
THE

House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1999 – 2004

HOUSE OF ASSEMBLY

November 13, 2001.

Pursuant to the adjournment, the House of Assembly met at 11.20 a.m. on Tuesday, November 13, 2001.

PRESENT

His Honour I. A. ROETT, B.A., Dip. Ed. G.C.M. (Speaker)

His Honour J. M. EDGHILL, J.P. (Deputy Speaker)

Hon. Sir HENRY FORDE, K.A., Q.C., M.A., LL.M. (Cantab.)

Rt. Hon. O. S. ARTHUR, M.Sc. (Econ.) (Prime Minister, Minister of Finance and the Civil Service)

Hon. Miss M. A. MOTTLEY, LL.B. (Attorney General and Minister of Home Affairs) (Leader of the House)

Mr. D. J. H. THOMPSON, LL.B. (Hons.) (Leader of the Opposition)

Hon. Sir HAROLD St. JOHN, K.A., Q.C., LL.B.

Mr. L. R. TULL, Q.C., M.A. (Oxon.)

Hon. Dr. R. L. CHELTENHAM, Q.C., M.A., M.Sc. (Econ.)

Hon. R. C. EASTMOND, J.P., B.A. (Hons.) Dip. Ed., LL.B. (Hons.) L.E.C. (Minister of Labour and Social Security)

Mr. D. CARTER (Chairman of Committees)

Hon. R. N. GREENIDGE, B.A., LL.B. (Minister of Education, Youth Affairs and Sports)

Hon. G. A. CLARKE, B.Sc., Dip. Ed., J.P. (Minister of Housing and Lands)

Hon. R. D. MARSHALL (Minister of Public Works and Transport)

Hon. H. F. LASHLEY (Minister of Social Transformation)

Hon. R. St. C. TOPPIN, LL.B. (Minister of Commerce, Consumer Affairs and Business Development)

Mr. D. St. E. KELLMAN

Hon. Miss H. E. THOMPSON, LL.B. (Minister of Physical Development and Environment)

Mr. M. Z. WILLIAMS

Mr. T. A. PRESCOD, B.A.

Rev. J. J. S. ATHERLEY, B.A., B.Sc., J.P. (Parliamentary Secretary to the Attorney General and Minister of Home Affairs)

Mr. D. T. GILL, B.Sc.

Hon. R. R. FARLEY, B.Sc., J.P. (Minister of Industry and International Business)

Hon. Miss C. Y. FORDE, L.C.P., J.P. (Minister of State in the Ministry of Education, Youth Affairs and Sports)

Prayers were taken by Canon Father Ivan Harewood.

Mr. SPEAKER: The House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, November 6, 2001.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I beg to move that the Minutes for the Honourable the House of Assembly for its meeting of Tuesday, November 6, 2001, which Minutes have been circulated, be taken as read.

Hon. R. C. EASTMOND: I beg to second that, Sir.

Mr. SPEAKER: If there are no corrections or observations, then let these Minutes stand confirmed.

PAPERS

Rt. Hon. O. S. ARTHUR: Mr. Speaker, I am commanded to lay the Annual Report and Statement of Accounts of the Insurance Corporation of Barbados for the year 2000.

Hon. R. C. EASTMOND: Mr. Speaker, I am commanded to lay the Report of the National Insurance Board for the year January 1 to December 31, 2000.

SUSPENSION OF STANDING ORDERS

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I beg to move that Standing Orders Nos. 6, 16, 18, 20, 42(5), 43 and 44 be suspended for the rest of this day's Sitting.

Rt. Hon. O. S. ARTHUR: I beg to second that.

The question was put and resolved in the affirmative without division.

GOVERNMENT BUSINESS

ORDER NO. 7 – TO MOVE THE SECOND READING
OF THE BANKRUPTCY AND INSOLVENCY
BILL, 2001

Hon. R. St. C. TOPPIN: Mr. Speaker, I rise today with a sense of honour to present the Bankruptcy and Insolvency Bill, 2001 to this Honourable Chamber. I want to say at the outset that what is being presented here today has to be seen against the background of the repositioning of the Barbadian economy and the need to look at the way business is allowed to respond to periods of financial difficulty.

Mr. Speaker, the fact is that there are times in the life of a business when it may experience some difficulties that may only require a bit of restructuring to put it back on a sound footing. Under our present system, such businesses are almost always put into receivership and few are ever restored to a sound footing. Our current bankruptcy legislation was passed by the colonial legislature in 1925 and was based on an English Statute of 1914. In fact, it really reflects the commercial reality of the nineteenth century at a time when there were debtors' prisons all over the United Kingdom and being indebted was viewed with a measure of some social distaste.

In fact, the word "bankruptcy" carried all the connotations of its origin. Bankruptcy is derived from the Italian words "banca rota" which literally translates into "bank or bench broken", an analogy which is said to be drawn from the custom of breaking the table or the counter of a defaulting tradesman, which was symbolic of the failure of a tradesman. So from the very beginning, there was a

social stigma attached to debt and worse yet, God forbid, attached to bankruptcy.

Mr. Speaker, times have changed. Now it is expected that people will borrow money, take risks to engage in business and in entrepreneurial activity, and the object of any modern legislation dealing with bankruptcy must, of necessity, be to ensure that companies and individuals who through no fault of their own find themselves in financial difficulty are, in fact, given a break to start over, as it were, in appropriate circumstances so that their businesses or they themselves do not go under.

This is important because the public interest and the maintenance of employment, the expansion of employment opportunities and the creation of wealth in our society require the saving of businesses which should not go under. There is no reason on earth, Mr. Speaker, why an unsuccessful businessman with good ideas should not be permitted to begin again. This, of course, will not mean that the interest of creditors are to be ignored but there has to be a balancing of interests which is clearly absent in our current legislation but which is now being adequately addressed in the Bill before Parliament today.

This Bill, if enacted, and we expect that it will be, would be the most significant reform of any Caribbean bankruptcy and insolvency statute in more than some 75 years. I want to just inform the Honourable Chamber of the process that led to our being where we are here today. Proposals for review date back to 1983 when Mr. Grenville Phillips felt that there was a need for a review of the legislation. Support for review of the legislation was given by the then Puisne Judge, the former Chief Justice Sir Denys Williams, in June 1985, and then afterwards there was the establishment of a committee under the chairmanship of the said Mr. Justice Denys Williams to review and reform the existing legislation. Cabinet, in January 1986, agreed to the establishment of that committee under the chairmanship of Mr. Justice Denys Williams and, in fact, what is amazing is that the first meeting scheduled for the committee was cancelled and no subsequent meetings were ever held.

The issue of the reform of the legislation was literally in abeyance until 1995 when Cabinet decided that the Attorney General should be requested to undertake a review of the existing Bankruptcy Act and to prepare a new draft Insolvency Bill. Those years between 1986 on the one hand when the committee was established and 1995 when the matter was then for the first time revisited are important years which I will expand upon a bit later in my presentation.

Thereafter, Mr. Speaker, the Attorney General in 1999 prepared a Draft Bill which was sent to my Ministry for comment and at the time of sending the Bill to my Ministry the Attorney General's Department indicated that they had

already sent to some ten individuals and agencies the Draft Bill for comment. Those ten agencies and individuals were Judges of the Supreme Court, the Registrar of Corporate Affairs; the President of the Barbados Bar Association; the President of the Institute of Chartered Accountants of Barbados; the Supervisor of Insurance, Mr. Andrew Burgess, Faculty of Law, UWI; Mr. Grenville Phillips, Chartered Secretary; Miss Jacqueline Cornelius, Attorney-at-Law; the Permanent Secretary, Ministry of Finance and the Commissioner of Inland Revenue.

On receipt of the draft legislation my Ministry also in turn sent it out to more interest groups for their comment as well. We sent it to the Central Bank of Barbados; the Small Business Association; the Barbados Manufacturers' Association; the Barbados Chamber of Commerce and Industry; the Barbados Workers' Union; Price Waterhouse Coopers; Peat Marwick Consulting Group; Ernst and Young; Coopers and Lybrand (Caribbean) Consultants Inc.; David Shorey and Company; Bryan Griffith and Company; the Social Partners Group; the Ministry of Industry and International Business; the Ministry of Labour, Sports and Public Sector Reform and the Ministry of Agriculture and Rural Development.

You would be surprised to know that of those 25 interest groups consulted, only four responded to our invitation that they submit comments. Those four were the Ministry of Industry and International Business, the Ministry of Labour, Sports and Public Sector Reform, the Central Bank of Barbados and the Barbados Manufacturers' Association.

The point being made is that no one can allege that where we have reached today was reached without a process of extensive consultation and all interested parties being given an appropriate opportunity to make any comments that they wished on the Draft Bill as it then was.

Mr. Speaker, before I go into the details of the Bill it is necessary to understand exactly and clearly the road we have travelled to get where we are today. I make bold to say that no Government could ever have done more to facilitate the development of the business sector, especially the small business sector of any country, in as short a period of time as this Government has done.
11.25 a.m.

Mr. Speaker, I also make bold to say that when the Fair Competition Legislation is enacted it will, in my view, constitute the last major general legislative initiative required by this Government to reposition our economy in the context of facing the challenges posed by globalisation and trade liberalisation as well as the challenges posed here at home in terms of creating a competitive environment for the purpose of increasing the capacity of our productive sector. Mr. Speaker, I will speak in more detail later in my presentation on the issue of fair competition.

Mr. Speaker, this Government has done every thing humanly possible to facilitate business development in this country and in doing so, has moved away from the philosophy that we have inherited which condoned the granting of generous concessions to Royal Westmoreland and Cruise Terminal Inc. Mr. Speaker, I have no problem with that except that while that was happening all credit to the small business sector had totally dried up. Mr. Speaker, they were helping big business at the time when they were castrating small businesses.

Mr. President, this Government moved to the position where it now facilitates all business development, large, small, foreign, local and in relation to all sectors of the economy whether tourism, agriculture, manufacture or whatever.

Mr. Speaker, I will highlight a few points in relation to some of these sectors. I will look briefly at the manufacturing sector. Government in its effort to reposition the manufacturing sector since 1994 has provided a range of fiscal incentives. These include the provision of debt relief whereby arrears owed to Government agencies like the Land Tax Department, the Inland Revenue Department and the Barbados Water Authority have been rescheduled for manufacturers.

There was also the removal of consumption tax on equipment, machinery, spare parts, fuel, diesel and natural gas.

There was the reduction in corporation tax from 40 percent to 25 percent to those manufacturing entities that met the criteria of small businesses.

There was the provision of depreciation of 150 percent on new equipment purchased by manufacturers to assist them in retooling and re-equipping with the latest technology.

There was the reduction in the cost for the establishment of bonded warehouses, the establishment of a technical assistance fund to assist with the development of business plans, product and package design and the protection of intellectual property.

There was the liquidation of \$12 million in consumption tax arrears and there was to be the creation of an employment fund in the sum of \$25 million to finance the retooling of industries in the manufacturing sector.

Sir, I will also look fleetingly at the tourism sector. There was the establishment of a \$30 million tourism loan fund to provide loans at concessionary rates for the

refurbishment and upgrading of accommodation properties with less than 75 rooms.

The Enterprise Growth Fund to date has received the first tranche of \$10 million and \$8.3 million has already been committed to two hotels to support the creation of 16 rooms as well as to refurbish 62 rooms.

In addition to the \$30 million tourism loan fund a \$5 million small hotel fund has also been added to be managed by the Enterprise Growth Fund. The small hotel fund was created to assist the cooperative type of hotel whereby the funds are used for the benefit of an entire group rather than individual hotels. To date the sum of \$453 000 has been disbursed from the fund which was used to launch the Intimate Hotels of Barbados. In fact, a website was launched on the internet and for the first time consumers can now book hotels via the world wide web.

This small hotel group now has representation in the marketplace and it is expected that the investment made will generate an additional 5000 room nights of new business during the year 2002. Mr. Speaker, that was a brief glance at tourism and a similar story would be discovered if we went to the agricultural sector.

Mr. Speaker, I will focus more specifically on the small business sector of which I have more intimate knowledge. Sir, I have said before that this Government, as the first order of business, set up the Business Development Unit in the then Ministry of Industry and Business Development to ensure that Government at all times was properly and professionally advised on policy in relation to business development in this country, particularly small business development.

Sir, I will speak now about the Small Business Association. Mr. Speaker, this Government stands firmly behind the Small Business Association. When this Government was elected in 1994, we found that the Small Business Association had no effective secretariat or proper administration system in place. We ensured that there was access to financing and a grant was also made by Government to the Small Business Association to fund the secretariat so that the association could function properly.

Mr. Speaker, I will use this opportunity to urge small businesses in Barbados who are not members of the Small Business Association to get on board. I can see no point whatsoever in small businesses not being a part of the Small Business Association. I fail to see that they cannot see the basic truism that in unity there is strength.

Currently, the Small Business Association has a membership of 300 and they will be going on a massive membership drive to target 1000 more members over the next three months.

I believe the Small Business Association is now showing the focus which we wanted to see and no one should have any fear about being a member of the Small Business Association. The small business sector has to be assisted because it represents a sector that makes a tremendous contribution to the economy of Barbados. At present, estimates suggest that there are approximately 6 000 registered small businesses in Barbados which employ a total of 24 000 people. This represents approximately 20 per cent of the work force of Barbados.

11.35 a.m.

Although information on the contribution that they make to the gross domestic product is not available, it is reasonable to assume that the actual contribution to the gross domestic product is significant, and will increase more significantly in the foreseeable future. The small business sector is vibrant and the Government is determined that it will stay alive.

Mr. Speaker, the next major initiative of this Government after being elected, was to launch a merciless assault on, perhaps, the main problem plaguing the small business sector. One of the main problems is with respect to the accessing the financing. Over the years the small business sector has cited access to finance as the main obstacle to the development of the sector. Commercial banks do not care about small people or poor people. Government, recognising the problem decided to launch an assault on the whole area of the access to financing, Sir, and in quick time was able to establish a number of institutions to provide financing to the small business sector.

Sir, to date this Government has set up a Rural Development Commission with a Rural Enterprise Fund and the Urban Development Commission with an Urban Enterprise Fund. The Barbados agency for Micro Enterprise Development Limited, otherwise known as Fund Access; the Enterprise Growth Fund and the Small Business Venture Capital Inc. FBVCI, a wholly owned subsidiary of the Small Business Association was established with a \$2 million grant from the Ministry of Finance in 1996. Then there are the Youth Entrepreneurial Scheme and the Barbados Youth Business Trust. These and other agencies from the private sector have been responding to the needs of the small and medium enterprise sector since they have been established.

I will give an update on how some of these institutions are functioning. Fund Access does not only provide money, it is a provider of technical assistance to those who borrow to teach them how to develop management skills. It assisted the corporation to disburse 326 loans totalling \$4 million and creating almost 400 jobs.

The Rural Development Corporation, in addition to providing funds and technical assistance, has also been

functioning effectively. This institution provided loans in the sum of \$50 000 for agriculture businesses and a maximum of \$25 000 for non-agriculture businesses with a repayment period of between 7 to 10 years. Amazingly, the interest rate on loans from the Rural Development Commission is only 4 percent per annum on the reducing balance. To date, they have disbursed 349 loans to the value of \$2.8 million. With respect to the Urban Development Commission, they have disbursed 432 loans totalling \$2 million.

These three agencies have surpassed the thousand-mark in terms of the number of jobs that they have created. The Barbados Youth Business Trust has also provided 207 loans to assist the young people of Barbados. There is a vibrant network of institutions providing financial assistance to small people in this country.

If there is a criticism that has to be made, it has been that the Government has established too many financial institutions. Mr. Speaker, to any such charge, I readily plead guilty and I will plead guilty on a daily basis to any such charge. I will certainly prefer to be accused of setting up too many financial institutions than having set up none, which was the situation we inherited on assuming office in 1994.

Sir, what is also significant about the providing of loans and assistance to small business persons is that where additionally we had funding to itinerant, wayside vending, agricultural and artisan activity, what we are now seeing, particularly in the last three years, is diversification of the enterprise mix. You are now seeing an emergence of small businesses in new and non-traditional enterprises.

We are seeing new enterprises in areas of desktop publishing, videography, karaoke services, business consulting, computer programming, internet related services, personal care sector, massage parlours, health shops, spas and cosmetiques as part of the new and more sophisticated mix of small and micro enterprises. There is now a diversification of entrepreneurial and small business activity in this country because of the number of institutions which have been set up to provide loans and technical assistance to the small business sector in this country.

Mr. Speaker, with respect to the Small Business Venture Capital Inc. which I mentioned earlier, it is unfortunate what Barbadians are adopting in relation to equity finance. For some unknown reason, Barbadian businessmen do not seem to want equity financing. They want to have loan financing, even when it means giving up a measure of control of their assets, they want loan financing as apposed to equity financing.

The idea of having an outside Director sitting on a Board seems to be something that they find revolting to their psyche. Therefore, they have exhibited a preference for loan

financing and a chronic dislike for the conditions associated with equity financing. That attitude has to change and my Ministry has been providing entrepreneurs, as far as we can, with information to show the value to be derived from equity financing. I think that the Small Business Venture Capital Inc. under the new Chairmanship of Dennis Tull has started to show some results and they too are managing to get some small entrepreneurs to realise the value of equity financing. Growth in these times depends on new approaches in doing business and new attitudes towards development financing. They have to get that through their heads, as it were.

Mr. Speaker, under the new Chairmanship, applications have been increasing. There are currently 17 applications which are before the Small Business Venture Capital Inc. One application has already been approved and I expect that all due haste will be shown in considering the other 16 applications.

I spoke about the Small Business Development Act. It provides a fiscal and technical assistance regime for qualifying small businesses, and provides some stimulus for growth and development. Some of the benefits include a reduction in corporation tax from 40 percent to 25 percent; exemption from import duty on plant and equipment imported for use in the business; exemption from withholding tax on dividends and interest earned on investment in an approved small business or any fund approved for investment in an approved small business. These are major and significant benefits being conferred on a particular sector by a Government.

In addition, the technical assistance that will be provided under that Act is wide-ranging. It covers package and label design, marketing assistance and the preparation of business plans and feasibility studies relating to the development of new businesses or products. The provision of assistance in managerial accounting for budgetary analysis or the provision of assistance in general or production management.

11.45 a.m.

Mr. Speaker, as I said, the technical assistance is wide ranging. The passage of that legislation has, perhaps, been to date the highlight of the work done by my Ministry.

To date we have received some sixty applications, of which thirty have been approved. Accountants have hundreds of application forms in relation to their clients, but because of the difficulty some of them are having in relation to arrears of national insurance, income tax and VAT there has been a slow down in the submission of the applications. I have already said and am prepared to say again that if persons would go in and make arrangements and honour them, I would be prepared to argue a case with the Minister of Finance in those circumstances. I do not know

what the Minister of Finance will say. I cannot argue with the Prime Minister. There can only be one winner in an argument between a Minister and the Prime Minister, therefore, I am only prepared to recommend.

There is another problem, Mr. Speaker, that is perhaps slowing down the rate at which my Ministry can process applications made under the Small Business Development Act, which has to do with the fact that there are some companies that are seeking very creative ways – perhaps the word ‘abuse’ would be correct – but they are certainly trying to circumvent the provisions of the legislation. By that I mean there are some companies for whose benefit the legislation was not intended, who are using creative methods to get the benefits of the legislation. Sir, what is raising its ugly head is the situation where some of these entities do not qualify for the benefit of the legislation. For example, that company might have more than \$2 million in annual sales, or more than 25 persons as employees, or whatever the reason that they do not qualify. What these companies are seeking to do is to chip off a portion of that large non-qualifying company, then incorporate that separate chipped off part which would qualify for the benefit of the legislation *per se*, then seek to apply for the benefits under the Small Business Development Act.

In those cases, there will be some where the non-qualifying company or shareholders in the non-qualifying company would also be shareholders in the new company, but they would be holding more than 25 percent in the new company. Therefore, on the face of it, everything would look normal and acceptable. This is very creative, but it is not the way in which the legislation was intended to be used, particularly in a case where equipment that might have been bought free of duty for this qualifying chipped off business, may find its way back into the hands of those controlling the larger non-qualifying business which was formerly associated with the new chipped off business that was granted the benefit.

Therefore, the Ministry has to be very careful to ensure that the provisions in the legislation are not abused. We want to help in this area as much as we can, to the point where we have decided that those persons who are not incorporated, because incorporation is the requirement to get the benefits under the Small Business Development Act can in fact make an application to my Ministry for financial assistance to be incorporated. We are going to grant a sum which is a non-reimbursable grant not exceeding \$1,700 to assist those who would want to incorporate, so as to get the benefits of the legislation. We are prepared to bend over to help the sector, but we have to ensure that members of the sector in turn do not seek to abuse the provisions of the legislation and take advantage of our good nature.

So that we, in the Ministry, are currently reviewing the Act with a view to making some suitable modifications to it, based not only on this particular problem, but also on

representations that have been made to it from others from time to time. We are now reviewing the legislation to see how it can be effectively modified. Of course, the area of abuse will have, out of necessity, to be given priority in any review process that we decide to undertake. In terms of other plans in relation to the small and micro-enterprise sectors, it is the Government’s intention, during the next year to operationalise the innovation fund. This innovation fund will cater to everyone, including and especially the boys on the block who always say that nobody has any time for them and that they have lots of ideas, but cannot go to any financial institution to get funding. Therefore, this is the fund especially for them, for anyone who has a sound and innovative business idea, but who would not otherwise be able to transfer or convert that idea into a commercially viable and sustainable business.

The fund will provide seed capital, but it is clear that it takes more than money to commercialise a good business idea. Technical expertise will be provided from the State in the assessment of the project to product development, to test marketing and to the actual commercialisation of the idea.

A sum of \$5 million has been set aside to get the innovation fund off the ground. In terms of the provision of seed capital, it will be provided in a range between \$25,000 to \$250,000 to assist with the implementation of any innovative and commercially viable ideas.

It is important, Mr. Speaker, that the fund will also provide assistance, not only to persons wanting to establish a business for the first time, but also provide assistance to established businesses to enable them to retrain their staff. This is important and would be particularly helpful to businesses in situations where the impact of globalisation and trade liberalisation are such that it becomes necessary to overhaul the production and operational procedures in order to improve productivity and enhance competitiveness.

The fund will be managed by the Enterprise Growth Fund Limited and will be set up under a Trust provided, of course, that the necessary approval is obtained from Cabinet. Projects in areas such as non-traditional agriculture, environmental management, biological pest control, culture, music, arts and craft, waste management, computer software development, alternative energy and agro-processing, would be good and strong candidates for funding but, of course, that list is in no way exhaustive and there could be other areas of activities as well.

11.55 a.m.

Mr. Speaker, it is in the context of the Government’s commitment to the development of the business sector in this country, particularly the small business sector, that I will now take a look at the provisions of the Bankruptcy and Insolvency legislation before Parliament.

Mr. Speaker, the Bill is very long. It contains 199 pages and 257 sections. Therefore, I could not possibly be expected to go into it, section by section, unless we all want to be here until half past eight tonight before I finish speaking.

Mr. Speaker, the Honourable Member for St. Lucy really should not seek to taunt me on this point, because what is here before us today should have been a priority for the Democratic Labour Party. I mentioned earlier the dates of 1986 and 1995 as important dates to which I will revert. You will see that this current administration left Government in 1986 with a plan in place to review important legislation impacting on small entrepreneurs and small businessmen, with the intention of the expectation that it would have been proceeded with as a matter of urgency. The Democratic Labour Party between 1986 and 1994 did nothing to advance this process. It is shameful and shows that the Democratic Labour Party does not have any conscience.

