. Hinds: The amendment we are tabling today is to amend the Bill before you for your consideration.

Sen. Seetahal: You should withdraw, with respect, those two circulated ones and just amend what you have here; that is my view. That would make it much simpler.

Mr. Hinds: That is what we are attempting to do. [*Crosstalk*] [*Interruption*] Bear with us, hon. Senator. [*Interruption*] I think it is settled now. It reads:

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

Sen. Seetahal: My view is that instead of using the circulated amendments, which are confusing, just make that amendment to the clause.

Mr. Hinds: The first one has already been withdrawn.

Sen. Dr. Saith: All are withdrawn; let us just amend.

Mr. Hinds: Mr. Chairman, I ask to formally withdraw even the second draft and we will go with the amendment as has just been read. I will read it again:

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

Sen. Dr. Mc Kenzie: Mr. Chairman, since we are going to use this Bill as the one we are amending, then the first amendment you read on the second amendment that you passed around about 2005 being changed to 2004, you should do it on this too.

Mr. Hinds: We can deal with that now. [*Crosstalk*]

Hon. Senator: It is a typo.

Question put and agreed to.

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

Long Title.

Question proposed, That the Long Title stand part of the Bill.

Mr. Hinds: Mr. Chairman, I propose an amendment to the Long Title and it should read:

"An Act to amend the Family Proceedings Act, 2004."

Sen. Seetahal: What is the amendment, to delete 2005 and replace it with 2004?

Mr. Hinds: To delete 2005 and replace it with 2004.

Question put and agreed to.

Long title, 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 Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move that the Senate be now adjourned to Tuesday, November 22, 2005 at 1.30 p.m., which is Private Members' day and we will deal with the motion. [*Crosstalk*] If there is no motion at that time, we will do Government Business.

Sen. Mark: There is a motion; I have two.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.53 p.m.