Sir, in the 1970s the former Member for St. Michael West, then Minister of Trade, by the indiscriminate use of price controls and his general incompetence in the area of business development, ensured that more than 650 small businesses in this country went out of business. Then the Democratic Labour Party came into office with a ready-made plan in relation to bankruptcy and insolvency legislation, and for eight years they were so disturbed with internal strife – which may or may not still be happening – that they paid no attention whatsoever to advancing the process along in relation to a very important Bill which was tailor-made for them.

What I am saying here today, Sir, one of them could be saying, but they showed no interest and the Barbados Labour Party came back and picked up from where we left off. We now have before us, Mr. Speaker, what I would classify as a revolutionary piece of legislation. There are many innovations in the legislation which you will see as I go through the salient points. I will now give a brief overview of the various parts of the Bill.

Mr. Speaker, looking at the Bill, you will see that Part I contains preliminary matters, the citation and the interpretation provisions, but when you look at the interpretation provisions in section 2, you will see a number of new words and phrases used which signal the inclusion of some innovating provisions.

For example, you will see mentioned an “insolvent person” defined as a person who is not yet bankrupt. This is not currently in our legislation. You will see a definition of “person” and you will see a definition of “debtor.” Significantly, our current legislation uses the expression “debtor” repeatedly, but it was never defined. You will also see a definition of “proposal” which again is not contained in the current legislation. You will also see a definition of

“public utility”, “receiving order” and a whole host of new words are defined. The word “supervisor” is also mentioned, which again is one of the major innovations in the legislation.

Sir, you can see just from reading the interpretation section of this legislation, innovation and a new way of dealing with the issue of bankruptcy and insolvency in Barbados. We have, Mr. Speaker, to fairly balance the interest of debtors and creditors at the same time, especially when the existing legislation is too heavily weighted in favour of creditors.

Mr. Speaker, you will see that Part II defines the act of bankruptcy which triggers the provisions of the legislation. That is in section 3, and these are the same provisions that are in the current legislation. There is no need really to update these measures that are considered to be acts of bankruptcy, where a defiance or fraudulent conveyance, or gift of delivery of his property, with the intention to evade his creditors and the like, failing to satisfy judgements, *et cetera*, obtained by the court and in a court of law, such as is set out, Mr. Speaker, in Section 3.

Part III deals with certain preliminary matters related to the filing and trial of petitions for receiving orders, application for appointment of an interim receiver and the qualifications of duties and rights of receivers.

Part IV speaks to the conditions relevant to assignments made by or on behalf of insolvent persons.

Part V makes intricate provision for the making of proposals which are designed to allow a means for resuscitating debtors in financial difficulty. In the case of corporations, it allows them an escape route from liquidation.

Part VI stipulates the property of the bankrupt which is available for distribution in the event of a finding of insolvency, and provides for the circumstances in which a sale of proceedings shall be available, in the event of a proposal or filing of a notice of intention of a proposal.

There are also general provisions concerning the priorities of certain claims, including claims of the crown, in respect of certain defined preferences and specific provisions, and with respect to the administration of partnership property.

Part VII contains detailed provisions dealing with the administration of insolvent estates.

Part VIII provides examination for bankrupts in certain cases and for the arrest of bankrupt persons. There is also provision for the discharged subject to conditions of bankrupts.

Part IX, Mr. Speaker, provides for the office of insolvency and for the duties and powers exercisable by that officer.

Part X contains miscellaneous provisions for the procedures to be followed by a court, handling a bankruptcy matter and for the jurisdiction and trial of bankruptcy matters.

Part XI provides for the conduct of proceedings in respect of cross border insolvencies.

Part XII makes provision for the creation of certain miscellaneous offences.

Part XIII contains general miscellaneous provisions including among other things, the exclusion of certain admissions in the process of bankruptcy proceedings from admission, in relation to the Theft Act. There are also provisions for certain transitional consequential repeal of later legislation and for the commencement of the Act. 12.05 p.m.

Mr. Speaker, in our current legislation, bankruptcy and insolvency spans, unhappily and at times confusingly so, two pieces of legislation, the Bankruptcy Act and the Companies Act. In fact, the Bankruptcy Act was really enacted to deal only with individuals and all the terminology clearly indicates that it is only to deal with individuals, not companies. It was only after a while when section 357 was placed in the Companies Act, that the Bankruptcy Act was then expressly made applicable to companies as well. To remove all doubt, this current Bill which is before Parliament is to ensure in clear terms, that this Bankruptcy Bill will, in fact, refer to and cover both individuals as well as companies.

The definition of a "person" by section 2 includes a partnership, an unincorporated association, a corporation, a co-operative society or an organization, the successors of a partnership, association, corporation, society or organization, and the heirs, executors, liquidators of the succession, administrators or other legal representative of a person.

By the Interpretation Act, therefore, the Bill is expressly deemed to cover both individuals and corporations as well as every conceivable form of association known to the laws of Barbados. As I said before, this is unlike the position in the Bankruptcy Act which although it refers to corporations as I pointed out does so in a very roundabout and convoluted fashion.

I turn next to the issue of the act of bankruptcy and the receiving orders which I mentioned broadly in my outline just now. The provisions of this Bill are premised on the commission by an individual of an act of bankruptcy within the terms of section 3 of the Bill. It is that act of bankruptcy

together with owing the particular creditor not less than \$4 000 that really constitutes the recognition in law of the debtor's insolvency and it is really conditioned precedent to the filing of a petition for a receiving order against a debtor.

A receiving order is the means by which a debtor is deprived of autonomous control of his assets. When a receiving order is made according to this new legislation the Court must now appoint, not just a trustee but a licensed trustee of the property of the bankrupt. The issue of a licensed trustee is important as opposed to a trustee because one of the comments made about the present legislation is that it permits the appointment of persons who are less than entirely appropriate or desirable to be receivers of an estate or a property.

Therefore, this legislation is seeking to ensure that there is a cadre of persons licensed by the Supervisor of Insurance who will meet certain criteria set out by the Supervisor of Insolvency. He alone will decide on who should, in fact, be licensed as a trustee. There will be this cadre of licensed trustees from among whom one or more, as necessary, would be appointed to perform the function now of the receivers so that a higher standard will be brought to bear in the whole area of receiverships and the process of bankruptcy that currently exists.

There is also the power by virtue of section 7(1) to appoint an interim licensed trustee as receiver. That will be done in circumstances where the property of the bankrupt is perhaps perishable and, therefore, would need immediate sale to realise its value for distribution among creditors. You, therefore could not wait until the entire proceedings to have a determination made before you allow a receiver to go in. So in those circumstances you will find an interim receiver.

It is important to realise under this new legislation that even secured creditors have to appoint licensed trustees when they are appointing receivers under securities agreements. Again, as I said, it is normal to just appoint persons to be trustees but in this new legislation, the court, in the case of application by unsecured creditors, must appoint a trustee. Even when you have secured creditors acting on their securities, they too will have to appoint trustees who are licensed by the Supervisor of Insolvency for the purpose of administering the estate of the bankrupt.

The rights of a class of secured creditors to automatically remove their security from the assets of the debtor which is now an everyday thing in bankruptcy and insolvency, is now made subject to the provision of the very important section 10.B. (2).

This provision is saying that a secured creditor cannot now decide to withdraw his assets from the pool without

giving to the person who is adjudged bankrupt 10 days' notice of his intention to do so. This is necessary so as to give the debtor breathing space because he may wish to come up with a proposal or make whatever arrangements he would be entitled to do or may want to do. This is so even in the case of a secured creditor.

The Act says that where a secured creditor's interest covers all or substantially all of (a) the inventory, (b) the accounts receivable or, (c) the other property of a debtor used in relation to business carried on by the debtor, the secured creditor must give a minimum of 10 days' notice of his intention to enforce his security. So that by section 10.B. (2) of the Bill, the secured creditor is expressly prevented from exercising his normal powers and rights with respect to property charge. His normal right would be to remove the charge probably at once from the body of the assets of the insolvent that are available for distribution to creditors.

The Bill provides that during a period of 10 days following the sending of the notice, the secured creditor shall not enforce the security in respect of which the notice is required unless the debtor consents to an enforcement of security earlier than 10 days.

Now, in anticipation that unscrupulous persons may decide to come and weigh in on persons seeking to borrow money and would seek to have a clause included in the mortgage up-front saying, for example, notwithstanding the provision of the legislation, I hereby agree that I will not enforce my right to give 10 days' notice and so on, is now expressly outlawed by section 10.B. (3) of the Bill which outlaws the predictable attempt to circumvent the prohibition by securing the debtor's consent to an earlier removal of the assets at the time when he is most vulnerable.

Therefore, section 10.B. (3) stipulates that a consent may not be obtained by a secured creditor prior to the sending of the notice. So that there is definitely now a modification of the rights of the secured creditor.

Receivers now have certain defined responsibilities and rights as they always had. The one I will make reference to, because they are technical in nature and it would not be necessary to go into them in detail at this point, is the requirement that they must act in a commercially reasonable manner. That requirement already exists in our Companies Act. In addition to having to act honestly and in good faith, they must also act in a commercially reasonable manner.
12.15 p.m.

There might have been some doubt cast on this in light of the fact that in a fairly recent Privy Council decision, *Downsview vs. First City*, a 1993 appeal case, page 3158, the Privy Council seemed to have reverted to the common law

position, merely saying that a receiver is really not subject to any duty of care owed to the mortgagor and can only be liable for breach of the duty of good faith.

So as to remove any doubt as to what Barbados' position is in the enactment of new legislation we have deemed it fit to re-insert in the new legislation the provision that a receiver must act, in addition to acting honestly and in good faith, in a commercially reasonable manner.

The section also speaks in terms of receivers that they must involve others, notably, the Supervisor and the Trustee, and where the debtor is not actually bankrupt must also involve the debtor himself. Then you have the usual provisions like a requirement to maintain properly drawn books relating to receivership, the making of interim reports and the preparation and submission of final accounts.

From time to time there would have to be an interface between this Act and the Companies Act but what section 10.L. does is to make it explicitly clear that in cases where there is any conflict between this legislation and the Companies Act that the provisions of this legislation will not, in fact, prevail.

An entirely new provision in the legislation relates to assignments at Part IV. What this now does is to permit an insolvent person or, if deceased, the insolvent person's legal personal representative, with the leave of the Court, to make an assignment of all of his property for the general benefit of his creditors. That will not constitute an act of bankruptcy. Assignments before to trustees for the benefit of creditors were deemed to be an act of bankruptcy. This is an assignment not to trustees but directly to creditors and it will also now include assignments of existing and future debts or any class of those things where the assignor subsequently becomes bankrupt.

What this provision does is to allow an insolvent person – remember an insolvent person is a person who is not yet bankrupt – to enter into a sort of debt work out with creditors, things which creditors themselves would want but which were prohibited by the earlier legislation, so that, in fact, the insolvent person can re-arrange and re-organise his business. In situations such as this, of course, there is also provision to ensure that all the creditors in such an arrangement are treated equally and that their interests are secured and protected. Any such assignment has to be filed with the Supervisor of Insurance and unless it is filed with the Supervisor of Insurance it is not valid. This provision, I think, is salutary and it brings a measure of flexibility to the law of bankruptcy that is not currently in existence.

I move now, Mr. Speaker, to the section dealing with proposals which really is, in my view, the major selling point of this Bill. It is a radical departure from what now exists and the term "proposal" has a definition in the legislation and

these are proposals made by insolvent persons, trustees, receivers, liquidators and the like. They can all make proposals now in relation to the debtor's property.

The term "proposal" is defined by section 2 of the Bill to mean "a proposal for a composition, for an extension of time, or for a scheme or arrangement." The current legislation mentions proposal in it, but it does not include an extension of time and what is to go into a proposal and how it is filed. There are no procedures laid down in relation to it and it is really to all intents and purposes a paper concept. In this legislation, you have clearly defined what a proposal is and how it works.

How, Mr. Speaker, does a proposal work? On the filing of a proposal, it is significant that you can also not only file a proposal but you can also file a notice of an intention to file a proposal. You do not have to rush in and file a proposal until you get your thoughts together. You can actually file a notice saying that you intend to file a proposal, making a recommendation or scheme or arrangement for an extension of time. In such situations where you file a notice of an intention to file a proposal, you buy yourself some time. You have up to 30 days to file your actual proposal and even if you cannot make the 30 days you can then go to the Court for an extension of that time for a further 45 days and then a further 45 days up to a maximum in all of six months between the time when you filed your notice of intention to file a proposal and when you actually file it. You can actually buy yourself some time to sort yourself out by filing a notice of intention to file a proposal. That is a very significant feature in the legislation.

In terms of getting extensions of time, you have to satisfy the Court that you are acting in good faith and diligently but that should not be too hard to prove. What is significant is that when you file a proposal or a notice saying that you intend to file a proposal, creditors of all types, secured and unsecured, are prevented from taking or continuing any proceedings whatsoever against the debtor.

You get a stay and the stay also prevents parties to agreements with the debtor, the non-creditors now, from exercising any contractual rights they have to terminate any agreement they have with the debtor or the insolvent person. That is one of the deficiencies in the current legislation. It does not allow a debtor to preserve any contractual rights that he may have during a re-organisation effort, whether you are an individual or corporation. On the filing of a proposal or notice of intention to file a proposal, even non-creditors cannot exercise any rights that they may have to terminate any agreements that they have with you.

This section on the proposal goes further than that. It really fills the gaps in the moratorial law that exists in the current provision, because the Bill goes on to say specifically

that public utility companies cannot discontinue any service to an insolvent debtor on the grounds that there are arrears owed in respect of the service which would ordinarily have entitled a utility company to discontinue service. It cannot use the fact that you are in arrears with them if you become insolvent or bankrupt that you owe them money and they are going to discontinue the service to you. The law expressly prohibits that.

The law also prohibits landlords by this proposal section, and I believe franchisers as well, from terminating, amending or seeking to pursue accelerated payment, again by reason only of the fact that arrears of rent or royalties are owed prior to the filing of the proposal or notice of proposal.

The "public utilities" are defined in the Bill to include "persons who supply fuel, water, electricity, telecommunications, or such services as may be prescribed." 12.25 p.m.

Once the funds are proposed or there is a notice of intention to file a proposal, the utility services cannot be disrupted. It also prevents persons from terminating or amending any agreement or seeking to pursue an accelerated payment under agreement with the debtor.

Mr. Speaker,

Section 41 provides that:

- (a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent persons become bankrupt.

Mr. Speaker, one intention from the provision of the stay has to do with what is referred to as 'eligible financial contracts'. These are defined in Section 35 as:

- "(a) currency or interest rate swap agreement,
- (b) a basic swap agreement,
- (c) a spot, future, forward, or other foreign exchange agreement,
- (d) a cap, collar or floor transaction,
- (e) a commodity swap,

These are some of the things considered to be eligible financial contracts.

In a similar section in Canadian legislation the comment was made that the special treatment of these eligible financial contracts is a recognition by the Government of the volatile nature of commodity markets and of the risk that the Canadian market could be adversely affected if the stay provisions were interpreted as preventing the termination of these contracts.

In Barbados these contracts are not commonplace at the present time but given the early development of our capital markets, we should introduce protection for these instruments in the legislation sooner rather than later, hence the inclusion in this particular legislation.

In Section 39 there is no provision for exempting income from the bankruptcy process:

- (1) Standards for determining the portion of the total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living shall be as prescribed.

The trustee will determine what is reasonable in the circumstances and the Supervisor can review the trustee's decision and make a determination as he sees fit. We are going to allow a bankrupt person to live a reasonable standard of living while the bankruptcy process continues.

The Bill also provides for things like fraudulent settlement and preferences to be avoided and any asset so transferred will be brought back into the pool for distribution.

Mr. Speaker, the status of the Crown has now been reduced to an unsecured creditor. The Crown in the case of a bankruptcy as a claimant will not be viewed as a secured creditor, it will now be viewed as an unsecured creditor. Among the preferred creditors there are some debts payable to the Crown that will be included in the list, for example, income tax and land tax for the preceding year.

In terms of the administration of the estate the law is clear. The law stipulates that the claims provable include all debts and liabilities present or future to which the bankrupt is subject.

The Court is given the usual power to disallow false claims and creditors are given the power to scrutinise proofs of other creditors as well.

Where a secured creditor realizes his own security, he may prove the balance due to him after deducting the net amount realized.

The licensed trustee has the power to examine the proof and to require further evidence as may be necessary and in

appropriate cases may disallow the claim in whole or in part. Interestingly, by virtue of section 117, officers or directors of corporations are not entitled to have their claims referred in respect of wages, salaries, commissions or compensations for work done, deferred in accordance with the general provisions and preferences contained in section 113. They would rank as unsecured creditors.
12.35 p.m.

Sir, another major innovation in my submission has to do with the treatment of bankruptcy. The new legislation provides for counselling for bankrupts.

"Section 134. (1) The trustee shall provide, or provide for, counselling for an individual bankrupt and his immediate family as prescribed..."

It also makes provision for provision of counselling for a debtor who is not bankrupt. This counselling will be primarily to inform and educate debtors on credit and budgeting to ensure that they do not come out of a bankruptcy or insolvency situation and make the same mistakes again. Counselling is an omission in the current legislation. Sir, what is also significant, is that a first-time individual bankrupt will be automatically discharged after a period of nine months, according to the new legislation, unless there is some objection by the supervisor, trustee or creditor. Sir, a first-time bankrupt who refuses to attend counselling sessions which have been arranged for him, will bar himself from being entitled to be automatically discharged after a period of nine months.

Mr. Speaker, the Supervisor of insolvency is another innovation in the legislation. There was clearly an absence of any regulatory entity in the area of bankruptcy proceedings at this time in this country. The supervisor is to be the regulatory authority in relation to insolvency. He will be an impartial participant in the bankruptcy process and he will also be an investigator in the tribunal to enquire into the conduct of bankrupt persons.

The State will now have a more proactive role through the Supervisor of Insolvency, who will be a civil servant in the administration of bankruptcy. The current process is governed by the courts and the trustees. There is potential for abuse in the current system which the introduction of a Supervisor of Insolvency will prevent.

At present the trustee, particularly in small bankruptcies, may well be and often is connected in some form to the bankrupt; usually, they are the former accountants of the bankrupt. It is very difficult to find someone to serve as a trustee for a small bankrupt. It is usually someone who is connected to the bankrupt, either as a former employee or a relative and there is always the potential for abuse in a system such as that.

Creditors, at their various meetings, have the capacity to do as they please, again abusing the process. An intermediary was clearly absent for a long time and a supervisor will now fill that void.

The duties of the Supervisor are vast. The supervisor will be responsible for issuing licences to trustees, to take guarantee bonds, to inspect and investigate estates, to receive and keep records of complaints from creditors or interested persons and to examine the accounts of trustees.

Mr. Speaker, what is really fascinating about the powers of the Supervisor is that he will be entitled in court proceedings to which he is not a party to intervene in the proceedings if he deems it necessary and expedient to do so. This will be beneficial, particularly in circumstances where the creditor, a big corporation or entity, will be coming with a large battery of highly paid lawyers and the lonely bankrupt will be unable to help himself in the face of those opponents. In situations such as those, an intervention by the Supervisor on his behalf, I believe, would be one of the regular occurrences and certainly would be something that will be welcomed by any bankrupt. The Supervisor of Insolvency will also be a major innovator in the current legislation.

Mr. Speaker, those are the major points which I want to make in this bankruptcy legislation. In general terms, the legislation addresses the issue of allowing an insolvent person to reorganise his business as opposed to having the focus continue on the creditor, and the creditor being able to move against the debtor and realise his assets and close down his business.

I want to say, the Honourable Attorney General will be able to elaborate, that the Government will also be moving to a situation where individuals, especially small persons, do not find themselves in prison for debt. That is a position we in any civilised society would want to move away from. We are moving to the situation where people will not find themselves punished and imprisoned for payment of debt. Sir, that is not to say that they will be allowed to contract debts and walk away from them and assume that they are not going to prison, therefore, there will be no other right against them.

Sir, the intention is also to tighten the legislation to ensure that in all debt which will become a civil liability, the remedies available will be so tightened that the persons will have to comply or face the consequences of noncompliance in terms of payment of debt. The seizure of properties and so on will have to be reactivated in the strongest terms but we will be seeking to move away from where persons are imprisoned for the debt. Mr. Speaker, those are the salient points of this legislation which I want to mention.

I could not conclude my presentation without making some reference to the Fair Competition Legislation. Mr. Speaker, after all of the incentives given to businesses, especially small businesses, after all the legislation we have passed, the financial assistance and technical assistance given and revised bankrupt legislation are all done and no framework is put in place to ensure fair competition in the marketplace, all of these things may well come to nought.

Therefore, it is imperative, Mr. Speaker that there will be Fair Competition legislation being introduced in this Chamber very soon; that there has to be a levelling of the playing field in the business arena so that all legitimate business enterprises will have an equal opportunity to participate and compete in the Barbadian economy.

If we do all that we have done and there is not fairness in the marketplace, all that we have done will be reduced to nought.

Mr. Speaker, in the Fair Trading Commission Act, one will see that it is required to carry out its functions in such a manner as to, *inter alia*,

- “(2) promote efficiency and competitiveness amongst service providers and business enterprises..”
- (3) The Commission shall, in the performance of its functions and in pursuant of the objectives set out in subsections (1) and (2),

“investigate whether business enterprises are engaging in anti-competitiveness business practices.” That was put in the legislation. Of course, when the actual legislation is passed, that will be duly amended to specify in greater detail the role of the Fair Trading Commission in relation to fair competition.

12.45 p.m.

The Fair Competition Act will detail what will constitute anti-competitive practices. That Bill is being prepared and the broad policy in relation to Fair Competition Legislation will clearly be to open up markets and guard against any undue concentration of economic power, or to provide for competition and rivalry in market, or to create an environment of free and fair competition to ensure that all legitimate businesses irrespective of size, will have an equal opportunity to participate and compete in the Barbadian economy.

The Fair Competition Legislation will take us one step further than the enacted legislation has so far taken us by, among other things, ensuring that businesses are given an equal opportunity to participate and to compete in the

Barbadian economy. This does not mean that the small business sector or any other sector will be given any special treatment by virtue of the Fair Competition Legislation.

The Fair Competition Legislation protects competition. It will not protect competitors directly. Therefore, the broad goals of the Fair Competition Legislation will be to promote and to maintain competition and enhance the economic efficiency and production, trade, commerce and to prohibit anti-competitive business practices that prevent or distort competition and that which constitutes an abuse of dominant position in the market.

In pursuit of those objectives, the legislation will have to adequately deal with any conduct found to exist in Barbados that is inhibiting any businesses from having an equal opportunity that I have just referred to. Naturally, the type of practices that will be dealt with by the legislation will be: an abuse of dominant position, price selling, price fixing by two or more businesses, double ticketing, daily ratings, price discrimination, predatory pricing, *et cetera*.

In terms of the proposals for the legislation, obviously it has not yet been passed, but there are two areas I know that are of concern to a number of persons and one of them is, how are we to deal with the issue of mergers and interlocutory directorship? Subject to what will be determined by Cabinet, I can tell you that my Ministry's recommendation in relation to mergers is that all mergers will have to be notified to the Fair Trading Commission before any entities can be merged. Notification of that intention will have to be filed with the Fair Trading Commission who will then have 40 days to make an evaluation of these proposals and in due time may call for any further evidence that they may need before making a determination as to whether to permit the merger or not. If, in their investigations it is found that the merger or any aspect of it will in fact result in an inhibition on competition, then in those circumstances, it will not be granted.

Also, there is the area of interlocking directorship. How is that to be dealt with? The proposal is that a person shall not be, at the same time, a director or officer in two or more enterprises if the enterprises are competitors by virtue of their business, location or operation and if the effect may be to lessen competition substantially, or to create a dominant position. So that, we are dealing with the issue of interlocking directorships in the new competition legislation.

What the creation of a free and fair competitive environment will do, Sir, is to achieve a number of things. It will:

1. Increase efficiency that inevitably results whenever there is a competitive environment,

2. Lower prices and create more choices as a consumer,
3. Provide better products and better services,
4. Increase opportunities for any existing business to function in the context of free and fair competition.

Therefore, Mr. Speaker, those are my comments this morning. I do believe that what is before Parliament today represents the Government's best efforts. It is here after a process of extensive competition where all stakeholders have a chance to make their input. This Government is committed to a process of consultation whenever it seeks to undertake any major activities. In fact, sometimes we are accused of being over consultative because, whenever one engages in a process of consultation the process is usually delayed. But we prefer to have it said that we are democratic and consultative than that we have not been. Therefore, what is before us today is the result of a process of deep consultation.

I will end, Mr. Speaker, by saying that this Bill, if enacted – and I expect that it will be – will be the most significant reform of any Caribbean bankruptcy and insolvency statute in more than 75 years.

Mr. Speaker, I beg to move that this Bill be now read a second time.

Hon. R. C. EASTMOND: I beg to second that.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, before we suspend the Sitting, the Leader of the Opposition would wish to have the matter pertaining to the giving of notice of questions re-committed on the Order Paper and we have no objections to that, Sir.

NOTICE OF QUESTIONS

Mr. SPEAKER: The Honourable Member for St. John.

Mr. D. J. H. THOMPSON: Thank you, Mr. Speaker. Question No. 41, to ask the Minister of Health:

- (a) Would the Minister state whether it is the Government's policy to complete the construction of the St. John's Polyclinic?
- (b) If so, would the Minister also state the projected date for completion of construction?

Question No. 42:

- (a) Will the Minister state whether the Mangrove Landfill, St. Thomas will be closed?
- (b) If so, will the Minister state the date of the proposed closure?
- (c) Will the Minister also state whether Government has a policy on alternative sites for waste disposal and, if so, what is that policy?

Question No. 43:

- (a) To ask of the Minister of Health, would the Minister state whether the construction of the Greenland Landfill will be completed?
- (b) Will the Minister also state the amount spent to date on construction of the said landfill?
- (c) If the construction of the landfill has not been completed, will the Minister state the projected expenditure needed to complete the said construction?
- (d) Will the Minister also state the proposed opening date of the landfill?
- (e) Will the Minister state what use, if any, the landfill has been put to in the interim?

12.55 p.m.

Question No. 44 to ask the Prime Minister and the Minister of Finance:

1. Will the Minister state if any jobs have been created in any statutory corporation since January 1, 1995 and if so, how many jobs and in which statutory corporations?
2. Will the Minister also state the terms and conditions of the jobs still created, and the additional cost to the respective corporations?

Question No. 45 to ask the Prime Minister and Minister of Finance, will the Minister state whether the Chairman of the Barbados National Bank has resigned. If so will the Minister state the reasons for his resignation, if any?

Question No. 46 to ask the Minister of Public Works and Transport:

1. Will the Minister state the tender procedure followed in the award of contracts in that Ministry?
2. Will the Minister also state the number of persons tendering for contracts and the details of their tender?

3. Will the Minister further state the number and value of the contracts, and to whom awarded by the Transport Board for the provision of goods and services since 1996, and the nature and services provided by those contracts, over the period which the contract extends?

Question No. 47 to ask the Minister of Home Affairs:

1. Will the Minister state the percentage content of local, regional and international programming respectively by the Caribbean Broadcasting Corporation for the years 1996, 1997, 1998, 1999 and 2000?
2. Will the Minister also state the amount allocated, if any, and the amount actually spent, if any, on local programming during those years?

Question No. 48 to ask the Minister of Energy:

1. Will the Minister state whether there were any resignations or terminations of employment of the managerial staff of the National Petroleum Corporation since 1998?
2. If the answer is in the affirmative, will the Minister state the reasons, if any, for the resignations or terminations of employment?

Question No. 49 to ask the Minister of Housing:

1. Will the Minister state what financing arrangements have been made for construction of the National Housing Corporation Building at Warrens, St. Michael?
2. Will the Minister also state whether investors have indicated a willingness to invest in the project?
3. If the answer is in the affirmative, will the Minister state the amount to be invested in the project?
4. Will the Minister further state the projected completion date of the said construction?

SUSPENSION

Hon. Miss M. A. MOTTLEY: Mr. Speaker, at this stage, I move that the Sitting be suspended until 2.15 p.m. today.

Hon. R. C. EASTMOND: I beg to second that, Sir.

The question that the Sitting do now suspend until 2.15 p.m. was put and resolved in the affirmative without division and Mr. SPEAKER suspended the Sitting accordingly.
1.00 p.m.

RESUMPTION

Mr. SPEAKER: This Sitting is resumed.

Mr. D. J. H. THOMPSON: Mr. Speaker, I do not think I will be very long in this particular debate, despite the size and the weight of the Bill that is before this Parliament. I always try, Sir, not to be uncharitable to the Honourable Member for St. Michael North, but if he takes his own foot and plants it firmly in his own mouth, then, all one should do is highlight how successful he has been at doing it, and that is what I might in the first few words wish to do.

First of all, I think it is a stunning revelation to discover that this would be the last piece of legislation that this Parliament will ever have to pass to reposition the Barbados economy. For unless we are living in a state of perfect bliss...

Hon. R. St. C. TOPPIN: Mr. Speaker, on a point of order. I never said what the Honourable Member for St. John is saying. I said that the unfair competition legislation which would come after this, would be the last major general legislative initiative to reposition the Barbados economy. Those were my words.

Mr. D. J. H. THOMPSON: Mr. Speaker, I have allowed the Honourable Member to remove at least one foot from his mouth, and if he wishes to remove the other one, he can do so also.

Unless we are living in a state of perfect bliss and unless the 350 years that have preceded us as a Parliament would have done nothing in their time to reposition the Barbados economy, I would not be able to accept the statement by the Honourable Member for St. Michael North.

Sir, the passage of fair competition legislation, a new Bankruptcy Bill, and all of the previous legislation, including recent legislation in telecommunications, in relation to the establishment of the Fair Trading Commission, are not going to make the market in Barbados a perfect place. Those are but accoutrement in the entire business context in Barbados.

Sir, as the Honourable Member for St. Michael North was groping for the appropriate message, perhaps I might be able to assist him. Mr. Speaker, what the Honourable Member for St. Michael North needs to address, is the ethos that should underpin the business environment in Barbados.

Therefore, you could have all of the most modern legislation in the world – the United States has anti-trust legislation and consumer protection legislation and they have class action suits everyday against large corporations, but it still remains the most greedy exploitative and competitive

economy in the world, in which there are many people who fall by the wayside without succour or assistance from the state in which the market is often left unbridled and not reined in, even where it works a disadvantage to competitors.

Sir, the point I wanted to make in this debate is that perhaps the Honourable Member for St. Michael North needs to see this legislation as facilitating business in Barbados, but at the end of the day, as the Minister responsible for this and the other pieces of legislation, I think the Honourable Member for St. Michael North needs to spend a few minutes explaining what is the Government's view of the current business climate in Barbados.

Sir, the private sector in Barbados is fighting the Government on the issue of interlocking directorships, and of making Barbados a business place which is the scene of much white collar corruption. These matters were identified about three years ago in a report by some consultants. Mr. Speaker, it exists because we saw it when we were trying to unravel the sugar industry.

Sir, the promoters of big business in Barbados, and there are a few on that Side who come readily to mind, would not accept that it exists because their idea is that the *status quo* is acceptable. Sir, those who understand how business operates in Barbados, and to a lesser extent in the rest of the Caribbean, except in countries where there is active competition between the races like in Trinidad and Guyana and in which people divide business or compartmentalise it along racial grounds. In countries like Jamaica and Barbados there are monopolies interlocking directorships and predatory practices stifling small business. The Government needs therefore to say in the context of the bankruptcy legislation and the fair competition legislation exactly what business ethos or climate it wishes to create in Barbados. This is exceedingly important.
2.20 p.m.

The fact that the Minister has not been able to answer the question why small businesses do not seek equity financing, to my mind flies in the face of a very useful suggestion that I made recently and which had been made by many others. In order for a small business to succeed there has to be a relationship between that small business and larger businesses.

I made the point in here previously that when large companies are looking to out-source, if there are public companies where they have no tendering systems or a fairer system of awarding contracts for the services which they purchase, they generally look for people who have some ownership relationship to them. So if our largest corporations in Barbados are contracting out to purchase computer services, the first thing they do is look to see if a family member owns such a business and if it is a big enough

business or one does not own one yet they finance the establishment of such a business under his guidance and then they purchase the stock from him. So that if it is landscaping services, computer services, as I said already, or marketing services that is how it is done.

Just the other day one of the largest companies in this country established a distribution service for its soft drinks and they set up that business with a family member. So if they could not find a family member, they would look for one of their other shareholders because the worse thing those directors of public companies can do is to go to a shareholders meeting and find a fellow in there who is making them miserable year after year.

Therefore, it is not so much that small businesses need the equity financing either by Government or by individual venture capital institutions. Government needs to find a way to help small businesses to own some shares in larger corporations so that they too can muscle in on those opportunities that exist relative to those larger corporations. So it is a two-way street.

I believe it is critical for us to understand that in a small society a lot of what passes for discussion of financial reform and re-engineering are not going to be relevant to us. Therefore, Government has to be much more activist in breaking down the barriers.

If you look at the way in which the sugar industry would have been unravelled in the 1990s and you look at the interlocking relationships and then examine the way in which some of the larger corporations in this country have been milking the sugar industry without even knowing that they were doing so and they had their defenders in here. They had people in here every week saying "oh no, the sugar industry is on its last leg and there is nothing to milk out of the sugar industry". They did not take away any of the money. They plugged it back in. They are patriotic Barbadians but the first opportunity they had to examine the arrangements that existed, some of the very people who worked in the industry did not know who were benefiting from some of the contracts to purchase insurance and the commissions on all kinds of areas of activity such as storage of sugar and you could go through the long list, as I said, of interlocking business relationships, which had we had a more sharing and cooperative business ethos in Barbados, those persons would understand that it is not in their best interest to be selfish but it would be in their best interest to try to help others to get opportunities to be involved in commercial activity in Barbados as well. I hope that that is what is driving the concerns of the Honourable Member for St. Michael North, and if it is, I think he needs to say it.

The most important thing that we need in Barbados today to my mind is legislation that deals with the issue of economic democracy, economic empowerment, economic

enfranchisement or whatever one would want to call it. That is what is needed more than anything else and that is what would strategically reposition the Barbados economy, not any bankruptcy law. Bankruptcy law facilitates business failure and we understand why you need to have orderly solutions to bankruptcy.

Even though the Honourable Member for St. Michael North failed in his closing remarks to acknowledge that this legislation, by and large, had been borrowed from the Canadian legislation and seems to want to credit somebody, who shall remain nameless, with the genesis of this legislation, it is largely borrowed legislation with some modifications to suit the national purpose. That is nothing new.

The point is though that the previous legislation was outdated and was not sufficiently facilitative for persons moving into and out of the various forms of bankruptcy.

Asides.

Mr. D. J. H. THOMPSON: The previous legislation, if one were to check it, had been on the statute book for decades. It has survived successive Barbados Labour Party administrations and successive Democratic Labour Party administrations.

Asides.

Mr. D. J. H. THOMPSON: The world did not begin in 1986 although your world may have.

There were black Barbadians in business in the 1930s operating under that bankruptcy legislation and there were some in the 40s that survived operating under that legislation but there were others who did not survive and were penalized by that outdated legislation. There were people between 1976 and 1986 when the Barbados Labour Party was in office who also faced difficulties.

We do not blame the Barbados Labour Party for failing to repeal it and replace it by something else because I do not believe that all the wisdom resides in this administration nor do I believe that it resided in a previous Barbados Labour Party administration. If I did, I would be the one whose wisdom would have to be questioned but nobody can tell me that between 1976 and 1986 that the Honourable Member for Christ Church South did not at least once during that time raise the issue of amending the bankruptcy legislation.
2.30 p.m.

The fact that he did not do it is not in itself a sufficient criticism in the context of how Government functions in this day and age. If that were so, there are hundreds of Barbadians dislocated in the past few months by

developments in the commercial sector in Barbados who would have lynched the Honourable Member for St. Michael North for failing to introduce fair competition legislation in this country. They would have said that he would have sat down since he became a Minister in 1999 seeing a business environment changing and has not been able to produce the most important piece of legislation that should have protected them from unfair competition and price gouging and all of the other elements. According to the Honourable Member's own theory they should be lynching the Honourable Member for St. Michael North for dereliction of duty. But that is not the way, Mr. Speaker, that we are going to function in this debate.

I do not have any fixation with the fact that it has taken the Minister eight years to complete the bankruptcy legislation as long as the last Democratic Labour Party Government was in office. The Honourable Member, as I said, has to credit the fact that the previous Attorney General was working on it. He had a draft in circulation that a previous Barbados Labour Party Government was working on and successive drafters have been looking at various pieces of legislation. This is the sum total of the contribution of all of those persons, not the wisdom of the current Minister alone, but the contribution of successive persons and successive administrations to the development of legislation of this type.

If the Government was serious about legislation that would reposition the Barbados economy, then it would look at some of those important things that need to be done to promote balance in the economic arrangements in Barbados, that would help protect black businesses large and small, from difficult economic circumstances, it would find a way to assist them with their cash flow and much of Government's own contracts would be spread more evenly. I know there is one newspaper commentator who blames both leaders of the political parties for, as he says, inflammatory statements about black business. The point is that there is a real need in Barbados to identify some of those businesses which have received no tax concessions, which have been built from one-door shops to whatever they might be now, mega-marts or supermarket chains or whatever, to provide some kind of affirmative action to isolate them from economic distress. That is vital.

Yes, if we are to be realistic, we will acknowledge that a lot of those businesses that are suffering that economic stress are black businesses and that while the Honourable Member for St. Michael North is telling us about the new businesses that have been created, he cannot say a word to the country about the large black businesses in the distribution sector that are being destroyed. His grand claim to fame is opening massage parlours, a profession that is one of the oldest in the world, biblically spoken of.

Meanwhile, black businesses, employing hundreds of Barbadians would not have heard a simple message of comfort from the Minister responsible for commerce and for business. He cannot tell them that they will survive September 11 because all he is interested in doing in this debate is trotting out the standard form propaganda that all of these agencies have created 650 businesses – 1000 businesses.

When you check, some of the very money that Government has disbursed to some of those small business people has put them in more debt than before they had the money. When you went to auto body repair shops when the money was flowing because the Government had a lot from the VAT prior to the last election, those fellows could get \$1500, \$2000 to \$3000. They took that money and made a down payment on sound equipment, all kinds of things, did not buy any new tools, paid off a few debts and today many of them are in worse debt than they were prior to when all of these institutions were established, because there is no agency in Barbados that has the capacity collectively, not even all the agencies that Government has established, to hold hands with a thousand new businesses and to make sure that they are successful. If the Government was seriously interested in institutional reform, what it would seek to do is to match the resources given to those small businesses with the kind of assistance that those businesses need in terms of holding their hands and ensuring that the enterprises are successful; but that has not happened. One month you create one new business and the very same policies that you introduce have ended up closing down about three or four.

I spoke last week about the number of small rum shops in Barbados that are facing serious financial crises, the number of mini-marts in Barbados, mainly owned by black Barbadians, the number of supermarket chains again owned by black Barbadians, the largest supermarket owned by a black Barbadian on their knees and the Honourable Minister comes in here to tell us all the new businesses he created and milk and honey is flowing, and cannot tell a single thing about those that this Government wants to promote relative to the business sector in this country and will tell you that the Bankruptcy Bill and the Fair Competition Bill would be the last pieces of legislation required to reposition the Barbados economy, as if having passed them this Parliament can close its doors and all of our business would have been completed.

Many of the businesses that now need the fair competition legislation and the kind of affirmative action legislation that would assist them have no recourse because that legislation does not yet exist. The legislation to accommodate their failure, and it is true to some extent to put them back on their feet, would have taken precedence over the legislation to protect them currently, which would include the fair competition legislation and the kind of

legislation that would provide affirmative action programmes for black businesses in Barbados, the incentive structure in our tax system that would encourage large businesses to invest in small businesses and small businesses to invest in larger businesses directly, not institutionally.

As I said, you need to give that small businessman access to the shareholders' meetings. You need to give that small businessman an opportunity to help change the direction of some of those larger businesses so that they will be more sharing and cooperative. I am not asking for utopia, but I do recognise, however, that in a country of 280 000 and the size of our country, it should be easier for a Cabinet, the largest in the history of Barbados, to have Ministers who can engineer outcomes in the corporate sector in Barbados, not only create new businesses; sustain them and find a way to develop linkages between big and small business; find a way to get more Government patronage into the hands of small businesses to assist their cash flow; to design a method to get those small businesses to become medium sized businesses through strategic alliances between Government and larger businesses in the corporate sector in Barbados.

2.40 p.m.

We need to see the flourishing and blossoming of economic democracy in our country and this legislation is not going to do it. Even so, the history of receivership and bankruptcies in Barbados will show that there are very few people who have seen their way out.

Many years ago a gentleman started a factory in St. Philip producing PVC windows which are very popular now. The business went into receivership and he was one of the people who said that if his business is going to collapse it will not be because he had been negligent in relation to his receiver/manager. He took a trip every day to the factory and breathed down the manager's shoulder to ensure that the decisions made at the end of the day were in his interest so that he could pull the company out of that position. Sir, there are other examples of that but there are few and far between.

Recently, we saw a situation where another black enterprise was pulled back from the brink where a receivership was involved. The Honourable Member would know that these are few and far between and that, by and large, for most of those companies which go into receivership the cost of the receivership itself is a drain on the enterprise because a person might not be drawing a salary from his business and then a receiver comes along and gets a bigger salary than the owner ever got.

Government has to develop a facilitative framework which makes it easier for people to move through the process that hopefully would make it less costly, in which it is better supervised and which will focus on some of the issues which the Honourable Member for St. Michael North identified as being of concern to business development in Barbados.

Mr. Speaker, on a previous occasion when we were doing the securities legislation, I outlined ten things I think the Government could do to promote economic democracy in Barbados and see a more balanced economic and financial environment in our country. I urge the Honourable Member for St. Michael North to see it as part of his remit not just to see the creation of new business but to find a way for Government to play and encourage the traditional private sector to play a more active role in ensuring their survival particularly in these difficult times.

At the end of the day, despite what the Government is saying, there are a lot of businesses in Barbados, small and medium sized, that are facing severe financial problems at this time. I cannot join with the Government in giving the impression that Barbados is nearly out of the woods because many of those businesses, prior to September 11th and prior to the second quarter of this year, were already facing grave economic distress, were going through restructuring and some were being closed down.

The Honourable Member for St. Michael North talked about the thousands of businesses created but he should also talk about the thousands of workers who were laid off in the private sector in Barbados in the first and second quarter of this calendar year, because that is going to be extremely significant unless the Government finds a way of shifting some of the burden on creating new jobs in the private sector in Barbados. If you look at the statistics, you will see that the majority of new jobs in this country since 1994 have been created by the Government itself.

Asides.

Mr. D. J. H. THOMPSON: We are not arguing against activist Government but activist Government needs to hold hand with activist private sector. If the Government is giving concessions, tax and otherwise, particularly to larger businesses in this country and was able to force wage restraints on workers where you saw real income declining and the cost of living and the tax burden increasing because of the VAT, and yet at the first sign of economic distress the workers are sacrificed, then it means that the economic model of the activist Government has been failing. This is the greatest concern that I have Mr. Speaker.

Asides.

Mr. D. J. H. THOMPSON: Even in the context of Government's employment strategy which was not on the cards in 1994 because the creation of jobs was supposed to come principally from the expansion of existing enterprise and the creation of new enterprise, that was the strategy the Honourable Member for St. Peter identified as underpinning his economic arrangement...

Asides.

Mr. D. J. H. THOMPSON: Well, if there is a redefinition of Government to include enterprises, perhaps that is true because Government, through the creation of new enterprises, has spent more money in capital development than on the Government's own capital development programme. For example, in this fiscal year the capital projects of the companies owned by Government which are incorporated under the Companies Act, the expenditure on capital projects is projected to be larger, based on what we heard in the Estimates, than the central Government expenditure and the expenditure of statutory corporations. If that was the strategy it means that at the end of the day we will be saying that the private sector has no obligations at all despite the existence of a social partnership and despite the fact that there is going to be constraints on Government's ability to deliver all of its programmes if the future is to be effectively safeguarded.

Mr. Speaker, those are my principal concerns and they are only of a policy nature. I believe that this Bill was necessary. I compliment the Honourable Member for St. Michael North even though he needs no compliment because he is not afraid to shower them on himself for introducing the legislation today, and I want to say that the many years of labour which others have put into this he should at least credit them with that. This legislation is not going to be revolutionary or heart-breaking in the context of Barbadian development unless people see it as redefining failure. If the legislation redefines business failure and as a result people accept that it is possible and legitimate for the same person who runs a business into the ground to develop another enterprise and be successful, this has happened to many business moguls in the USA and is still happening today and what we consider to be failure in Barbados, it would have been a pointless exercise. Even though it provides an escape route or a faster route for resolving the issue of insolvency and bankruptcy. At the same time our task should be, wherever possible, to avoid that time of haemorrhage, to ensure that economic relations among individuals, businesses and corporate entities are successful and that the ethos of business in Barbados promotes business success, accounting sometimes for the fact that there is going to be failure. Sir, that is why the Bill is desirable.
2.50 p.m.

Sir, it needs to come against a background of the Government speedily implementing its Fair Competition Legislation and being activists ensuring that legislation and the things that it seeks to obliterate from the business scene are actively pursued, and the Government also creates legislation that gives teeth to the process of economic democracy, greater sharing of wealth of country and greater access and control of economic decisions to the owners of wealth in this country.

I believe that the Government needs in that legislation to identify a fixed amount of Government's contracts for goods and services to be given to identified businesses in this

country. Those businesses need to meet certain targets as they are receiving the benefits of Government's patronage and as a result of that, it will be possible for us to create a more sharing and cooperative business and economic environment in which new players as well as existing players can be successful.

Sir, those are the heart of my concerns. I have no objection to the legislation as currently designed. We will see how it works in the context of Barbados against the other pieces of legislation that are in existence. In that regard I hope that this legislation, as I said will not so much facilitate insolvency as it would redefine business failure, but will put the businesses that have resorted to it back on their feet as successful enterprises.

Thank you, Mr. Speaker.

Hon. R. R. FARLEY: Mr. Speaker, I rise to lend my support for this legislation. I think that it is only appropriate that this Parliament of Barbados should put such laws in place as would facilitate the legitimate aspirations of the vast majority of our people. It cannot be denied, our history clearly shows that our society and economy have undergone substantial transformation over the last several years. We were able in the post-second World War period to transform the economy from a small dependent sugar economy to a modern services economy and we are here at the start of the 21st century.

During the past century, we would have witnessed the transition from colonial government, where many would agree that the primary influence in one period of our history was not so much colonial government, but more of a national autocracy. We moved from there to representative Government and then on to independence.

It is noteworthy that this Bankruptcy Act that we are going to repeal and replace with this new legislation, goes back to 1925. Also note that this would have been derived from legislation out of England. If we look at what was the thinking of the persons who made this legislation then, apart from 1992 where some amendments were made, the only other amendments to this legislation were in 1956. Sir, you will recognise that the same legislation which is to be repealed does not reflect the current vision for the society of Barbados. It more reflects the realities such as they existed. If we go back to all that would have caused the great eruption in the society of 1937, we would recall that we were an undeveloped mono-crop society.

It is our responsibility that where vestiges of that past still remain, we need a way of law reform to clean up our legal system to ensure that it reflects the more egalitarian nature of the society which we are hoping to create. It is

unfortunate, but true, that some aspects of our commercial law remained in place much longer and several aspects of our commercial practice, not necessarily written in law but forming part of the culture of Barbados, remained in place much longer than we retained our political freedom as we dealt with our laws relating to our politics, democracy and other aspects of our social arrangements.

We cannot forget that it is only less than 50 years ago that things such as the Located Labours Act were repealed. Laws were made by previous Parliaments of Barbados with the sole intention of stifling the legitimate aspirations of the broad masses of the public of Barbados. Some aspects of law as they related to business were more intended to keep people in their place than to facilitate their ascent to the pinnacle of commercial society.

Sir, the bottom line is that while we have made substantial progress over the years since Independence, with the improvement of several aspects of our laws as they relate to commerce, we still have some way to go. This administration has set itself to the task of buttressing our firm commitment to the economic democracy which we have set as one of our principle targets, by way of ensuring that our laws and practices and our institutional capacities are fully consistent with that particular objective.

We would not want to have in the future what has happened in the past. Names which should have been part of the patronage of Barbados, names which the majority of the black population of Barbados should have, even today, been able to hold up as icons and examples of corporate success, have slipped away and disappeared with the time and the tide, Sir. You will remember the Symmonds Bank, the Civic, N.E. Wilson and 5 and 10 Model Store.

The reality is that every society, whether it is large or small, needs to have examples of success which have endured. It helps a society when 100 years hence, persons can look back with pride on examples of hard work of entrepreneurship, and that future generations would be able to gather inspiration and strength, and to proceed in the firm knowledge and resolve that if persons in the past, in less than a perfect environment could make it, that they could make it as well.
3.00 p.m.

Therefore, this legislation is as much economic as it is social. It is as much about taking care of the present situation as it is about dealing in the future. But this approach to using legislative change in the economic development context is very important. In fact, if we are to achieve true economic development, then we need to locate this legislation within that broader framework. What are we trying to achieve by way of economic development in this country? Important structural change by way of diversification of production.

We have been able to achieve that to a large extent, moving from sugar to several other aspects of the economy.

We have been able to achieve some measure of income redistribution and there is some business to go with that as well. But I am pleased to note that this Administration, through economic democracy as well as its poverty alleviation, has been able to add significantly to the transformation of the economy by the greater redistribution of the national wealth and the general increase of the welfare of a country's citizens.

There is the need where we are able to achieve economic development to ensure that there is an increase participation of indigenous talents in the ownership and control of the commanding heights of the economy. In our case, Sir, that is a two-headed creature because, in many ways, we have had local ownership and control of the commanding heights of the economy, but what we need is for a more diverse spread of that ownership and control.

Everyone knows the history of Barbados which has shown and still continues to show, although to a lesser extent in 2000 than it was in 1975, 1950 or 1925, but there is a new entrepreneurial class emerging and because of that the concentration of the ownership of significant business assets in Barbados is able to spread. Through earlier legislation and enactments, we have been able, for example, by creating a Securities Exchange of Barbados, which the BLP has been able to do, to facilitate the ownership of shares. We have been able by several other means to create those opportunities for greater ownership in Barbados. Part of that strengthening of ownership also relates to the issue of increase in domestic services and this legislation is all part of the wider matters of ensuring economic development. But at the end of the day, the strengthening of our entrepreneurial base is what this is all about. If we are going to encourage persons to go into business, then we need to do a few simple things. We need to have entrance strategies which encourage and make it easy for new persons to enter into the market. We need to improve the ability to compete, whilst they are in the market. We need to have exit strategies also.

In the past one of the few ways, other than selling one's business, is where one was forced out. Sir, going into the hands of a receiver in Barbados, was as close as one could get to being lowered into his grave, whilst yet alive. The legislation facilitated that, Sir, because the previous bankruptcy legislation spoke, almost exclusively, to the interest of the persons to whom the money was owed and the receiver sole purpose was to ensure that the person who put him there was able to get his money out of the business. There was not necessarily any interest in the wider public good of ensuring that the business continued to be a valuable contributor to the development of the society. There was no requirement to focus on the rehabilitation of the business, to put it on a new strategic path, to ensure that it

was able to capitalize a market opportunity as it may arise in the future. There was no requirement to improve efficiency and productivity and general competitiveness. Its sole purpose was to ensure that persons to whom money was owed was able to get his money back by one means or another.

This legislation, therefore, joins other progressive legislation which has been introduced by the Barbados Labour Party's Administration and which has put business in Barbados on a more secure footing.

I need not make any detailed mention of the fact that in terms of small business, for example, the passage of a Small Business Development Act was the first time in nearly 400 years that an Act was created specifically and especially to benefit small business people.

I need not mention the provision which has been made in the Annual Economic Policy Statement, of the Right Honourable Prime Minister and Minister of Finance, providing incentives, encouraging a range of business persons, particularly small business persons, to get into business and to stay there, and particularly to engage in those activities within the productive sectors which spin over to the long-term interest of the Barbadian public such as: manufacture, agriculture, tourism and international businesses.

I need not speak to the commitment which this Government has made and has been buttressed by firm action in terms of expanding the local market for locally produced items where the Government, through its procurement policy, has given effect to its commitment to economic democratization by ensuring that small businesses get their substantial share from Government contracts, particularly the provision of building construction services. We have, for example, given contracts to Small Business Venture Service Inc., which is a company set up by the Small Business Association to farm out work to micro businesses. We have made a commitment to purchase over 60 per cent of fresh and processed foods from domestic sources, and we can go on Sir.

Therefore, the point I am making is that this legislation has to be seen, not as a stand-alone, for this is not the only act or action which the Government of Barbados has taken to develop and support business, this is part of the package: easier entry, greater ability to compete when one is in the market, and exit strategies.

Sir, we would not want persons having to find themselves in the position where they need to use this legislation.

Sir, we are ensuring that if the worst comes to worst, people are not immediately thrown to the wolves but there is

the capacity for the business to be reorganised, rehabilitated and rendered useful to its owner/founder and the wider Barbadian community. Broken businesses do not employ people, but businesses that are properly functioning do.
3.10 p.m.

The Technical Assistance Programme of the Government has sought to help businesses to remain viable. We know, Sir, that many of the small businesses which have been started would have been started by young boys and girls, growing up like me, Sir, in a village somewhere in Barbados. They would not have been able to do what businesses started by the traditional business families in Barbados would have been able to do.

The difference between a small business started by someone in a family with a business tradition, and someone in a new and emerging society, is that there is no stock of human capital on which one could draw. You are not able to call Uncle Jim and cousin Bob and Godfather James, to ask how do you set about this or that. The Government, recognising this loophole and weakness, has established technical assistance programmes which would ensure that Barbadians who might be first generation investors in business, are able to call on mentorship resources to get the same kind of advice that persons in the traditional business classes in this country would have been able to draw on. This is where technical assistance in these things are important, Sir, and these are measures which this Government has been putting in place.

The Honourable Member for St. Michael North would have presented in some detail the proposals for competition policy legislation, which will be a very fundamental step in the direction of further ensuring economic democratisation and ensuring that there is true openness, transparency and proper arms-length transactions which can stand the test of scrutiny. Also, we know we have to be anecdotal, so that favouritism in business does not work a hardship against a number of new entrepreneurs, who by way of not being known, or not having the human capital resources of long family connections to draw on, find themselves out in the cold.

The Government is committed to stamping out that, so this legislation, Sir, is just part of that wider package of economic reforms, with a very strong social component, which will ensure that we are able to achieve our vision of true economic and social development.

I need not mention, Sir, the Securities Commission Bill which has again in the same vein ensured that the new entrepreneurs, following our encouragement, went to the securities market. This is one of its strategies, Sir, to transcend from being a sole proprietorship or being just a limited liability company with a few shareholders to a public company that has an injection of capital.

The Securities Commission Bill also seeks to broaden the base of ownership. We recognised that a securities exchange of Barbados which was a self-regulated exchange, run by its members for its members, without the intervention of anyone, Sir, and which we knew in certain circumstances was not of such a transparent quality as would encourage persons to have confidence knowing that their interest would be protected, so we have created a Securities Exchange Commission to oversee the action of the exchange, of its dealers and securities within that activity.

Sir, this new Bankruptcy and Insolvency Legislation will give a greater sense of confidence to the market. We have to use the process of appeal to the wider Barbadian society to have a different attitude to business failure.

In the United States of America, which is recognised as one of the most entrepreneurial economies of the world, their most significant business figures are not there on the basis of their first investment. Many of them went through many disastrous failures before hitting on the project which proved to be successful. Were those persons in Barbados with the attitude which the public of Barbados but more specifically, the financial community of Barbados, would have displayed to those individuals, they would never have been able to make it, and we want to change that, Sir.

This legislation, by way of offering the facility of reorganisation, provides an opportunity for an entrepreneur, having tried a particular venture and not being successful, to be in a position to dust his pants off and start all over again. Entrepreneurs are essential to economic development. They are people who are willing to risk everything in pursuit of a dream, a dream where, if it is realised, not only do they succeed as individuals, but the wider society succeeds by way of jobs that are created, by economic activity which is created, and by way of the business cultural icons which are developed that say to people that I too can make it.

Sir, I want to say that there is no shame as far as I am concerned in business failure. The greatest shame is not to have tried in business and in this legislation we are providing a second, third and fourth chance, but we want the public, particularly the financial community, to adopt this same attitude.

We will continue as a Government to do whatever further reform of the commercial system is required to ensure that it is compatible with the times in which we live. The legacy of our past, which was driven by a social, political and an economic context very different from what we have today and what we want for the future, is stripped completely from the legislative frameworks. It is but fitting that this institution of parliament, which would have been used in a manner contrary to the interest of the masses of Barbados in the past, be now used to advance the interests of the masses into the future.

I am pleased, Sir, to support this great effort at reform of commercial law in Barbados and to add, in no small measure, to what this administration has already done by way of support network and services for the up and coming entrepreneurs of Barbados.

Mr. Speaker, I am grateful to you.

Hon. R. N. GREENIDGE: Mr. Speaker, I promise that I will make a rather short intervention of 15 minutes, and I will begin first of all, Sir, by complimenting the Honourable Member for St. Michael North for the very masterful and professional way in which he introduced the Bill earlier this morning.

I have to say, Sir, that our bankruptcy legislation as it presently stands, is very heavily pro-creditor and that this piece of legislation, the Bankruptcy and Insolvency Bill, 2001 will make it a little more debtor friendly. This legislation, Sir, will address the plight of the small and medium sized businessman who is in debt. The legislation, Mr. Speaker, gives the debtors more opportunities to reorganise their businesses and their financial affairs.
3.20 p.m.

We are looking at debt, Mr. Speaker, in a completely different way today than 75 years ago. Our previous approach just could not be continued. Formerly, our law, the Bankruptcy Act, was heavily based on the English Law. This law, as you have heard, Sir, would have operated from the year 1925. I guess that would have been before any one of us in here would have been born. This is really and truly what could be described as typical colonial legislation.

That law, Mr. Speaker, was very tough and also very heavy-handed. No one in those days cared about the rehabilitation of the debtor. The law was based on the idea that you should never be in a position where you cannot pay your debts. In England, there was, at that time, something called a debtors' prison where you could actually go to prison for not paying your debts. Indeed, Sir, you could not even work if you were bankrupt and you could not get credit. You literally carried around with you the badge of bankruptcy. There was very much of a social stigma attached to debtors at that time.

Today, Sir, you just cannot be as draconian as you used to be. So now the court can make certain orders which will assist and accommodate the debtor. Indeed, Sir, the whole of section 10 of this Bankruptcy and Insolvency Bill really and truly sets out the procedures that the court can follow in order to give the debtor some relief and a lot of what used to be considered to be a black mark against the debtor will not now be.

The main point I want to make, Mr. Speaker, is that there has to be a new approach to banking. The bank in my

mind should have a moral duty to ensure that any businesses that they put on the road are sustainable. The bank's obligation should be to help with the development of those they lend to. It should be the duty of the bank not really to sell a man's property as easily as they do today but to see that wherever possible the business comes to fruition. I think that banks who lend should have a couple of officers who are literally out there in the field because they need to provide an advisory service to those who borrow. I believe that the banks should also share information with a lot of those who borrow. For instance, you get situations where people go into the supermarket business. I think the first thing the banks in such a situation should do, is say to the borrower, are you actually going into the supermarket business? If so, well, let me tell you something; 19 out of the last 20 persons we lent money to who went into the supermarket business, failed.

I think the bank should also look to assist those who borrow by looking at things such as whether the supermarket will be in a good catchment area and so forth. It is my opinion that a bank does not really hold your hand in the way that it should. The bank seems to be interested only in your ability to repay and in what security you have. Too many businesses exist only for the bank. Very often the only person who benefits from your business venture and borrowing is the bank itself. You will go to the bank and sometimes all the loan officers will say to you is that if your salary is really \$3 000 a month, yes, you are entitled to a loan but you must bring in your land papers and once you have the adequate security, that usually is it.

I was listening to a discussion on one of the call-in programmes a few Sundays ago and I heard one of the leading businessmen in Barbados making this statement, that for some of us to borrow \$150 000 from the bank sometimes the banks seem to want your very testicles put up as security. That is the way that a lot of our businessmen view borrowing money from the bank.

The other thing is this; if your loan is in arrears the bank very often puts a fairly sizeable surcharge on you too. So the people who really need the help at that stage are being penalised at the time that they are indeed most vulnerable, and so this fellow will never be able to get a chance to get back on his feet.

With this new legislation now, Mr. Speaker, the position is a little different because once a notice of intention to file a proposal is given, the debtor can literally buy a six-month extension which acts as a stay on his creditors and persons like his landlord, utilities companies and so on cannot really and truly deny him their services.

I want to say, Sir, that I agree wholeheartedly with the statement made by the Honourable Member for Christ Church East in which he said that in many other

jurisdictions, and he used the United States of America as an example, people who have become very, very successful are those who have actually failed the most, but in Barbados we write-off people as complete and eternal failures who have only failed once. As you know, Sir, you can be dressing for work, you put on your brief, your shirt, your pants and everything but you might perhaps forget your socks. The point I am making is that you might make one mistake but that does not mean that you are an idiot or that you cannot get a second chance. Sometimes it is not a big mistake that you made. It might have been bad advice that you took, and you are written-off completely.

3.30 p.m.

I think that the problem with our society is that it is not just a small society it is also a very oral society. By that, I mean, Sir, that people talk. There are people at the bank who will tell others whose cheques are bouncing. That happens here in Barbados and then people at other banks refuse to lend you. Once you have made a mistake, they do not put you down as somebody who has made a mistake, immediately they term you as dishonest. You make a mistake and you are punished for life. It is a fact.

I am surprised that more businessmen have not freaked out mentally or otherwise in Barbados, and I have to commend the part of this legislation that also makes provision now for counselling the bankrupts. I think it is a very humane step that we are taking with this particular piece of legislation.

Mr. Speaker, some small businessmen make mistakes and one of the chief things they do very often is that they mistake sales for profits. You can be selling and sometimes you can see more money coming in this month than last month and so on but, occasionally, Sir, they see the sales increasing but what they do not realise is that almost imperceptibly their costs are increasing as well. They are actually losing money sometimes without realising it. Then one day out of the blue they realise what has happened and then everything crashes. They mistook sales for profits.

Mr. Speaker, let me say that another problem which I made a note of and which I think the banks have something to do with, is a failure by our businessmen to appreciate the difference between the business and self. I think that when banks encourage young or small businessmen to incorporate and tell them to form a company, the bank does not really explain to them the difference. I think that that is something which is crucial because the banks will make you incorporate but then the banks will ask you to put up a personal guarantee. When that happens, the message that is sent to that person is that the company and himself are one and the same; and that is not true.

You find that the businessman now writes the cheques for his groceries on the company's account because that is the message that is sent and nobody has explained to him anything. He goes on vacations using the company's account. Never is he made to think that he has a loan from the company. The bank does not seem to care and nobody seems to care about explaining to him the difference between the company and self.

I would think, Sir, that the bankruptcy rate for small businesses is more frightening than a lot of us in Barbados really appreciate. I believe that out of the number of new small businesses which would have been formed over the last ten or so years, more than 60 per cent of them have failed or at the very best have ceased to operate.

The final point I want to make, Sir, has to do with the receiver. I always thought that a receiver should be a man to guide the business through its difficulties, to steer the company through the rough waters. Although we have to appreciate that under our law the receiver has an obligation to protect the creditor, he is in there for the creditor but, sad to say, Sir, receivers in Barbados have a very draconian approach to small and medium sized businesses. Receivers, to my mind are a signal for destruction. They are like undertakers. It is like burial time where the receivers in Barbados are concerned. They destroy. They make money by liquidating companies and some receivers opt to liquidate rather than to try to steer that company through the stormy waters that we have been speaking about.

I know of an instance, Sir, where there was a company in receivership for about one month and that company's wage bill was in the vicinity of \$80 000 and the month the receiver moved in the company's wage bill moved to \$140 000, simply because the receiver was there. How do you ever expect that company to get back on its feet?

We are in a new era. We can no longer continue to operate with the colonial legislation and the colonial attitudes of the past. I, therefore, give my wholehearted support to this Bill and I want again to commend very heartily the Honourable Member for the Constituency of St. Michael North for his presentation of this Bill this morning.

I am obliged to you, Sir.

Mr. D. St. E. KELLMAN: Mr. Speaker, I rise to speak on this Bill and I want to say that if ever there was a piece of legislation in this Parliament that can be regarded as negative legislation, this one will have to be it. We cannot only look at the negativity of the legislation, one also has to look at the timing of the legislation, and it is clear that an economic analysis has been done and the projection for the future is very bleak.

Anyone with a positive mind would have to recognise that there is another way, and I am suggesting that after listening to all of the speakers we need to find some solutions to make sure that this Bill, even though it is put in place, does not find itself doing the same thing as the Bill that was brought to us previously by our slave masters. I hope that we would recognise what we are trying to stop and what we are trying to put in place and that we as people representing the Government of Barbados would acknowledge that we need to do something to stop something from happening instead of trying to solve a problem. That is why we need to have some preventative measures put in place and why I am proposing that Government recognise that small businesses need to have some patronage.

I have no apology for making that particular comment, because when one looks at the history of Barbados, one would recognise that all of the successful businesses of Barbados had patronage. You cannot name one, Sir, in here to me today and convince me that they did not receive patronage. If we know that, Sir, and if we know that that is the solution to the problem, why would we attempt to bring a Bill like this before we attempt to do what we know is right?

When one looks at the Budget for Government, one recognises that every year we spend over \$1 billion and the question must be asked, how much of that money that we are spending relates itself to the Small Business Association or the one-door shops? We also have to ask ourselves how can we continue to allow people to dictate to thousands of business people and tell them what mark-up they must charge for their goods and at the same time there is no control over them. Most of those people do not have to worry about shoplifting nor about people owing them and not paying.

We find ourselves in a situation where we always say that small businesses suffer from lack of capital but we do nothing to provide the capital neither do we do anything to reduce the cost of the capital.
3.40 p.m.

Sir, we have to stop looking at regressive legislation and look at progressive ways of doing things. I have always said in here that you cannot tell small businessmen that they must continue to obtain goods internally whilst their competitors have the capacity to get the goods externally.

We also have a situation where if you are a small businessman and you import goods, you are told that your goods are undervalued. Sir, small businessmen's goods are not valued by what he pays for the goods, the cost of his goods are valued by what the large businessman pays for his. I have always spoken to this point in Parliament for the simple reason that if a person has money, he can set up a company overseas, charge himself for the goods, make a profit over there, then send it here and that is the valuation

used. Sir, how can small businesses survive when they cannot attempt to get goods from overseas. Sir, we as Parliamentarians have to create a level playing field and cut out the talk.

Sir, all inclusiveness is not a concept developed in the tourism industry. It is a concept that was always here and everything that we know has the concept of all inclusiveness in it. When there was a sugar industry and we grew tobacco the concept of all inclusiveness was there and in the financial services it is also there. We are doing nothing to stop it, Sir. How can we expect small businessmen to survive in this climate?

Sir, Government must make a positive decision or I will have to see this legislation as negative. Sir, the present Securities Act and Companies Act are foolishness because what we need is the capacity for small businesses to have the same capacity as large businesses to generate capital. As it stands now, that cannot happen. The small businessman cannot decide to sell some shares if he has a capital problem. He cannot do it like the big businessman, so how can you talk about an equal footing?

The small businessman cannot influence any Government to give him a share of a contract because if that contract is broken he will hear that he is breaching some rule. Sir, we as Parliamentarians have to change the rules governing contracts. If we are serious about poor people, we have to split those contracts and give the small man the capacity to compete, but we allow the contracts to stand whole knowing full well the small man cannot bid for it.

It is true that there are people who do not believe that poor people are important. The truth is that if you do not have a mass base in a country, there is no economy. It is the mass base people who create the economy and develop the middle class and the middle class then sustains the upper class. We feel that if the upper class is rich and we have a middle class, we can continue and feel happy.

Sir, this legislation is a signal that we have given up all hope of having the capacity to solve problems, and we feel that this legislation will help solve the particular problem.

Sir, if things are to improve you have to expand the market because the market as it stands in Barbados is too limited. Even though we are a small country we need to expand our market to a capacity that can encourage the larger players to concentrate on the external market by exporting and leave the local market to the small manufacturers, but the big players are happy to have the local market for themselves and they do not feel they have an obligation to the country to export.

Sir, I think because of trade liberalisation and globalization Government has to understand that it has to provide the foreign exchange and make the same bold step that Right Excellent Errol Barrow made in 1975 when he took sugar and sold it. Government must also understand that the companies which have the capacity to export must set up an agency to look after those exports. We must force them to export because if we do not do that we will continue to limit our markets.

Sir, we have a situation where in the retail sector we are limiting our markets and we are inviting other people to come into our markets, and then they get on national TV and brag about how well they are doing at the same time that our brothers and sisters are suffering. Sir, how can I feel good with a situation like that?

Sir, we no longer invite people to generate foreign exchange to help the country but we are inviting people to take foreign exchange out of the country and we Parliamentarians are proud of that. Sir, I want to say that I am not proud of that. If we invite people here, they must save us the usage of foreign exchange or they have to come here to generate foreign exchange to help develop the country. Intel was here and they left but they used to generate foreign exchange and we used to attract plants that generate foreign exchange, but all of a sudden our foreign reserves seem to be good and we are not interested in bringing plants to generate foreign exchange any more but we are bringing plants to use foreign exchange. Their interest is to get as much as possible for themselves and small nations must understand this.
3.50 p.m.

We must understand that we cannot continue to feel that we can go to meetings and just tap the table. We must let our voices be heard, because whenever we do that, it is a way of promoting our tourism.

Asides.

Mr. D. St. E. KELLMAN: We cannot go to warm seats overseas. Those old ambassadors overseas have to understand that the interest of Barbados must be served, even though this Bill is being put in place, it should be seen as a stopgap Bill. We have to understand otherwise we are not going anywhere.

I am saying that the small business sector in any country is the most important sector because that is the sector that keeps the economy going. Whenever you are under threat the large businesses leave the country but the small people do not have anywhere to go. They have to bear the brunt of everything and they are prepared to do it in the interest of the country, Sir. That is why when you find that even though they might have their problems, when the guy from next door comes and his problem is greater than theirs, they still look out and help him.

Many of those one-door shops prevented a lot of people from starving when they did not have any money. Sir, as soon as they get money they go to the big supermarkets and other places. I am saying that the interest of Barbados must be served. We have to recognise that Barbados is the rock that we have to protect and if we do not do it, nobody is going to do it for us.

For the last two years I have been calling on this Parliament to recognise the importance of foreign exchange being generated within the economy and the ways that we should be trying to save foreign exchange. We have to tell those people who have the capacity to export that they must export. We cannot continue to subsidise those people when they should be creating more elbow room for other small manufacturers. I do not see why a large manufacturer would want to suffocate and decimate small manufacturers, when they have the capacity to compete elsewhere. Maybe, we have to look at our incentive systems to see how we, as a Government, might be contributing and encouraging them to do this.

We cannot continue to operate the same way as we did in the 1920s, nor can we continue to blame people for operating a particular way that suited them. Now that we have the opportunity to change it, we still continue to do likewise. I am hoping that we as a people would recognise that things have to change.

Sir, if we have a proper system in place, we would not have to pass any legislation to deal with competition, it would have been a natural process. The more players that we have seen operating should level the competition. The fact that we have to come now and think about legislation dealing with competition, tells us that our system is not working.

Mr. Speaker, with trade liberalisation and globalisation and free access, those things should be the checks to keep these things in place. The ability of people to travel and to use the internet to shop, should be telling business people that they have to put their prices in line.

Sir, as long as we have our Companies Act the way it is, we are not going to have any progress in Barbados. We do not have to continue copying what other countries are doing. I disagree with that. We have to get our own ideas and implement them. We have to cut the cloth to suit ourselves. We believe in a lot of theory. We go overseas and bring back the theory and we do not want to make changes.

The problems that we have in Barbados are unique and we have to treat them as unique. We have to appreciate what we have and deal with it. I will continue to argue that the international rules are not set up for us to benefit from them. They are designed to destroy us.

Sir, although competition is good, we have to balance that competition. If you have competition on one hand and patronage on the other hand, then you have to make sure that your patronage is equal. You can have all the capital and patronage, you cannot expect someone who does not have capital and patronage to compete. If we are going to expect everyone to compete in the marketplace, then the playing field must be level.

I am hoping that out of a discussion like this, we understand that the world has changed. A lot was said about the banking system. There was a time when one could have regarded a bank as a place that lends money. A bank is no longer a place that lends money. A bank is a place that provides a service. The bank does not make its money anymore on lending money. It makes its money by providing a service. If the bank was set up to provide loans and it is not providing loans anymore, then the Government of the day must understand that and make the necessary change and create the climate so that the economy of Barbados can expand at the rate that we would like it to. We might have ideas but there are people blocking these ideas from coming to fruition.

I hope that my Party would recognise that we must change the Companies Act and we must also change any institution that has the capacity to provide loans to Barbadians.

I thank you very much, Sir.
4.00 p.m.

Mr. SPEAKER: The Honourable Member for St. James North.

Hon. R. C. EASTMOND: Mr. Speaker, the Honourable Member for St. Michael North indicated during his presentation that even where a business entity is faced with severe difficulty, one should be so sympathetic toward it as to ensure that one would not allow that difficulty to cause the business to crash. I believe that this is one of the themes in forming the legislation which is being brought here today.

Of note too, Mr. Speaker, is that the bankruptcy law, has always been the law of the product of a statute, that at different points in history had to be reformed as new considerations came into being and as policies changed to take into account a number of fresh variables. Early bankruptcy laws, Mr. Speaker, seemed concerned with and revolved around the whole issue as to the conduct of corporate entities. In my investigation, when I looked at the earliest possible piece of legislation dealing with bankruptcy, I did not come across any that had to do with provisions that would apply to individuals.

It is possible, Mr. Speaker, that in an age like this that an individual who is not functioning in business might, very

well, be faced first with insolvency and then with bankruptcy.

Sir, let me give you an example. Suppose as a Barbadian, who based on his normal income, job expectation, the length of his career, *et cetera*, proposes to build a house worth \$350,000. Suppose at the start when he goes about with his plans for the house and everything is fine. His income, savings, job security is there and in good order, then suppose five years afterwards there is something threatening his job security or his income and then there is a financial emergency, he may very well find it necessary to seek, first of all, some degree of comfort and if things are very bad, some type of legal protection.

There are also other instances too, Mr. Speaker, where persons who borrow sometimes do not really appreciate the terms and conditions under which they are borrowing. There have been instances in this culture where persons all the more and more exuberant and enthusiastic about getting involved in projects would sometimes go to financiers and secure financing without first coming away with an understanding as to the fine print and the finer terms of the bargain. Let me look at those businesses which this legislation will very well do a lot to save when some of these businesses get into trouble.

Mr. Speaker, in Barbados, increasingly more and more business units are a little guilty of failing to inject equity as capital in businesses. Too many businesses are going for loan capital. There are businesses that have been capitalized and financed from the start with 100 per cent loan financing. Now, where this happens, a situation will arise where either they cannot easily go back for fresh loans in the future, or all of what they are making must go toward servicing the loan, but worst still, when it comes to what is called working capital, paying for stock and meeting short-term commitments, having over extended themselves by investing huge amount of loan funds in their businesses, when things are really tight and they need working capital, they have very, very little elbow room. To put it another way, Mr. Speaker, if a business wanted \$500,000 in capital and was able to raise \$400,000 in equity capital, then if it raises the remaining \$100,000 as loan, one can see that the equity to the loan is more or less four-to-one. If during its history the business needs short-term capital, it might be able then to negotiate an overdraft on good terms and be able to use loan capital from the banking system, only for short-term commitments, rather than have to rack its head about where else to raise fresh funding from, when it comes to its short-term obligations.

Mr. Speaker, there can be no doubt that a lot of businesses sometimes influence other businesses. For example, there may very well be a business called business A, where that businessman is so fortunate as to have made the most of his loan capital and he even has made some

degree of success. He then goes and talks a friend into that type of business. The friend, without thinking nor realizing that his business is different from his friend's business, falls for that trick and then eventually, the second business becomes capital constrained. One of the worst things that can happen to any business that intends to remain in existence and to progress, is to be constantly constrained by capital.

Invariably, those businesses which are hit by capital shortages are those businesses that will find it hard to raise fresh capital. A business that is thriving or flourishing will hardly be confronted by a severe capital shortage under normal conditions, except when it is seeking some enormous capital, or except for the fact it did not realize that it can use some of its profits, retain them and then plough them back in as sources of investment.

Mr. Speaker, we are dealing with an area of business and law that is by no means straightforward. We have in the real world, instances of persons going to banking institutions to borrow for the financing of their businesses. The banking institutions respond and say, 'you have to issue me a debenture'. The person is only interested in getting the money and does not take the time to try to find out what is a debenture. He is then given a choice of securing a debenture secured by a fixed charge or a debenture secured by a floating charge. That person still does not understand but he wants the money. He is told to sign. He does not take time off to go and talk to a lawyer or financial counselor, but he goes and commits himself. If he defaults over three or four months, he is then called by the financier and told that the floating charge is now crystalizing and will become a fixed charge and under the terms of the debenture, a receiver can be appointed by the financier against him. And he is amazed. This has happened repeatedly in Barbados.

Now, it has also happened, Mr. Speaker, that every time a financial institution allows its interest to crystalize in a way where what would have been a floating charge now becomes a fixed charge and where that claim, lien, or asset now materializes in the real world, financing business places appoint someone on their behalf to manage their interest, such a person is called a Receiver, therefore, under the term of the debenture issued by the borrower, a Receiver is appointed when the borrower defaults. He now has to locate the assets of that borrower. The receiver now has some notion as to the debtors indebtedness or the borrowing to his client, the banker, then all kinds of unpleasant things can happen.

The first thing that can happen is if this business has been a growing concern, trading and operating, one day the customer might come to the business and see some strange person saying that he is managing.

4.10 p.m.

The traditional role of the Receiver, who has been appointed under the terms of a debenture, is to manage in the interest of clients in the financial institution. Now, he might calculate that his obligation is to raise money for his client. He might not do an assessment and realise that he could bring back that business. A lot of businesses that have gone into receivership were not actually that broke. Some of their systems were a little askew. A lot of them, with studied analyses, could have been saved but what is there to prevent a Receiver who has to raise \$100 000 for his client right now, from just managing to raise the \$100 000 and then closing down, and Sir, this has happened.

I also want to make the point too, Mr. Speaker, that a very bothersome thing is that when John Public hears that a business is in receivership, he always assumes bankruptcy. If a business goes into receivership and the clients who make up the public assume bankruptcy, it means that they will stop being involved with that business. People do not like dealing with an entity that is perceived not to have a future.

Recently in Barbados, there were some rumblings about one or two businesses that were not doing well, and I dare say, that they are going to find it very hard to recover because, in our judgmental nature, we have more or less worked out that they have sinned and fallen short of the glory of the Lord and that they should be avoided.

Mr. Speaker, in all this, you are going to hear instances of receivers behaving as though the businesses that they are managing are hopeless. Yet, their fees out of the very business, are very high. I will make that point again.

Mr. Speaker, there have been businesses put in receivership which were perceived not to have any viable medium-term or long-term future. The receivers put on the Board were put there by financial institutions to raise enough money out of the sale of the assets, or out of trade, to pay back the financial institution that was owed by that business which was put in receivership. And, Sir, lo and behold along the route, before the receivership is done fully, the receiver's fees are so high that you really wonder if on a more reasonable arrangement, more of that money made by him could not have been funnelled back into the business in the business's own interest.

Mr. Speaker, the Barbados Labour Party Government of 1976 to 1986 recognised something about the plight facing debtors, and I am making this point because I thought that the Barbados Labour Party government of 1976 to 1986 really was visionary. Between 1976 and 1986, the Barbados Labour Party Government calculated that there were debtors who owed on mortgages. The Barbados Labour Party Government passed, in the Barbados Property Act, Chapter 236, a provision that if on a mortgage, the creditor is owed \$80 000 and forecloses on the mortgagor's property and sells

it for \$120 000, then the creditor's full amount is \$80 000 and the remaining \$40 000 is for the mortgagor.

Yes, Mr. Speaker, that passed this Parliament. The principle there, Mr. Speaker, was that where the poor debtor is oppressed, where the poor debtor owes money and his assets and property are sold, the creditor should not make a windfall out of the debtor's plight. That is the point and I believe that this legislation which is before this Honourable House, is contemplating situations like this where you would no doubt recognise, Mr. Speaker, that quite separate and apart from the fact that we are modernising the bankruptcy law, what we are also doing is providing for an element of humanity in this business.

Sir, you will notice that part of the long title says that we are providing for the rehabilitation of the insolvent debtor. There would have been people faced with this frightening and awful experience called bankruptcy, Mr. Speaker, who, as far as they are concerned, before this came into anybody's head, once they were faced with bankruptcy, such was a terminal condition.

The typical businessman who saw no way of getting out of his debts, who knew no way of recovering, or no way of coming back again, used to see bankruptcy as so terminal that when it hit him, that was it and that was the end of him in business. Similarly, Mr. Speaker, the individual who was not a businessman, but who was a person that borrowed money, for example, for a mortgage and could not get it repaid and lost his land in the process, along with the money he paid down, he too, would have seen himself as having been terminally hit by financial ruination.

The proposal, Mr. Speaker, to establish the office of supervisor of insolvency is a welcome one because it allows for a public official to be able to assess, mediate and work in the interest of that which is fair and equitable. Sir, having taken time to see the policy behind this and the various provisions here, I think that we, as a Parliament, have to come to a stage where, rather than try to apply law to deal with bankrupts and insolvents to their creditors, we are trying to bring the whole idea of striking their balance and balancing the interest of all those involved. I think that the piece of legislation, Mr. Speaker, readily commends itself.

With these remarks, I am grateful to you, Mr. Speaker.

Hon. Sir HAROLD St. JOHN: Mr. Speaker, I am very pleased to know that after a very long gestation period, we finally have the draft of a Bill before us which would reform the law relating to bankruptcy and insolvency in Barbados.

First of all, I want to emphasize that it is my opinion that when this Bill comes into operation, it will not prevent

people from being in the position in which the law will have to be applied to administer their affairs, Sir, for they would, by virtue of being potential candidates of this law, have reached such a financial state that they would come within the provisions of the definitions as set out in this Bill, as bankrupts or insolvents.

I think that it is important that we recognise that much of this debate has taken place against a background of the prescription of solutions or suggestions, relating to provisions necessary in our laws to prevent people from reaching that stage.

I propose to confine my remarks, Sir, to what I would regard as the important and innovative changes that will occur in the pre-existing laws that we have, which will be amended as a consequence. I think it is important to recognise also that we have few bankruptcies in Barbados.

I, in my 40 odd years of practice in the law courts in Barbados, can only recall about 10 to 15. There may have been more but the creditors or the debtors, because of the complications arising under the provisions of the law, may have decided that it was better to allow the situation to continue, the business continued and the creditors accepted that there was no hope of recovery of any of their money, rather than go through the process of the Bankruptcy and Insolvency Act.

4.20 p.m.

Nevertheless, I believe it is true to say that there have been, since the 1950's when I started to practice the far and few bankruptcies and some outstanding situations in which companies have gone under without becoming officially liquidated or individuals going under without officially being made bankrupt.

One of the criticisms of the existing law of bankruptcy has always been that the law was inflexible and did not have provisions to ensure that a serious attempt could be made to provide an opportunity for the reconstruction of the business, because it is recognised that there are circumstances in which businesses, whether they are individuals, partnerships or companies, could be rescued, provided a coordinated plan of action could be created to carry out the rescue. That rescue may sometimes be necessary in the public interest.

Barbados' law, based as it was on old English law, was not modernized to take those factors into account. So to the extent that this Bill closes that gap and provides that opportunity, it is a worthy and well-needed piece of legislation.

The second point I would like to make is that there is a distinct distinction between insolvency, bankruptcy and

receivership. One of my criticisms of this Bill is that no attempt has been made, as has been done in other jurisdictions, to utilise new nomenclatures to ensure that this confusion between the receivership where the individual and others are solvent and the situations where they are insolvent do not exist so that the public understands by reasons of the distinction in the names that there are two different situations in existence.

By using the common word 'receiver' in both situations, it is my opinion that confusion will continue to be registered. That will have an important impact because a company that is under receivership but is solvent and is trading normally as it is entitled to do, but the decisions in relation to the management decisions instead of being taken by the owner are being taken by the receiver, is in a completely different position from a company which is insolvent in the sense that that company is unable to pay its debts and the affairs of the company are to be administered by a person appointed by the creditors or by others and that the third party who is dealing with them recognise by virtue of that appointment and the bankruptcy law that their future payments and past payments of debts are likely to be seriously jeopardized because of the priority provisions and a scheme for distribution of assets which are provided for in the bankruptcy.

Now, other countries have decided that they have to use a different name for that individual or that body which is looking after the affairs of a person whose financial position is such that it has come under the Bankruptcy Act. In the United Kingdom, I believe they called it 'administrator' or 'administration', but in other countries of the world they use different names. That is distinguished from receivership where a particular piece of property is mortgaged whether by way of debenture or not. Therefore, a person is appointed pursuant to the mortgage deed or to a court order for the purpose of administering the specific subject matter which raised the subject of security.

I think that is important because I believe, just as we are amending the law relating to bankruptcy, that the time has come in Barbados for judicial intervention in receiverships. There are some provisions in the Companies Act but there is no general law of receivership in the statute of law where people will be able to understand precisely the rights, the duties, the obligations and the responsibilities of receivers, *vis-a-vis* the assets under which they operate.

I say this because the law courts have had a number of cases both with receivers appointed under deeds and receivers appointed by the court in which the owners are not bankrupt and they had to adjudicate upon disputes in relation to accounting, information, although the Companies Act does have some provisions, but most of all in relation to whether it is feasible or it is right for receivers to start off a business where the business owes say \$2 million under a

period of receivership but when it ends up the business owes \$10 million.

Asides.

Hon. Sir Harold St. JOHN: I am not giving my mouth the liberty of saying anything other than to say that those factual situations are known and I am not going to comment on them because there are a number of cases before the courts in Barbados in which a serious challenge is being issued to the receivers because of the fact that people find it difficult to understand that a receiver can continue a business and as a result of the continuation, the business finds itself in a worse position than it was at the beginning.

The general understanding has always been that if you are a receiver your function is to be in and out of the business as quickly as possible. Now, I feel that area of the law needs clarifying and at the same time we need to have clarity brought to the question of charges. I can speak of this because I have been involved myself in challenging the right of charges that have been made by receivers and we have got as far as the Court of Appeal in Barbados, and the Court of Appeal has made it very clear that receivers have to charge reasonable fees and they have set out criteria under which those charges can be tested.

4.25 p.m.

Elaborate responsibilities are placed upon receivers as to the responsibility for recording times spent and the basis of charges. It must be remembered that very often people who find themselves in difficulty and who are not yet bankrupt may find themselves being bankrupt by virtue of the fact that the receivers have carried on their business and they have no control over it.

Under the bankruptcy laws I notice that there are going to be some improvements in relation to the duties and responsibilities of the receivers and managers and also the duties and responsibilities of the trustee in bankruptcy. I notice that a new institution has been created, namely, a Supervisor.

It is an important point to recognise and I think that some consideration should be given to it if there are few bankruptcies in Barbados in the full sense. Is it contemplated in the scheme of administration that this office will be a newly created office, or will it be as it is at the present moment in the case of an official signee? Or will it be placed upon an existing officer who has other duties and you only tack on these duties? These are important points of principle that have to be decided.

I am drawing them to the attention of the Ministry and to the attention of Cabinet because, unfortunately, I was not here this morning to hear the presentation of the Honourable

Minister, but I do not think the statistics of bankruptcy over the last seven or ten years have been disclosed in Barbados. It is important that we recognise that this law like many other laws has to be administered.

If it is going to be administered, it has to be administered by an adequate amount of time being devoted by some functionary. It is important that we have that clear in our heads and I would be very glad to find out what is the contemplation of the Ministry. There can be no doubt that the existing practice, in the few cases I have been aware of, having the existing bankruptcy law administered as part of another set of duties, has not been satisfactory.

I would not want a new up-to-date legislation to be administered in the same fashion as the existing one. I am not attributing any blame to anyone, but what I am saying is that because of the complications and the complexities of the subject, it is possible. If it is going to be assigned to an existing officer, one should try and pick an officer who has little work at the present moment to do and who will be able to devote the necessary time to do this work.

Sir, there are a few other things that I would like to mention. I am glad that the Bill focuses on what one has called the transnational aspect of bankruptcy. This is particularly important in the Caribbean because here we are going into a single market in which there is supposed to be a large measure and there will be a large measure of integration among companies and cross-island businesses. It is quite likely that in the future, countries may go bankrupt in one of the territories but have assets in another territory. It would be very necessary that there be a level of cooperation between the competing jurisdictions of the places where the bankrupt has assets. This is an important provision because at the present moment the situation arises and it is settled by what is known as the Rules of Private International Law. It is better if it is set out in a statute and if we also can persuade our colleagues in the other parts of the Single Market to pass a harmonised piece of legislation in this respect.

That was one of the reasons why in 1985 it was found desirable to have a common bankruptcy law throughout the Caribbean as we had experience of the desirability of a common company law. If there is one thing I believe all Sides will agree on, it is that a common companies law is facilitative of the development of trade, money raising and securities legislation throughout the common market.

Indeed, because of globalization in the world today, there is an international movement that there should be harmonization of the bankruptcy laws of the Western world. It is a fact of life that there are specialist practitioners and others who attempt to distil the commonality of the provisions of bankruptcies of all the countries, particularly in the Western world. There are journals that one can

consult to see where the laws are similar and where they are dissimilar.

One only has to recall the situation that was created by the bankruptcy of the BCCI, that tremendously diverse financial institution, the Bank of Credit and Commerce International. It has worldwide implications and, indeed, the law reports are full of decisions of the courts in which one can glean the attempts that were made to try and discover what was the relevant rule of credit international law to deal with it.

It is also interesting, because there are some very interesting statements by the judges which place in true context administrators, trustees and others who are responsible for the administration of bankrupt estates. The most famous one which I will share with this Honourable House is a judge looking at the liquidators in the United Kingdom and saying that he wanted it to be clearly understood that the liquidation of the BCCI was not to be carried out in a manner of a carcass being plucked of all of its meat and flesh as though the crows were dealing with it. In other words, he wanted to make it clear that when they were finished there would be something left to be distributed among the creditors, and that the fees for administration would not be so high that there would be nothing left but bones. That is illustrative of some of the matters that we speak of and some of the difficulties that we expect.
4.40 p.m.

Sir, the other major area that I want to speak about is what is known in many countries as the chapter eleven situation, a situation in which a business finds itself in a financial bind and the business itself would like some protection from its creditors to allow it to put forward what it regards as a rescue plan. Sir, I am told that the provisions in the Bill that relates to that situation are attempts by the draftsman to deal with that typical situation.

Sir, I must say that while there are similarities of a chapter eleven situation, I have not had enough time to study the Bill in full detail to ensure that it captures all of the aspects, but I admit that they do have some superficial similarities. This will be studied and we will get the benefit of the experience gained from the actual operation of the Bill in due course.

Sir, it is important that we recognise that this Bill is of such complexity that this one Bill may not cover all of what we want to do, and it may be possible that we may have to come back with some amendments.

Sir, the last point I want to make is that this Bill has only been circulated today and I am sure that all Honourable Members are in the same position as me because while we had the benefit of the previous Bill I am not sure about all of the amendments to the previous Bill.

I have no doubt that a valid attempt was made to clean up some of the defects and typographical errors in the original draft but I am hoping that we will be given some time after the Second Reading to discuss this further, because we all recognise that this is a desirable attempt to improve a law which is in need of improvement. There are some important new features of the Bill, and we hope to have some time in Committee to deal with this Bill in greater detail.

Sir, we cannot do all the stages of this Bill today because of its complexity as we only received it this morning and since it has 257 clauses we should have more time to ensure that all of the problems with the Bill have been sorted out.

Mr. D. T. GILL: Mr. Speaker, I rise to make a contribution to this Bill. First of all I would like to laud the Ministers, present and past, as well as the legal draftsmen for putting together a Bill of such great meaning.

Sir, in my opinion this legislation seeks to restore a certain degree of equilibrium particularly with small businesses and people who are not accustomed to the realm of big business and corporate entities. It seeks to restore some equilibrium to a system that could have been pushed into disequilibrium not through any fault of the owner but merely because of some external event.

Sir, only recently we saw the happenings of September 11 which sent shock waves through our hospitality industry and today we are still experiencing the ricocheting and reverberations of that event. Sir, we saw businesses starting to weaken at the knees because of the sudden and sharp dislocation of the industry. Therefore, there must be mechanisms in place to protect the owners and partners of businesses that are vulnerable for one reason or another.

Sir, it takes me back to the first half of the 1990s where I witnessed small businesses closing their doors. There was a time during 1993 and 1994 when virtually every Friday you heard that the dollar was going to be devalued.

Asides.

Mr. D. T. GILL: Sir, these were the rumours and it shows how small a society we live in and the effects that such rumours can have on the society. At that time, debt collectors went on the rampage, overdrafts were being suspended, NIS defaulters were being published and loan sharks flourished. Sir, nonetheless, they served a purpose whether it was for a short period or otherwise.
4.50 p.m.

I may seem a little anecdotal, because I was in a specific type of retail business. I remember an individual

who had first and second mortgages on his property and someone called him and told him that his business was advertised in the paper for sale. He would do everything within his ability to save the hammer. Having got over that incident, by the next week he would see his personal private residence advertised in the paper for sale. Sir, it went on like that for a few months.

Sir, that individual took it upon himself to contact, at the presidential level, the overseas Canadian Bank with which he had one of those mortgages. He was successful in getting an audience with them. It was much to their surprise that he was being treated in such a shabby manner. A particular arrangement was put in place where he saved his house for which he was paying for 20 years, coming to the close of the mortgage. This only goes to show the kind of anxiety, panic and hardship which one can bear as a sole trader who has put all of his life's earnings and security into his or her business. Mr. Speaker, you know of what I am speaking, you being a businessman of another type of service.

Sir, this legislation could not have come at a better time. It can be described as progressive in nature. I do not like to use the word friendly because everything is friendly these days – environmentally friendly, patient friendly. It is in the interest of small persons who are not exposed to the highly technical aspects of business. In parts of the legislation it refers frequently to acting in good faith, diligence and reasonableness. Therefore, there seems to be some degree of equiponderance with respect to the debtor, the creditor as well as the law.

In Barbados there is this feeling that to fail is tantamount to death. It is for that reason I feel that a lot of our juniors do not like mathematics, because mathematics is either right or wrong. A lot of our juniors shy away because they do not want to be wrong. Barbadians do not like to fail. Although having failed, it teaches you sometimes how to prevent failure in the future.

In Barbados small businesses have contributed significantly to the upkeep of this society. We have seen and I have heard on the Floor about a chain of supermarkets. I would like to say a bit more about that. I remember in the late 1980s and early 1990s the emerging of what I called discount stores. There were all types of stores – Publics, Basix and Ricks. I will tell you that Barbados is a small society and I often say that four mega supermarkets could supply the entire population of Barbados.

Asides.

Mr. D. T. GILL: The small shops have their place. If you go to any big country, you will see that the small shops will survive because they carry a higher markup, and they

open later than the bigger shops. In Barbados you will find that the event of the Marts at the gas stations has weakened the base of the small village shop and also took up the slack after the big supermarkets are closed in the evening. There will always be a place, particularly, for the small shops.

However, Sir, what we have seen in recent times, is the crumbling of these discount marts. Ten years ago when those entities retailed, to use the Bajan parlance, from wine to iodine, Sir, they used a profit margin way below meaningful existence. Over a period of time it compounded and has eaten away at the base.

Asides.

Mr. SPEAKER: Order, order there, please.

Mr. D. T. GILL: In Barbados there are small businesses, whether they are car park dealers, shop keepers, vegetable vendors, hairdressers or auto mechanics, that incur expenses with creditors, secured or otherwise. All that is required to weaken the very base upon which these businesses are built, is a sudden unanticipated shock or change which would alter the day to day running of their businesses.

Statistics have been put out by a group of the Insolvency Task Force in Canada. This is in keeping with small personal family-type businesses. The number of bankruptcies has increased over the last 35 years. They have shown that in 1966, business bankruptcies represented 59.3 per cent, whereas consumer bankruptcies represented 41 per cent. Five years later, 1971, an eversion has taken place, where consumer bankruptcies reach 55.5 per cent, whereas the business bankruptcies have gone to 49.5 per cent. By 1999, consumer bankruptcies enjoyed an 89.7 per cent of all bankruptcies and the business bankruptcies 10.3 per cent.

Mr. Speaker, that is not all. I have used this to show how the sole trader or individual-type person doing business in Barbados, how these figures could probably help to explain quite closely what is ongoing or what could possibly be the case in another five to ten years, as more and more Barbadians seek to become self-employed.

The astonishing rate shows total percentage of the household debt to the personal disposable debt of almost 100 per cent. This new legislation, with respect to insolvency, offers great advantages to the debtor, giving him or her enough time to clear his or her thoughts. Whereas in a big organisation there may be different tiers of administration or departmentalisation, so that no one person carries that load, but in a smaller organisation where the man who speaks with the bank manager also speaks with the director of national insurance, his wife, his children, and keeping the house alive. This legislation should be explained.
5.00 p.m.

It is no sense just letting it rest here, passing it through both Chambers and saying that it is. We must take the opportunity to explain it literally chapter and verse. I do not know how it is going to be done, whether by way of print, electronic media, small snippets, Government Information Service, *et cetera*, but the small investor must realize and get to know what are the advantages or the improved position that he or she would be in as a result of this legislation passing these Chambers.

It gives the owner an opportunity to get rid of some of the anxiety brought on in many instances by the ignorance of the operations of businesses. Although the debtor may have his or her advantages, it does not at the same time offend the commercial morality. Sir, so long as the court is satisfied that the proposal is reasonable on behalf of the insolvent, Sir, he or she is in a much more comfortable position.

Sir, some of the advantages are:

5. The assets of the debtor are not vested in the trustee.
6. The debtor remains in possession of his or her assets.
7. The legislation also has more of a humane face and rather than filing a proposal initially, the debtor can now file a notice of intention to file a proposal.

What does that mean to the small business creditor Sir? An immediate automatic stay of proceedings against all creditors.

There is no need for any of the parties involved to fear any misrepresentation set out in section 24:

“The Trustee shall forthwith file a report in respect of the refusal of the proposed form with the supervisor who shall there upon issue a certificate of assignment in the prescribed form for the purposes of this Act as assignment filed pursuant to an earlier section 11.”

Sir, some comfort will also come to small traders who, as I said earlier on, are ignorant of the facts of the game and the advantages by way of not being denied utilities when proceeding with insolvency. Sir, section 35 says:

“Where a notice of intention or a proposal has been filed in respect of an insolvent person, no person may terminate or amend any agreement with the insolvent person or claim an accelerated payment under any agreement with the insolvent person by reason only that

- (a) the insolvent person is insolvent, or
- (b) a notice of intention or a proposal has been filed in respect of the insolvent person.”

Sir, I said the legislation is progressive and also proactive. It offers enough time for the insolvent to gather their thoughts together and to reorganize. This is particularly important to businesses, because I see a business as a living organism, a physical structure. One where it changes with time, it matures, it is newborn, it sheds itself of both outer and inner coatings. It has to carry certain pressures and if the structure is not strong enough to carry certain forces, then it would crumble. Therefore there is need ever so often to reorganise during the time of insolvency.

Sir, as I alluded to earlier on, it is not only reasonable to the debtor but it is reasonable to the creditor where, in the same legislation, a creditor can apply to the court to terminate the process and the court can terminate the process if the debtor is not acting in good faith or with due diligence. Therefore, this goes to show that this is only one example how the legislation itself is not shrouded in favour of debtor or creditor, but for sure it offers the debtor much more improved advantages than with the older legislation.

With respect to the actual bankruptcy, the concept of the 30-day goods I think is beneficial to the supplier, where an unpaid supplier has the right to repossess the goods supplied within thirty days of the receivership or bankruptcy if the goods are not paid for and have not been sold, or altered in any way by the buyer.

Sir, however, I am not clear and I suppose this has to do more with not being a student of law, or having been immersed in law, but I find it a little difficult to understand and therefore I believe that one of the legal luminaries on the Front or Back Bench should make this a little clear to me. Not necessarily crystal, but somewhat clearer to me. Clause 113, pages 117 and 118, which speak to the preferred creditor. I am not clear, if as set out there if that is the pecking order of the preferred creditors.

Sir, at page 118 (e):

“Contributions payable by the bankrupt, as an employer, pursuant to National Insurance and Social Security Act”;

- (f) “All taxes including land tax or income tax assessed on the bankrupt and not exceeding in total one year’s assessment.”

Then (h), I cannot understand because it speaks of:

“Claims of individuals being less than 30 years as to the date of bankruptcy having contracted directly with the bank, in each case the extent of \$750, and where there are insufficient funds in the estate to pay all such claims, they shall be paid ratably;”

That part is not clear to me, so maybe we need to have that understood. We have heard time and time again that this legislation has been taken out of the Canadian legislation. 5.10 p.m.

I know in that jurisdiction a personal Insolvency Task Force had been set up, subsequent to their amendments and there are changes in that legislation dealing with bankruptcy and insolvency. The terms of reference were set up in August 2000 and I think, they are supposed to report in approximately two years. It seems as if we in Barbados, had to follow, not necessarily the same guidelines but something similar, where you will be able to make a further contribution and help to improve the position of the insolvent or the bankrupt.

Sir, that Task Force has been charged with a mandate set out to achieve certain positions. The whole base of their charge is to make sure that Canada's highly privatised bankruptcy system which was designed for debtors with assets and/or income can, nevertheless, remain accessible to debtors with little or no assets and/or income.

Sir, that is one plank and the other plank which is of great importance to note, is the appropriateness of low income debtors. Sir, this again can be related back to our setting where we have more and more small people going into business being self-employed. So you have the appropriateness of low income debtors, paying even a modest fee to obtain a fresh start. This has, Sir, to do with beginning again, having a second bite at the apple while being subject to the same procedural process as those with high income and/or assets.

Sir, the final word about that Task Force is that the criteria with which they have to work are based on certain benchmarks of fairness, accessibility, predictability, efficiency, responsibility, understandability and effectiveness.

Mr. SPEAKER: Could you wind up please?

Mr. D. T. GILL: Yes, Sir.

Sir, as I said at the opening, I think there are great advantages in this legislation for small traders or businesses with small funds. It must be taken to the small businesses by means of the GIS or the print media to let them know that to fail is not the end. There is a legal system in place which would give them an opportunity to start all over again, or to halt, reposition, reorganise and chart a fresh course.

Mr. Speaker, I am much obliged to you.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I do not intend to detain the House for very long but I believe I have an obligation, as a Member of this Chamber to speak in this debate and to speak on as important a matter as this Bill. The Honourable Minister in his introduction would have clearly reflected on the fact that the current provisions which govern bankruptcy and insolvency in Barbados date back to 1925. In those circumstances much has happened in this economy

and society since then, such as to warrant a substantial change in the manner in which we deal with the issue of bankruptcy and insolvency.

Sir, the most fundamental change is the attitude, both to the general business of commerce, as well as the issue of persons who fail. Much has been said in this Chamber today on these issues, but suffice it to say that I would wish to reinforce the fact that ours has been a culture and a legacy that has had a predisposition against commerce and general mercantile matters.

Indeed, one only needs to be a student of British history to recognise that those who in the Seventeenth, Eighteenth and Nineteenth Centuries engaged in the practice of commerce, were generally looked down upon in the society. Indeed, the attitude which suggested that persons who entered professions, or who entered the cloth as a priest, would be valued far more generally in a society than persons who chose to dirty their hands by entering business.

This really arose out of the belief that only persons from a landed class should accumulate capital over periods of time. In those circumstances, therefore, the creation of wealth would not have been as significant an issue as it is today as compared to then. One of the unfortunate things therefore as to our development in the latter half of the Twentieth Century, when we assumed responsibility for our own affairs, is that many of the cultural biases that would hitherto have kept down the majority of people living in this country and most of whom had no access to major capital, or would not have belonged to a landed class, would be that they assumed many of the cultural biases.

Therefore, stories were told of many parents telling their children, what you going into business for? Or there is no future in that, or only hustlers do that, or only con men do that, why don't you become a doctor or a lawyer, or an engineer or a priest, or a teacher even. Indeed, Sir, one of the jumps that we must make as a society, is to recognise that being charged with the management of our own affairs, requires that we seek to create wealth so as to be able to earn our way through this world.

Sir, creation of wealth requires persons going out there and adding value to that which they have. This is in circumstances where many of the businessmen who come from the untraditional classes, in other words who did not have the benefit of large inheritances from which to move – the euphemism that may be used appropriately by me today – many of these businessmen, having started with large amounts of money, a lot of their businesses are under capitalised. Therefore, they are susceptible to the first signs of difficulty that may arise, whether in terms of international economic shock, regional economic shock, or even in terms of something as simple as a natural disaster.

In circumstances due to no fault of their own, the enterprise which they have been engaged in may well become compromised such that the security which they have given to a particular creditor will leave them having to surrender the management of their affairs to a third party whose interest under law and in practice is not in the interest of them, in terms of the sustainability of their enterprise.

We therefore, Sir, arrive at this point today, routed not simply in a loose collection of facts or loose collection of stories, but one that can be very carefully traced to the historical and cultural development of this island, to one where the values that were associated with a class of people, who were responsible for the management of the affairs of this country in an earlier time when self-government was not the order of the day, and from a class where there are substantial variations between the nature and the attributes associated with that class, as compared to the nature and attributes associated with the majority of the population of Barbados as we find it today.

5.20 p.m.

Sir, in those circumstances, it must be said that it would have been a primary responsibility of any Government charged with the creation of the building of a new economy in a post-independent Barbados, any Government who has as its commitment the goal of economic enfranchisement or any Government, who has as its commitment, the creation of a competitive economy that can provide a sustainable standard of living for its citizens.

I believe, therefore, Mr. Speaker, that this piece of legislation will represent one of the landmark pieces of legislation that this Government will bring in respect of the transformation of this economy and society into one that is suited to thrive in the early 21st century. It is a fact of record that the Honourable Member for St. Michael North has been responsible for bringing more legislation in a short period of time to fundamentally alter the structure of this economy than any other previous minister holding that portfolio.

In those circumstances, I would wish at this stage to publicly commend him and say to him that we eagerly await his completion of that task when he brings the consumer protection legislation and the legislation providing for fair competition in this economy. I happen to be aware that the drafts are now with the Attorney General's Chamber and in those circumstances I look forward to them being here in as soon as possible a time as we are capable of settling on those issues.

The fundamental point is that we have seen over the course of the last century in Barbados the start up of many businesses. Many people have the capacity to be good businessmen but the nature of their businesses, the nature of the times within which they function, the fact that the businesses may have been undercapitalized, because they did

not have large amounts of capital to start with and their options to access capital in terms of the private banking community or indeed other options within the economy to be able to source funds were limited, and in circumstances when you would normally have expected a business to move from generation to generation the business collapses or the business implodes.

Indeed, the general dubious nature of the rest of the society would want to suggest that the reason for the fall of the business was not because of any outside circumstances but simply had something to do with the hue of that particular individual as they were found.

Sir, these are myths that have been allowed to populate our cultural landscape for way too long. I trust that in our attempts to create the framework for a new economy that we recognise that we must also deal with the sociology of our development such that there are cultural and historical circumstances which are always to be kept present in any decisions that we make.

The Honourable Minister spoke today about the fact that there is a seeming reluctance on the part of businessmen in Barbados to engage in equity capital as a means of financing businesses. Historically, while that is true, we have to move to the point where we can seek to alter those circumstances by recognising why is it that persons have been reluctant to use equity capital as a means of finance and seek then to put a strategic framework in place that can show persons that at the end of the day, as they once attributed to Dr. Eric Williams, it is better to have half a loaf than no loaf at all.

The reality is that too many persons within our community believe that the right to be a businessman is the right to live out of the till or the right to determine things without reference to anyone else. Even the practice of sharing management decisions and sharing decisions with employees should be one that should alert him or her to the fact that there needs to be a determination that you can share decision-making processes without affecting the benefits that are to be derived from profit or ownership of an entity.

I believe, Sir, that we have a responsibility as a Government to seek to put a framework in place with other partners in civil society that will encourage the utilisation of equity finance as a more preferred option to finance companies in Barbados particularly in the context where the cost of loan financing is as high as it is in this part of the world as compared to the developed world where we are competing in the sale of goods and services.

If a chap in the United States of America can borrow money at five or six per cent and you are paying 10 and 11 per cent in Barbados to begin with before you even make

anything or even buy a piece of equipment, you are already operating at a disadvantage. When you compound that with the size of our market, the cost of our energy and a whole host of other factors, it is almost impossible for that individual to be competitive. Therefore, it makes us inherently vulnerable in respect of our efforts to become competitive as an economy. So in those circumstances, Mr. Speaker, Sir, I do believe that it is not sufficient for us to sit back and say that black people do not like to trust one another and, therefore, equity capital cannot get off the ground in this country.

The truth is, we owe it to ourselves because too much of what we accept as the norm is not because we were made that way but simply because we were socialized that way as a society, but we have the capacity to change that. It may take a determined effort and it may take a little long because it did not happen overnight but it does not mean that it cannot happen.

Equally, Sir, when we discussed the Security Exchange Commission in here, we discussed the establishment of it under the new framework of the Securities Exchange Act. We recognised also that one of the problems with the Barbados Stock Exchange is the limited instances in which shares are traded. People treat shares as an ownership gift for life and would dispose of them only upon death in most instances or in the absolute most dire circumstances whereas in other parts of the world the trading of shares is as commonplace as walking up and down the street. I am reminded, Sir, that part of the phenomenon that the American downturn in the economy faces is that 50 per cent of American households trade in shares. We cannot even say that 10 per cent of Barbadian households trade in shares.

5.30 p.m.

I believe that while the Honourable Minister has done an excellent job in putting the legal framework in place, it is incumbent upon him now with his Ministry, to work along with other entities in the public sector and civic society to create the public education and sensitising programme such that those things we accept as normal behaviour in the past can be changed, and the change which is effected is not only in terms of legislation but in terms of the attitudes of ordinary Barbadians on whom we are relying to create wealth to produce a sustainable form of living for themselves and for this country.

I believe that this legislation is significant and I have said that it is without doubt a significant thing that we are not seeking to imprison anyone simply for the act of bankruptcy. That does not mean, as happens still, and a lot of people do not realise why it happens, that a person may not be committed to prison for failure to obey an order of the court. That is an act of contempt of court and, in those circumstances, the court must have the power to force people

to obey its orders. What we may want to do, and I have discussed this with the Chief Parliamentary Council, is to look at a situation where prior to that person being taken to prison after an enforcement order has been issued by the court, there may be an opportunity to go before the court one final time to be able to explain why it is that person should not be committed for contempt of court.

The common perception is that that person is committed for debt, but the truth is that after he has served his time, he still owes the debt, and that is because he is not committed for debt but committed for contempt of court.

Sir, I hope we will have an opportunity to be able to review those mechanisms without affecting the fundamental power of the court to order people to obey. It may simply be that we can amend the law to look at it in the isolated circumstance of debt which is unfair to poor people in these circumstances.

I also believe that this legislation provides an opportunity for us to look at the sustainability of businesses. The reality is that the sustainability of businesses is key if we are going to build a strong economy. As I indicated earlier, we have to recognise that it is not a criminal act for persons to undergo problems in the course of their business. The fact that this legislation gives breathing space and puts a burden on the receiver to make decisions that cause him to act honestly, in good faith and make decisions which are in the commercial interest of the overall company is a significant variation from what currently exists. Under the present law, the receiver needs only act in the interest of the creditor and in many instances once a receiver has been appointed a company never sees the light of day for itself again.

We believe that the requirement in this new legislation that requires the receiver to act in the commercial interest of the enterprise will help ensure that in many instances where persons are acting in their own interest or the interest of the creditor alone, they will now have to take decisions that benefit the ownership and management of companies.

Equally, it also ensures that there is a level of greater job security that attaches itself for the persons who work within the context of enterprises that become vulnerable. To that extent, I am happy that the conscience of the Government is also being reflected in the fact that, for example, where a person has become bankrupt, that person has the opportunity when they are married of being able to pay their spouse as an employee genuinely. If the person is working ten or twelve hours a day, they deserve to be paid and not for it to be seen as a fraudulent act. Equally, where they are tenants, they are not immediately evicted but there is a provision that protects them in the context of their tenancy as a bankrupt.

Equally, the fact that it requires counselling for the bankrupt is indicative that we are not only looking to satisfy the debts owed but we recognise that these persons need some form of counselling or training to begin to understand how they got into that position so as to avoid a repetition of the situation in respect of the insolvency or the bankruptcy.

When one goes through the legislation, there is clearly reflected a policy intention for a more caring approach to the fate of bankrupts and insolvent persons and corporations, equally recognising that the balancing act must balance both the interest of the creditor and also the interest of the debtor and the opportunity for sustainability of the enterprise in circumstances where it is a hallmark of Government's policy that persons should be encouraged to create wealth through the establishment of enterprise.

I believe that this legislation will go a long way towards providing the architectural framework within which this must happen. But without public education and without systematic sensitising, I do not only mean those persons working on Broad Street but all the small businessmen throughout Barbados, the ones who are most likely to be vulnerable, the ones who are mostly under-capitalised and the ones who are most unlikely to receive access to capital from the banks in Bridgetown, these are the persons who must not only hear about it on the radio but there should be systematic zonal workshops to be able to allow small business persons to know what is the framework in the same way that I now see the Government Information Service working with the Ministry of Commerce with the regime for small businesses under the Small Business Development Act.

I want to congratulate the Minister. His record in respect of the legislation which he has brought since 1999 is remarkable. I am told he will improve on it when he brings the other two pieces of legislation which are absolutely essential, but I urge him that having developed the architectural framework to work assiduously with Barbadians in ensuring that that architectural framework can indeed be filled out and that many of the things that led historically and culturally to our not having confidence in ourselves to create wealth as a nation and as individuals will become a thing of the past because there will be a policy and programme agenda to counter those assumptions that have hitherto made the experience of the average Barbadian an unpleasant one in the area of commerce. Thank you, Sir.

Rev. J. J. S. ATHERLEY: Mr. Speaker, I want briefly to lend support to the Bill before the Honourable House. Certainly, I support the Honourable Leader of Government Business in this Honourable Chamber, both in terms of her commendation of the Honourable Member for St. Michael North as well as her clear admonition to him to continue upon the path along which he has embarked thus far in terms of introduction of legislation for the consideration of this Chamber.

Normally, the natural impulse here is to support legislation brought here by Government but, in addition to the natural impulse to do so, I often will myself seek to see where such legislation, especially pieces of legislation such as this, fit within the overall developmental perspective of Government's programme. So with this piece of legislation before us, as I said before, I believe Government needs to continue to realise that one of its principal goals and objectives must be to change the colour of business in Barbados. As I said, I believe that is an objective which is not only noble but necessary. I do not seek in any way to suggest that there should be any reduction of the level of white business in Barbados, if I may define it thus, or of red business, but that there should continue to be a fostering and increase of black business in Barbados.

5.40 p.m.

Sir, the culture of our landscape is being changed by the prudent policies being implemented by this particular administration.

Mr. Speaker, I believe it is necessary that we seek to change the culture of business in Barbados. We need a radical cultural change with respect to how business is profiled in Barbados. Traditionally, the business culture of Barbados has had a very prominent feature of class attaching itself to it. Class considerations have attached themselves to the development of business and have been one of the factors which ensured the success of business on one hand and perhaps subscribed to the lack of success of other businesses on the other hand. Issues of capital have also been prominent in the profile of the Barbadian business culture over the years.

I think this Government understands that it needs to address itself to these issues if the culture of business is to change. Businesses of a certain type, businesses associated with a certain class, of a certain volume and magnitude must be given an environment within which the negatives associated with some of these features which I have just identified, would cease to exist.

Mr. Speaker, I do not see us as simply integrating ourselves in the new world economy but in fact building a new economy here in Barbados. I see pieces of legislation such as this as adding significantly to the effort of creating that new economic environment and that new economy. It is good to ensure that there is the creation of a greater capital facility for those who seek to enter the world of business. It is good to ensure that there is provision of technical support for those who embark on the entrepreneurial endeavours but we need also to have a sound legislative framework in which the effort is made so that this might help to conduce to the success which is desirable by the Government and those who give themselves to these business efforts.

We are operating now in a new liberalised environment and there is wide scale availability of technological capacity, and all these things will help us toward the creation of a new economy. It is absolutely essential that we have the type of legislative base and environment which would prove to be one of the enabling factors which might conduce success to business especially those who do not have the access to volumes of capital like the bigger traditional businesses.

I do not believe that business failure at first risk should necessarily mean the final chapter in any entrepreneurial effort. I believe that this measure will go a long way to ensuring that those who are prepared to take the risk, if that risk is accompanied by failure to whatever extent, can find that there is a provision for some recovery and that the final rites do not have to be read in their case as has been the situation in the past. I subscribe in my entire life with respect to everything I do to giving a second chance and this type of legislation constitute more than simply the offering of a second chance.

I believe it adds to the building of the kind of psyche, especially in the minds of small black business people that we can do it, that we can take the step and that there is the enabling environment to do this. If, in spite of the enabling environment, there happens to be some failure, to some extent there is recourse and that does not mean the end of the world for us.

We live in an environment in Barbados where there is expanded opportunity for growth of business. There is a new emerging business class amongst us and I do not think that we would be honest if we were to suggest that this new emerging business class is a result of any crisis which we now face or faced over the past few years. I think that may have been the case some years back where people, out of expediency, responded to some crisis situation within their lives and feeling that there was no alternative opportunity sought to get into business ventures for themselves, but we have come now to a time when a lot of the new emerging businesses to be seen in Barbados are coming out of a genuine effort for people to come into ownership, have more control of their lives and to use the growing opportunities made available to them for such endeavours and activities. Certainly this is to be encouraged and legislation like this can only help to strengthen and bolster the enabling environment and facilitate the efforts of entrepreneurs.

Of course, the legislation will, to some extent, remove some of the old and ugly practices associated with how we handle debt in Barbados traditionally and much mention has been made of that today and I do not need to repeat them, but certainly how we handle debt in respect of persons who contract themselves into certain arrangements or embark upon business efforts and find difficulties is something that has for a long time needed to be addressed and this legislation seeks to do that.

Mr. Speaker, a balance must always be found as in anything else and whereas in the traditional context the old legislation seemed to be over-biased in favour of the creditor, we are looking at a piece of legislation where there is no countering over-bias in favour of debtors. We are moving away from a traditional context but by no means embracing an undesirable extreme. Debt over-bias in legislation such as this can only serve negatively in the interest of the wider economy of Barbados. There have been examples in the USA in the 1980s coming out of their bankruptcy code where there was over-bias in favour of debtors. I do not think that we want to get into that type of situation. We do not go to that extreme.

5.50 p.m.

Filing a bankruptcy should be facilitated but should not be made easy to the extent that creditors are disadvantaged. I think that we have been able to find that medium and the balanced position with respect to the measure which is before us for consideration. The debtor must be facilitated, the creditors must be protected and the State or the society must be protected.

I think that this is a move in the right direction to afford relief from debt, some relief from creditors and the practices that we have been accustomed to in the past. It is a move in the right direction to ensure that amidst difficulties there is still a measure of facility for accessing the necessary supply to keep their businesses afloat so that it does not have to go under, and everybody's best interest is served.

It is a move in the right direction to allow facility for a debtor to work his way out of his difficulties. I think that this is something that any one of us who found ourselves in a situation would want to know that a facility is available for us to work ourselves out of a difficult situation, such that we do not have to reach the stage where we are so impoverished that we are made a public spectacle – and much public embarrassment accompanies that – or even becoming a burden to the State.

Sir, as in all things, if there is to be a proper working system and a balance to be found, if persons are to be assisted and facilitated in times of difficulties or crisis, it is only fitting and right that proper accounting for the causes of failures should be ascertained and a proper basis on which assistance is being sought should be established. I certainly support these elements as built in to the measure before us.

Doctrine of Ownership: I see some reference to this in Clause 51 of the Bill, which allows a bankrupt's spouse to claim a one-half interest of the equity of a matrimonial home with the primary intention of improving the rights of women. Clause 57 gives persons claiming an ownership interest in property control by the trustee, the right to file with the

trustee a demand for the return of the property. The trustee is required to return the property or to reject the claim.

I believe that these are inbuilt elements within this measure which is protecting the interest of the debtor in a difficult situation without injury to the rights or interest of the creditor or the State. It should also be a genuine control for process which is transparent, fair and just. The provision for a licenced trustee, I understand, to be an innovation which brings professionalism to the process, a process which can stand up to scrutiny.

The provision of a Supervisor of Insolvency: We have supervisors in some instances with respect to other activities in the financial sector of this country. The Supervisor of Insolvency, I see as a necessary part of the regulatory mechanism in a liberalised environment. Perhaps, one of the ironies here is that we need to have stronger measures of regulations. This in my view is a provision to ensure that there is a proper impartial regulatory mechanism in place. Perhaps, a mechanism which can also serve for the purpose of prudent investigation to establish a system which is just and fair to all, the debtor, creditor and the State.

Sir, that would be my brief contribution on the Bill. I will certainly want to give support to the measure.

Hon. R. St. C. TOPPIN: Mr. Speaker, I wish to thank all Honourable Members on Both Sides who contributed to the debate on this matter today. What has clearly emerged is that there is a consensus that this Bill represents a significant improvement on the current situation and that it would serve the interest of the country by assisting in the transformation of our economy. It would also assist the society by shoring up the security of employment and the survivability of business enterprises. I am grateful to the Honourable Members who spoke.

The issue of the preparation of the Fair Competition legislation, to which I alluded in my introductory remarks, is a very important matter. The Honourable Attorney General has indicated the Fair Competition legislation as well as the Consumer Protection legislation are with her Ministry at this time. As soon as they are returned from there, my Ministry will be working assiduously to have them presented to this Honourable Chamber.

Sir, the Honourable Member for St. John spoke about the Fair Competition legislation being outstanding for seven years. I do not intend to waste too much time on the Honourable Member. Sir, the principles in mathematics would let us know that if I was in the Ministry for only three years, it could not be outstanding for seven years. The first mention of the establishment of a Fair Trading Commission was made in September 1998. A lot of work has been done and we already have a Fair Trading Commission Act and a Utilities Regulation Act.

In circumstances and in a time frame which far outstrips the preparation of similar legislation in other jurisdictions, the establishment of a Fair Trading Commission has taken between six and seven years. I want to say that the Fair Competition legislation will be in this Honourable Chamber within the next few months, which makes it three years for ours to come to this Parliament. I do not intend to blow my own trumpet, as the Honourable Member for St. John said that I usually do. I am thankful that the Honourable Attorney General has applauded me and I am indebted to her.

Sir, as regards the points made by the Honourable Member for Christ Church South about the issue of insolvency, the Ministry intends that there will be an office for the Supervisor of Insolvency, separate and apart from any other officer at present functioning within the Civil Service. We are going to be arguing with the Ministry of the Civil Service for the establishment of an office of Supervisor of Insolvency dedicated to the task of working in relation to this piece of legislation.

Sir, the Supervisor's responsibilities are vast and it would be unrealistic and I think would not serve to fulfil the purposes of the legislation if the responsibilities were simply to be tacked on to the functions of an existing officer.

The issue of the preparation of harmonised bankruptcy legislation through the western world, I do not know when that would happen. I do not know if it would happen in your lifetime or mine.

Asides.

Hon. R. St. C. TOPPIN: If you look within the CARICOM experience, as far as I am aware, there has never been any preparation to date of a single legislation within the CARICOM region. To wait for harmonised legislation in the western world is something, I believe, that we might, perhaps, witness the second coming of Christ before that were to happen. We have opted for the Canadian approach and have used the procedure where one will be able to file a proposal or notice of intention to file a proposal and that will operate as a stay in order to get some breathing space and have a sensible proposal and, at least, revive the business back to a sound footing. So we have opted to take that course at this time.

6.00 p.m.

With respect to the Honourable Member for Christ Church South complaint about having got the Bill late today. That certainly is not any blame on the Government. We do not distribute Bills. There is only one significant amendment between what has been circulated and what has been distributed today and that is the issue of the hearing on bankruptcy matters, where in the draft Bills that had been

distributed earlier it had been stated that queries could have taken place in Chambers in some cases. That has since been changed in this new and final Bill to state that, in fact, it shall take place in open court. Since bankruptcy is an issue that can affect so many persons and the welfare of a society, it was felt that the proceedings should be held in open court. That change has been made and I am not aware of anything I can classify as a substantial change made between the last draft and the one currently before Parliament.

Mr. Speaker, those are my responses to the issues raised. I thank Honourable Members, particularly those on the Other Side for supporting the Bill. I would only comment that the contributions of the Honourable Member for St. John was unusually short today; some 26 minutes. It is unusual to see the Opposition Leader speaking for less time than the other Member of the Opposition who in fact spoke for a full 30 minutes.

Mr. Speaker, with those remarks, I beg to move that this Bill be now read a second time.

Hon. R. C. EASTMOND: I beg to second that, Sir.

The question was put and resolved in the affirmative without division.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, at this stage, I would beg that further consideration of this Bill be postponed. There are some amendments which will have to be done and I would wish sometime between this week and next week to consult with the Honourable Minister before we proceed with the Bill.

Therefore, at this stage, I would like that further consideration of this Bill be postponed.

Hon. R. N. GREENIDGE: I beg to second that, Sir.

The question was put and resolved in the affirmative without division.

ORDER NO. 15 – TO MOVE THAT THIS HOUSE
RESOLVE ITSELF INTO COMMITTEE OF
SUPPLY TO CONSIDER THE GRANT
OF SUMS OF MONEY FOR THE
SERVICE OF THIS ISLAND

On the motion of Hon. Miss M. A. MOTTLEY seconded by Hon. R. N. GREENIDGE the House resolved itself into Committee of Supply, Mr. D. CARTER in the Chair.

COMMITTEE OF SUPPLY

ORDER NO. 15(a) – TO MOVE THE PASSING OF A
RESOLUTION TO GRANT THE SUM OF
\$21 635 000 FROM THE CONSOLIDATED
FUND AND TO PLACE IT AT THE
DISPOSAL OF THE GOVERNMENT
TO SUPPLEMENT THE ESTIMATES
2001- 2002 AS SHOWN IN THE
SUPPLEMENTARY ESTIMATES
NO. 3, 2001-2002

Mr. CHAIRMAN: The Honourable Member for Christ Church East.

Hon. R. R. FARLEY: Mr. Chairman, the House is being asked to approve this supplementary expenditure; the sum of \$21 635 000 to supplement the Estimates. This will finance part of the National Emergency Economic Programme.

You will recall, Mr. Chairman that by way of Resolution, Parliament approved an Economic Programme, as it were for some \$31.85 million. You may wonder why the difference of what had been approved then and the supplementary that is now being requested. On that occasion, I had indicated that by way of financing, \$10 million which would go towards the accommodation sector support would come from the Tourism Loan Fund, some \$30 million. We are making the direct provision for that loan fund, administered by the Enterprise Growth Fund to be used to create the accommodation sector support.

Additionally, the \$250 000 which was provided by way of support to the Barbados Agricultural Society will be provided directly from the resources of the Agriculture Development Trust.

What is being requested by way of this supplementary, Sir, relates to the other aspects of the programme, namely \$18 million in line items. Grants to non-profit agencies will be provided through the Barbados Tourism Authority for the \$9.6 million additional for the marketing of Barbados, \$45.2 million by way of special support for the tour operators of Barbados for their joint marketing programme. \$0.8 million for airlines support, as well as \$2.4 million which is needed to upgrade both the security of the airport and seaport in order to ensure that we meet with the new heightened international standards and that we are able to continue to accommodate international flights.

Additionally, the items deal with the grant to public institutions, \$2.5 million. As you recall, that is for the more welcomed environment in which it is proposed that in addition to the already committed resources, we would, in fact, be doing somewhat of a clean up or spruce up.

Therefore, a general improvement of Barbados such as would ensure that, in this time when the market is tight we would be in a position to expand the quality of our product and thereby improve our chances of success on that market.

You will recall as well that additionally small sums were approved by way of the local campaign. \$600 000 is included and is very much up and running as the 100 per cent Barbadian campaign. You will also recall that funds were provided for the institutional strengthening of the Financial Intelligence Unit. That is on the way. In fact, during the course of this week, the mutual evaluation of Barbados' anti-money laundering capabilities is ongoing and the Financial Intelligence Unit and several other agencies of Government are under intense scrutiny in order to process the extent to which we are going to be listed as a corporative jurisdiction, as far as the fight against money laundering activities is concerned. Therefore, those funds were, indeed, urgent and pressing in that particular regard.

Also, this week the International Business sector is participating in the world's capital forum in Florida which would be our first major effort to promote the opportunity. The insurance sector of the international business sector, in light of the opportunity created by the increase in insurance rates and the general hardening of the insurance market by way, Sir, of further progress of our implementation, all of the measures which we have announced as part of this emerging package are in the process of implementation.

Also going on this week is a team from Bear Stearns, the investment bank which has been chosen on the basis of competitive bidding, to deal with the US\$150 million loan which we are seeking to raise on the international market. They are in the island, as we speak, to do their due diligence. The preparation of the offering circular is to be done by the end of this week and the marketing of this particular issue would most likely occur towards the end of November. By Mid-December, 2001, we should be in a position to put the offer on the road.
6.10 p.m.

Therefore, Sir, the measures which have been announced are very much in train. I should advise the Honourable House of Assembly that in terms of provision of funds for this exercise, we were able to advance the sums which were already approved by the Parliament in the Estimates for the financial year 2001-2002.

The programmes therefore have not been frozen while we awaited the injection of this Supplementary but clearly, if we had made an early advance of these sums from existing funds, there would have been a short fall between now and the end of the year. We have moved with alacrity to ensure that the full cost of these programmes are fully accounted for to this Parliament.

Mr. Chairman, I do not propose to engage in a full discussion as we recently had a debate on the measures. I just want to indicate the composition of this Supplementary and to note the difference in the total figure between what was given to the House of Assembly and what is actually being requested because of the funding from the Tourism Loan Fund and the Agricultural Development Trust.

I beg to move, Sir, that Head 19 stand part.

Hon. G. A. CLARKE: I beg to second that, Sir.

Mr. D. St. E. KELLMAN: Mr. Chairman, I rise to speak on this Resolution and to say from the outset that after listening to the Honourable Minister of Tourism last week, one would have gotten the impression, Sir, that these figures were calculated based on the assumption that tourist arrivals would have been much lower than we would have expected.

It is clear to me now, Sir, that those figures would have been revised. If those figures had been revised, one would have expected the new Minister to at least acknowledge that the country is doing much better than had originally thought, and that there would be a call on the particular sectors to make sure that the delivery is much greater. Sir, if you based these figures on an assumption and conditions have improved, one would expect that the projection would be much higher.

In his speech, Sir, I had not heard any mention of better returns based on the allocation given to the various sectors. When one considers the additional revenue they will be getting from their business acumen, and the revenue that is given to them by Government, one would expect a total picture that would show a better light.

It also brings me to another point, Sir, that is, for several years, this Chamber has been bombarded with a suggestion that there is a relationship between the private sector, the public sector and the workers of Barbados. In light of the improvement in the projections for the economy, one would have expected the new minister to acknowledge that there might be a softening of the heart and they will be calling the negotiators to the table much earlier on behalf of the workers. Therefore, there will not be a need to request a negotiating slack period and we would be able to go back to our original date.

This is something I think the Minister should take into consideration because when one looks at the figures based on 1994 to 2001, one would have recognised that the workers of Barbados, especially the civil servants, would have experienced stress because of the Incomes and

Prices Protocol. They would not have demanded the increases that they would normally have asked for because of the economic situation, and the sector that cannot bear this new burden will be that group.

Sir, if one looks at Appendix 13 in the *Barbados Economic and Social Report*, one would recognise that the private sector was able to increase their take by 108 per cent and the Government was able to do it by 71 per cent, if you look at total revenue. If you look at the increase in taxes from goods and services, it will be 98.7 per cent. The workers were only able to increase theirs by 49.6 per cent. Therefore, one would see a lag between the private sector, the public sector and the workers.

In a time of crisis one would expect, Sir, that the workers would be the ones which would be looked at in favourable terms. I am asking the new Minister to recognise that the workers have already made a sacrifice between 1994 and 2001, and he might be asking too much of them at this particular time.

I have already made the point in this House, Sir, that capital cannot be seen alone. Labour is just as important as capital and it takes labour to work capital but not capital to work labour. One must understand that the workers of Barbados are important, especially in a time like now, Sir, and we need to remove all the stress from the workers and give them some breathing space so that they too can increase their capacity.

It does not make sense, Sir, having the best proposals while the workers are still under stress. I will say to the Minister that in light of the new out-turn figures and the new projections, it might be better to get back to the unions and create a friendlier atmosphere which would bring the workers into his confidence, show them that they have done well for the last seven years, and it is time to compensate them for the stresses that they would have undergone during that period.

I hope that when the Minister has an opportunity to look at Appendix 13 in the *Barbados Economic and Social Report*, laid in this House in the last Budget that he would have understood the finer point that I am making and he would have a social feeling as it relates to this particular topic. He would also recognise that the trade union movement in this country has done a lot. They have pulled their full weight and now we are asking them to do a little too much.

You see, it is like working a car without oil, and the Minister is now asking the workers of Barbados to operate without oil. Sir, you know when you run a car without oil what will happen. I hope that the same way the private sector's interest and the Government's interest are looked

after, that the workers of Barbados would get their interests looked after also.

I thank you very much, Mr. Chairman.
6.20 p.m.

Rev. J. J. S. ATHERLEY: Mr. Chairman, it is perhaps to the extent that I hold a brief temporarily for the substantive Minister of Tourism that I need to respond to one or two of the things stated by the Honourable Member for St. Lucy.

Clearly, it seems to escape the understanding of the Honourable Member that the crisis pursuant upon the events of September 11, 2001 is still an unfolding situation. It needs perhaps to be repeated as well that the package brought to this House by Government to address the potential impact of those developments of September 11, is designed to address a period of 90 days and we have not yet gone far towards the half of that period.

I think one only needs to reflect upon the tragic event of yesterday to see that we are dealing clearly with a situation which is still unstable, volatile and unfolding. Irrespective of the conclusions with reference to the causes of the airline crash of yesterday, we are still very much dealing with an unfolding situation with respect to persons travelling especially for the purpose of leisure.

It is correct to say that the fall-off in terms of our tourism performance and receipts to date is not quite what was projected but I must re-emphasise that it is still very much early days. The fall-off up to September was of a level of about 11 per cent as I understand it and for October, 17 per cent as opposed to a projected 30 per cent fall-off over the next three months which cannot be overstated. Whereas the fall-off in traffic out of the United Kingdom is only about 7.9 per cent to be precise, there is a clear indication that there is something more sinister, if I might use that term, happening with respect to the North American market where the fall-off out of Canada is 36 per cent and out of the United States of America 29 per cent.

There is also a trend with respect to bookings at this time and if one would check the patterns, it is quite clear that persons who are desirous of travelling are booking much closer to the date of travel. So clearly an atmosphere of uncertainty therefore exists and it is too early in my view, to suggest that there should be any rethink of Government's position with respect to what is being offered to support the tourist sector. That lateness suggests caution in spite of the fact that perhaps the fall-off is not as bad as we would have projected and would suggest a case for optimism. Clearly, the pattern with respect to how bookings are being made in a situation which is still unfolding would suggest that it would be prudent to be cautious. We have a situation where

the load factor of airlines, and we talk particularly here now of airlines which travel and ply our routes, is about 65 per cent or has reached about that level. Then again, as I said, one must reflect upon the incident of yesterday and what that might portend for load factor levels.

The Government understands that efforts must be continued, in the face of the crisis and the emergency that faces us, to restore confidence especially with respect to safety and security matters revolving around the issue of travel. Efforts must be continued to secure our niche position within the global tourism market. Efforts must be sustained to ensure that we remain strong where we are now strong to the extent that other competitors in the industry are now encroaching on markets which perhaps traditionally were excluded from their focus but for which we made a significant effort. So we must maintain a position where we are strong in spite of the circumstances obtaining at this moment and we must seek in the face of the emergency – I think this is part of the premise upon which the package is pinned – to continue to deliver and improve efficiencies with respect to our products and to ensure that there is continuing good quality associated with the tourism product which we offer.

In terms of the original projection, it was conceived that without Government's intervention over this last quarter there would have been a loss of revenue of some \$200 million. But even with Government's intervention and with the reduced rates offered within the hotel sector of about 20 per cent there would still have been a loss in excess of \$100 million.

Part of this money in this package is designed to facilitate sustained marketing areas where that is necessary. Certainly, the marketing and the promotion products must be refashioned in circumstances where for instance the North American market has suffered these serious tragic shocks. So the type of marketing which is done must, of course, be subject to a rethink and some redefining. Part of this package is given to the important business of refashioning and refocusing the marketing efforts.

The protection of the availability of seats is crucial. The airline industry floundering now in the face of these shockwaves is integrally linked to our total tourism industry and product and we must, therefore, seek to protect these seats. Part of this package is to support tour operators and airlines to ensure that these seats are available to us. The airlines have been asking for assistance of various forms to tide them over this very difficult period. As a matter of fact, American Airlines specifically has been asking for a two-year package of assistance. As Government responds to this and gives certain considerations to American Airlines, which we must perhaps out of necessity also give to other airlines, it is costing the Government over \$3 million over

a two-year period. But this is critical to the availability of airline seats which serves the overall performance of the tourism sector.

Of course, we have to continue to rebuild the channels of distributions and this is where the tour operators come in because they make up about 70 or 80 per cent of the distribution channels that provide the tourist traffic for Barbados.

Sir, I do not want to detain the House further but I simply had to respond in that fashion to the Honourable Member for St. Lucy.
6.30 p.m.

Mr. D. St. E. KELLMAN: Mr. Chairman, I realise that the Honourable Member for St. Michael West stayed away from the wages side of it and I think he did well in doing so for the simple reason that it is clear that in 1993-94 the workers of Barbados were getting 36.8 per cent of the total current expenditure. A careful analysis of that would show that if they had continued to receive that 36.8 per cent of total current expenditure, they would have received \$4 143 200 000. In truth and in fact, what they actually received between that period of time was \$4 064 900 000 which gave a shortfall to the workers of Barbados of \$78.3 million.

No one can tell me that the workers of Barbados have not contributed significantly to the amount of money during that crisis period. If the workers of Barbados, the civil servants, gave up \$78.3 million between that period it is going to be difficult for us as parliamentarians to ask them to give up when at the same time you are asking them to put their hands to the plough and give of their best.

We have to recognise that labour is as important as capital and in the same way that the hoteliers and the marketers understand the significance of a downfall, the workers of Barbados, that is, the civil servants also have understood what happened previously and now you are asking them to do that again.

What I am also saying, Sir, is that in order for us to maximise our earnings in the tourism sector we must not only tell the hoteliers that we are going to give them concessions to bring people to Barbados, especially those in the all-inclusive system of tourism in Barbados, but we must encourage the hoteliers that when the people come here to Barbados they must be prepared to allow them to travel throughout Barbados and mix, so that we would have the capacity of encouraging them to spend more money in Barbados.

If we allow hoteliers to keep those people on their properties, drive them around in their buses and not allow them to mix with the people of Barbados, then they have no

reason to spend more money. What we need now is an encouragement to get the tourists away from the hotels and take them throughout Barbados in order to help develop community tourism which I am always speaking about. It is known that the services they get in the hotels they would have pre-paid for, but for the services they need outside the hotel, they will have to look for more money.

If we are in a crisis, we have to maximise every opportunity to make sure that we have the capacity to earn every single cent that is brought to this country by the tourists, especially the ones staying in all-inclusive hotels. It is in the interest of Barbados to make sure that hoteliers are told that they cannot continue to keep the tourists on their properties and deprive them of the opportunity to mix with Barbadians.

The most interesting point about this is that our tourism has been made because of the Barbadian public. If one looks at any visitor or sun seeker, one would recognise that when you ask tourists about Barbados and what they like about it, the first thing they say is "the people of Barbados". Yet, in a crisis, we are still allowing hoteliers to keep them on their land and not allow them to mix with the people of Barbados who can best do the marketing for the tourism product and for the same hoteliers.

Sir, this calls for proactive thinking and not reactive thinking and this is what I want to hear the Minister of Tourism dealing with and the new Minister the Honourable Member for Christ Church East. This is where we will get out of this crisis. We are not going to get out of this crisis by continuing to do business the way we have been doing it all the time.

The foolishness about all-inclusive tourism, that whole concept, has to change, especially in a time like this because we have to maximise the earnings from our tourism product. This belief that they must keep them – if the hotels stop for a moment and start thinking, it is also in their interest to get the tourists off their properties because they would save money. This selfish concept of keeping them incurs costs by increasing the amount of liquor they drink and the amount of food they eat. Whereas if they get them off the properties, people would be inclined to buy outside and they would still have the money because it is a pre-paid package. Because of the selfishness we have now in Barbados, we feel we have to grab everything and cannot share anything.

The concept of all-inclusive must change, especially at a time like now. The cake must be shared equally and distributed throughout Barbados. I will continue to push for this, Sir, because the masses of people in Barbados have a right to feel the goodies of their hard work. The economic situation in this country cannot only be for a "too few" but for all. We are all on this boat and we must be prepared to make sacrifices, and when we make sacrifices we must be

prepared to get gains. That is my role and the role I will continue to practise in this Parliament. Democracy must be seen to survive in this country and it cannot be that too few can get everything, and because they have a crunch now they can come and ask the Government to take the money from the masses to give them, but they do not want to share the goodies with the masses.

This is a time for us to hold hands, Sir, and walk. Those in the protected sectors must understand that. We have to look at the opportunity cost to everything we are doing and be sure that at the end of the day when we spend a dollar, if the maximum amount we can get back from that dollar is \$5, we must get it back and not be prepared to get a dollar for a dollar but maximise everything we get.

Thank you, Sir.

Hon. Miss H. E. THOMPSON: Mr. Chairman, I listened with great interest to the Honourable Member for St. Lucy and would just wish to make a few observations on the comments that he has made in his last two presentations. I would wish to speak briefly to the tourism product.

I agree with the Honourable Member for St. Lucy that we need to maximise our earnings from the investment we are making in the tourism sector. I believe very strongly that we should not let what was the initial panic in the days immediately post September 11 be the guiding factor for how we structure our economic planning at this time. It is not clear, and I say this without being able to anticipate as to what would apply to everybody else, what the implications will be of the crash of yesterday of the flights coming into the Caribbean, although from the information emerging to date it would seem that it was not as a result of an act of terrorism. If that is so, then it is relatively true to say that our tourism product is not really under threat and that the initial fears that we had that this was going to be a catastrophic winter across the tourism sector, have been unfounded.

Enquiries into the travel agencies would suggest that British Airways is almost entirely booked coming into Barbados for this winter season, so much so that they are, as is their custom, now contemplating putting on the additional Concorde flights which we used to see during the winter season before the Concorde was taken out of the air. That speaks well for Barbados and it speaks well for those hoteliers who have been doing their marketing all year.

Whatever the economic circumstances, there was always a core of hotels which would have done well in the height of winter and those who because their hotels are worn and need refurbishment, whose service may not be the best or their marketing was poor, could not attract a full house and it has nothing to do with the economic conditions but issues relative to their management. It is also true that American Airlines and the carriers coming out of the USA,

including the new US Airways, are showing very promising bookings. So I do not believe that the very serious consequences which we expected in terms of damage to the economy will be realised and I think that we can only say thank God for that.

As a Government, we have a responsibility to continue the most vigilant observation of the circumstances and continue our planning, but the planning process must be one that is evolving. It cannot be fixed because the situation is evolving and we must not be seeking to respond with panic.

I cannot share the Honourable Member's view in relation to the all-inclusive hotel package. I am not a supporter of the all-inclusive hotel package. I think that if you have a country and you want to offer a variety of products there are those who would like the all-inclusive model and be attracted to it and there are others who would not. The all-inclusive packages do not necessarily seek, and this is where I differ from the Honourable Member for St. Lucy, to keep their guests on compounds.

6.40 p.m.

There are several services like coach services, or people buy various packages for various activities on the island. The person who goes to the all-inclusive hotel has a lot of the same exposure and experience that those who stay in the non-inclusive hotels have. It is a false notion, in my view, to put out the impression that the all-inclusive packages take money out of the economy and put it in the pockets of only a few people in the tourism industry.

In addition, those persons who have all-inclusive hotels have to buy food and employ staff so they are spending money in the economy. Sir, I am not defending the all-inclusive product because I do not support the all-inclusive product. I believe it was developed in a situation where the socio-economic circumstances out of which the all-inclusive evolved were such that birth had to be given to a situation that was needed for the tourism product to survive. We do not necessarily need it in Barbados because part of the strength of our tourism product has been that hotel, middle income development and villages all exist within close proximity to each other and there is open and free mixing of the tourists with Barbadians. The Honourable Member for St. Lucy is right because when you ask people why they come back to Barbados so many times, they say repeatedly that it is the warmth of the Barbadians and the local experience which bring them back.

The fundamental question that we need to ask is whether or not in the management of our tourism product we have the kind of national package and aggressive marketing and business thrust that can cause the visitor who comes here to leave Barbados broke. It should be our intention to get every single dollar that the visitor brings. The Honourable

Member for St. Lucy made this point but again I diverge from him on the reason. I believe that Barbados has now come to the point where our tourism package is worn. Before people came for sun, sea, sand and other reasons including sex.

Mr. Chairman, not much has changed. When you come to Barbados, you go to Harrisons Cave and Sunbury House. There are just a few sites, a few nightclubs and a few shows available to the visitor, so we need to broaden the scope of our tourism package. The Honourable Member suggested community tourism and we need to go for brands of eco-tourism. There are those who will enjoy the rehabilitation of the gullies as part of their tourism experience in Barbados which the Ministry of Physical Development and Environment is seeking to create. There are those who will enjoy going to Shorey Village in St. Andrew and mixing with locals, but we have to broaden our tourism package.

We go into hotels and the service is good but a lot of the hotels need refurbishing and upgrading of the facility. The kinds of packages we offer have to be varied and exciting so that we capture a range of interests because not everybody comes for the same reason.

There are those who will be interested in the historical product that we have to offer. Others will be interested in the marine environment. There will be those who will want to see the flowers and plants of Barbados and in that regard they will go to Orchid World and Welchman Hall Gully.

I am happy to say, Sir, that only last Thursday Cabinet approved the initial plans that the Ministry of Physical Development and Environment has put in place for the development of a national botanical garden for recreational and multi-purpose activity to be located at Waterford, St. Michael opposite the National Stadium. I will speak more to that at another opportunity because I know that time is going and I want to move off tourism and deal very briefly with the other area to which the Honourable Member for St. Lucy spoke.

Sir, the point I am making is that we need to create a greater variety in our tourism products, we need to excite and titillate the interests of all tourists with varied and myriad taste and we need to cater our tourism product so as to make what we offer exciting, because there is a limit to what we produce and we have to find new ways to make sure that when the tourists come to Barbados they leave Barbados broke but very happy.

I am glad to say that the Ministry of Physical Development and Environment in terms of broadening the scope of the tourism product and the sites available to tourists and locals will play its role in developing and broadening the tourism product.

Mr. Chairman, I want to speak very briefly to the point the Honourable Member for St. Lucy made in relation to members of the Civil Service. Sir, it is very false in my view for the Honourable Member for St. Lucy to suggest that civil servants need to be compensated for what they suffered in the 1991 to 1994 period.

Mr. D. St. E. KELLMAN: Mr. Chairman, on a point of order. The Honourable Member is misleading the House with the impression that I referred to the 1991 to 1994 period. I said the period was 1994 to 2001 and I gave an analysis where previously they were getting 36.8 percent of the total current expenditure and that there was a shortfall of \$78.3 million owing to civil servants.

Hon. Miss H. E. THOMPSON: It is always good to use statistics, financial and economic analyses to come to a logic that the truth does not support. The reality is that civil servants in Barbados are better off than there were in 1994. People were suffering in a way that they no longer are, whether the Honourable Member for St. Lucy accepts it or not. At that time they had suffered an eight percent salary cut and the eight percent has been restored. Since then, unemployment moved from 30% to 10.9%. Government has increased the range of services that it offers to the public. It has expanded many Government departments. It has introduced many new facilities. Therefore, throughout the Government services and its satellite corporations, the number of people working in the Civil Service has increased significantly.
6.50 p.m.

Since 1994, civil servants received several increases of salaries, productivity bonuses and a range of allowances, especially in satellite corporations, which make their overall remuneration packages far more attractive. In fact, this comes against a background where prices in Barbados are lower, inflation is lower today than it was when we came to Government.

Sir, some time ago, since Parliament resumed this session, I took the opportunity of getting the Central Bank Report to look at inflation statistics over the years. When we came to Government in the 1991-1994 period when people were suffering, the inflation statistics were up to 6 per cent. Today, inflation is 2.7 per cent. When you put these facts together, the inescapable conclusion to which one must come if one wants an impartial analysis of the facts, because it might not be in one's political interest if one is in Opposition to say that people are doing better. We would have to remember that during the 1999 campaign, we repeatedly heard how badly off we were, how people were suffering, how hard things were and how the economy was in trouble.

Sir, out of the mouth of the individual who made those statements, on the night of the election, when that person was interviewed, he said that the economy was doing well and,

therefore, it was hard for people to accept that things were bad and, therefore, difficult in those circumstances for the Opposition to regain the Government.

Mr. CHAIRMAN: Honourable Member, you have one more minute to conclude.

Hon. Miss H. E. THOMPSON: Thank you very much, Mr. Chairman.

We must be careful when we see statistics and information coming from the Other Side, especially in the light of the current confusion which exists and would affect people's powers of reasoning and thought. We have to be skeptical about the veracity and the accuracy of the information that we get from over there.

I just wanted to make an intervention to look at some of the issues being raised by the Honourable Member for St. Lucy, who I know must get up to defend his interest to retain his leadership position.

Mr. D. St. E. KELLMAN: Mr. Chairman, when I listen to the Honourable Member for St. James South, she reminds me very much of P. J. Patterson of Jamaica, who was once cast out of Cabinet and came back bouncing.

Asides.

Mr. D. St. E. KELLMAN: I must welcome her back to her new role.

Asides.

Mr. D. St. E. KELLMAN: Sir, I want to say that the interesting thing about the intervention by the Honourable Member, is that it was welcomed. Even though I was very conservative with my thoughts and my figures, the Honourable Member reminded me that I had to add \$60 million to that amount of money, \$78.3 million, that would have been repaid as the 8 per cent. It is not only \$78.3 million that was taken from the civil servants during that period. In the calculation of the \$4.6 billion, I should have taken \$60 million which would have been the 8 per cent cut that was taken prior to 1994. I should add that to the \$78 million and make it \$138 million that is owed to the civil servants.

Another interesting point that was made by the Honourable Member for St. James South, is that an increased number of workers were added to the Civil Service. Sir, that would mean an additional cost would also have to be deducted. In fact, the amount owing to civil servants would have to be about \$153 million.

Hon. Miss H. E. THOMPSON: On a point of order. Unless the Honourable Member for St. Lucy is using a definition of owed, not found in any dictionary with which I am familiar, Sir, he would have to explain what he means. To say that something is owed to the civil servant would suggest that something had been taken away from them and is a debt due. The Honourable Member has not justified any argument other than to do some false maths.

Mr. D. St. E. KELLMAN: I want to congratulate the Honourable Member for St. James South for her intervention in this debate. Clearly, she was able to refresh my thoughts on this particular matter. It is clear that the number of workers that came to the Civil Service since 1994 would cost about \$15 million. When you add that \$15 million to the \$138 million, the total amount of money owed to the civil servants will increase to \$153 million.

The Honourable Member for St James South disagreed with my concept of all-inclusive tourism and she referred to tours. The tourists are not allowed to do what they want to do. I want the all-inclusive tourists to be able to roam Barbados. I want them to go all across Barbados.

Asides.

Mr. D. St. E. KELLMAN: Of course, they have to come to St. Lucy, the most beautiful and unspoilt parish of Barbados. All the other parishes have been decimated.

Asides.

Mr. D. St. E. KELLMAN: I can assure you that I spend a lot of time in St. Lucy.

Asides.

Mr. D. St. E. KELLMAN: Mr. Chairman, we have to understand that when the tourists come to Barbados on an all-inclusive package, when they reach Barbados they know exactly where they will be going. I disagree with that. The tourists must be prepared to roam Barbados. They must go to the market in St. James South, Six Mens, Moon Town, and Oistins. Sir, you are not going to find a hotelier telling the tourists to go to these areas but they will get there. When they go to these areas, they will want to visit these areas again.

Mr. Chairman, I would expect the tourists to meet the ordinary folks of the island and this interaction would encourage them to return to Barbados. We believe that when we put them into vans and send them to select places that we are doing a good thing for Barbados, but we are fooling ourselves. We must allow the tourists to know the whole of Barbados. It is only when they know Barbados that they will be able to appreciate the package that we are offering them.

They have to come and go into the cart roads, cane fields....

Asides.

Mr. D. St. E. KELLMAN: They must be able to come and be able to pick guavas and dunks and understand how we live and operate. They must taste some roast corn. They do not only want shrimp and lobster. They must be able to go on the beach and taste roast fish. That is the life that I am talking about.

Asides.

Mr. D. St. E. KELLMAN: The Honourable Member, being a Minister, would not understand what I speak of. She needs to mix a little more with the fishermen at Paynes Bay and she would understand the reaction of the tourists when they get fish that is roasted on the beach.

Hon. Miss H. E. THOMPSON: On a point of order. The Honourable Member is misleading the Honourable House by suggesting that I do not mix with the fishermen down Paynes Bay. Not only do I mix with them but I have responded to their need for a new fish market and it is presently under construction.

Asides.

Mr. D. St. E. KELLMAN: I had hoped that the Honourable Member would not have replied to one. Sir, when one looks at that fish market, the fish market is built more to complement the building that is next to it, than to suit the fishermen. I am not sure whether the fishermen will be able to land their catches in that fish market or if very soon the land will be sold to the owners of the building next to it for parking space for tourists. I hope that will not happen, Sir.

Hon. Miss H. E. THOMPSON: On a point of order. The Honourable Member is misleading the Honourable House. While this has been very playful banter between us during the course of this debate, as Minister of Physical Development and Environment, I would have a very serious concern to hear the Honourable Member for St. Lucy suggest that we are going to part with Government land and let a private sector entity have it for their private use. It is not true. It is not in the works and if it comes to my desk, it is going to be rejected. It has to come to my desk because it is beach-front land, so the Minister would have to make a decision on it.

If the Honourable Member for St. Lucy has been encouraging them to make such an application, tell them not to come.

Asides.

Mr. D. St. E. KELLMAN: Mr. Chairman, I can now tell my comrades and friends on the west coast that they need not worry, because the Minister has assured me that she will not interfere with the beach boys and they do not have to visit me anymore on this particular matter. They can continue to repair their boats on that site and do not have to remove their boats to another location for repairs.

I think that we have to recognise that at the end of the day, the total amount of revenue we can receive from the tourists is what will matter to this country. I hope that the \$153 million that have been sacrificed by the civil servants will be taken into account and we will understand the importance of labour. Labour plus capital can give production but capital cannot equal production. I hope that the Honourable Members on the Other Side would understand that is a simple equation, labour plus capital equals production.

I thank you.
7.00 p.m.

Mr. CHAIRMAN: The Honourable Member for Christ Church East.

Hon. R. R. FARLEY: Thank you very much Mr. Chairman. I rise to wrap up the debate on this Head.

It saddens me, Sir, to have had to listen to part of the contributions of the Honourable Member for St. Lucy. He has made me firmly convinced that one should have to apply to the appropriate Government's Department for a license to analyze statistics, to avoid the blatant abuse of statistics which we had this evening.

The Honourable Member referred to the *Barbados Economic and Social Report, 2000*, Appendix 13: Current Expenditure by Economic Classification. From there everything sped downhill and then crashed. The Honourable Member looked at the Government's Wages and Salaries Bill, Fiscal Year, 1991-1992, 2000-2001. It was at \$400.5 million in 1991-1992, \$360.3 million, a \$40 million drop in 1992-1993, then it went up. The drop occurred during the Democratic Labour Party's Administration, when the Honourable Member for St. Lucy was at the heart of the decision making in the DLP.

Mr. D. St. E. KELLMAN: Mr. Chairman, on point of order. The Honourable Member is misleading the House because of two things.

1. The record he mentioned could not be correct because I was not in the House in 1994, and
2. The statistics would have been the statistics under the Barbados Labour Party from 1994-2001. Therefore, I cannot see how the Honourable Minister in the

Ministry of Finance can expect anybody to take him seriously when he does not understand the period of this Party's life, especially when he is the Chairman of the Party.

Hon. R. R. FARLEY: Thank you very much. Mr. Chairman, the statistics are here and the Honourable Member made the very false assertion that the workers of Barbados had been made to suffer a decline in wages during the period 1994 to 2001. False. The statistics are here, Sir. He wants the relevant period, 1994 to 1995, the Wage Bill of the Government was \$400.1 million. At 2000 to 2001, the Wage Bill was \$587.2 million, an increase of \$187 million.

Mr. D. St. E. KELLMAN: On a point of order, Sir. The Honourable Member has just disappointed the House. I cannot honestly believe that Honourable Member who once was a Minister of Finance will disappoint the House, because my argument was that between 1993 and 1994, the civil servants were getting 36.8 per cent of total current expenditure and to come and use a total figure and show that the figure has increased, is a non point. In order for him to do that... and I can teach him this particular one. I will do it for you, Sir, to enlighten the Minister. What the Minister would have to do is to add the years and then find a percentage. Therefore, one would have expected that the Minister would know how to calculate a percentage, but the Minister gets up and behaves as if I am saying that the total wages did not increase by an amount. This is a false assumption and it shows me that the Minister might be able to add, but he cannot use percentages.

Hon. R. R. FARLEY: Thank you very much, Mr. Chairman. That is the kind of abuse of the statistics that I am talking about. Sir, please, we need a licence. I am glad that the Honourable Member repeated his false point, because it is not juxtaposed against what I am going to say now.

The Honourable Member, by his own admission just only a moment ago, indicated that he took wages and salaries as a percentage of total expenditure. That is a regular statistic, but then one has to understand what he is looking at. He is saying that the percentage figure for wages and salaries against the total Government's Expenditure may have risen or fallen. He is saying that it is lower now than it was then. That is no problem, because it does not stand alone. Total Expenditure also comprised subsidies and transfers, interest and amortization, goods and services, therefore, Sir, as has been pointed out, with an increase in the Government's Wage Bill of some \$187.1 million over the period that he wants us to focus on, if he were having regular and frequent consultation with the Honourable Member for St. John he would have advised him not to go there, because the Honourable Member for St. John would have known what I was talking about. You can have the Wage Bill as a percentage of Expenditure going up or down, depending on

the movement of those other items, but to make the leap of folly, which would be to suggest that the workers in Barbados have been disadvantaged, that public servants have gotten less money, or are owed money, is to ignore the fact that the Expenditure on goods and services, companies and transfers, could have decreased at a faster rate than wages and salaries and therefore, accounted for that.

Therefore, I would not want the Honourable Member to have anyone caught up in his whirlwind of miscalculations to come to the false conclusion that workers wages have been cut or frozen or any such thing.

Mr. D. St. E. KELLMAN: Mr. Chairman, the Honourable Member is misleading the House by giving the impression that when a Budget is prepared, it is not done based on a percentage of what it was the previous year. It is clear to me, Sir, when the Honourable Member is saying that when he prepares a Budget, he does not do a projection, that one thing will put it up and in the other instance it will pull it down. Sir, that is not how it is done. The Honourable Member needs to be told how a Budget is done.
7.10 p.m.

Hon. R. R. FARLEY: Mr. Chairman, in essence that is the point I want to make and I urge the Honourable Member for St. John, who knows these matters well, to help his colleague and explain the intricacies so that he does not run into this particular trap. I want to make the further point, Sir, for the record that the public sector workers of Barbados have received a wage increase for every wage settlement since this Administration has been in office.

In fact, there have been generous wage settlements for each and every negotiation held since this Administration has been in office. Sir, what is on the table now, is not a wage freeze. The Honourable Member for St. Lucy attempted to paint that picture. Clearly, if the unions were to negotiate...

Mr. D. St. E. KELLMAN: Mr. Chairman, on a point of order, the Honourable Member is misleading the House. Nowhere in my speech did I say that the workers were going to have a wage freeze. I said, Sir, that in light of the improved figures, I am asking the Government, instead of pushing back the negotiation period, to reconsider and recognise the importance of workers as it relates to production, and to put the workers in their confidence so that the workers can improve their productivity and they would not be operating under stress. In light of the economic situation, we need to make sure that all sectors are functioning efficiently.

Hon. R. R. FARLEY: Thank you very much, Mr. Chairman. The Honourable Member for St. Lucy must understand that the workers are in a better position to wait until the dust settles on the economic turbulence, and make

a proposal concerning the rate of pay which they will receive in the new settlement, rather than settling in trying economic circumstances. The unions of Barbados, barring one, had no difficulty with that proposal.

I would also want the Honourable Member for St. Lucy to understand that although we are pleased that the worst case scenario was not experienced, we still had some downturn in our tourism product. I want the Honourable Member to understand further that we must not reach a state of total euphoria on the basis of the results of just a two-month period. We still have a long way to go. The situation is still unfolding and therefore for the Honourable Member for St. Lucy to suggest that everything is at an end, that we should adjust these monies and we do not need all of this money...

Mr. D. St. E. KELLMAN: Mr. Chairman, on a point of order. The Honourable Member is misleading the House by giving the impression that it was me who said that but it was the Honourable Member of Tourism who made that point in a Press conference a few days ago.

Aside.

Hon. R. R. FARLEY: Mr. Chairman, the Honourable Member continues to fatigue me by his frequent interruptions so I urge you to protect me from him.

Sir, the Honourable Member for St. Lucy must understand that from the outset, we indicated that the situation was very dynamic, and while we are pleased that the worst case scenario has not been reached, we will not step back and breathe too big a sigh of relief. We will keep the matter under watch and will adjust as required.

The National Economic Council will continue to meet. That council, as you know, Sir, includes CTUSAB as the representative of the workers, the private sector agencies and the Ministers of Government who are responsible for economic portfolios. We will monitor the programme and make adjustments as warranted. It is our most fervent hope that this situation will be short lived and therefore, we will do just what the Honourable Member for St. Lucy wants us to do and that is to open up our hands and things of that nature.

Sir, in closing, I just want to draw to the Honourable Member for St. Lucy's attention, one additional error. He seems to have been on a trot of errors this afternoon. The Honourable Member suggested, by way of innuendo, that the better than expected or less bad than expected tourism results, by way of hotel occupancy, should result in a reduction of the money which he said was given to the hoteliers. The Honourable Member must be reminded that

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