
THE

House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1999 – 2004

HOUSE OF ASSEMBLY

November 12, 2002

Pursuant to the adjournment, the House of Assembly met at 11.00 a.m. on Tuesday, November 12, 2002.

PRESENT

His Honour I. A. ROETT, B.A., Dip. Ed., (Speaker)
His Honour J. M. EDGHILL, J.P., (Deputy Speaker)
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. Miss B. A. MILLER (Deputy Prime Minister, Minister of Foreign Affairs and Foreign Trade)
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. G. A. CLARKE, B.Sc., Dip. Ed. (Ministry 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 the 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. A. P. Wood, B.Sc., M.Sc., M.Phil., J.P. (Minister of Agriculture and Rural Development)

Hon. R. R. FARLEY, B.Sc., J.P. (Minister of Economic Development)

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

Prayers were led by Rev. Canon Ivan Harewood.

Mr. SPEAKER: This House is now in session.

MINUTES

Mr. SPEAKER: Minutes of the meeting held on Tuesday, November 5, 2002.

Hon. Miss B. A. MILLER: Mr. Speaker, the Minutes for the proceedings of the Honourable House of Assembly of its meeting on Tuesday, November 5, 2002 have been circulated and I beg to move that the Minutes be taken as read.

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

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

PAPERS

Hon. Miss H. E. THOMPSON: Mr. Speaker, Sir, I am commanded to lay the following:

Barbados State of the Environment Report, 2000.

SUSPENSION OF CERTAIN STANDING ORDERS

Hon. Miss B. A. MILLER: Mr. Speaker, I beg to move the suspension of Standing Orders Nos. 6, 16, 18, 20, 42(5), 43, 44 for the remainder of today's Sitting.

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

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

GOVERNMENT BUSINESS

ORDER NO. 10 – BILL ENTITLED AN ACT TO MAKE A NEW PROVISION FOR THE PROTECTION AND SAFETY ON CONSUMERS AND FOR CONNECTED PURPOSES

Hon. R. St. C. TOPPIN: Mr. Speaker, the passage of the Fair Trading Commission Act, the Utility Regulation Act and the Proclamation of January 2, 2001 really signalled the dawning of a new era, in the area of consumer protection in Barbados. The passage of the Utility Regulation Act, in particular, meant a number of benefits for consumers.

First, it meant that rate setting mechanisms will now be used by the Fair Trading Commission to determine the rates which would be paid by consumers for utility services. It would also ensure that no unjustifiable increases in operating cost, incompetence or inefficiencies of utility companies would simply be passed on, to be paid by the consumer.

Mr. Speaker, that legislation also meant that for the first time an institution, the Fair Trading Commission, would now be able to set quality of service standards to be provided by utility companies. This is important, particularly in the context of monopoly where, as consumers, we have no choice and have to accept whatever is dished out to us.

Mr. Speaker, you know that several complaints were made, over time, about the quality of service provided by utility companies. For example, the length of time it takes to restore service when it is down and the length of time it takes, quite often, to install the service in the first place.

I can report to this Honourable Chamber that with the passage of Tropical Storm Lili, some wire lines were down in front of my house and my neighbour's house, and despite repeated requests to utility companies to date, those lines are down and dangerously low to the road. The Barbados Light and Power Company maintains they are not their wires. Similarly, Cable and Wireless/BARTEL maintains they are not their wires. Sir, the wires belong to somebody and they are down since, I believe, September 30, 2002.

Mr. Speaker, we have to put an emphasis now on the quality of service and the Fair Trading Commission is set up and empowered to deal with the quality of service and standards to the benefit of the consumer.

There is also the question now of the ability of the Fair Trading Commission to streamline hearings before it, in relation to rate applications. There was a time when proceedings were dragged on inordinately long, before the former Public Utilities Board.

New rules and procedures have been prepared and are functional, whereby the hearings will be streamlined. Objectors will be required to file the objections and make any applications for information in advance of any hearing, so that the hearings will now take a shorter time and decisions will be rendered in a more expeditious manner. Mr. Speaker, again, this will be important for the consumer because, in the past, the cost of a hearing has invariably been passed on to the consumer.

Last week, we had in this Honourable Chamber, the passage of the Fair Competition Bill which will now provide an environment for free and fair competition in Barbados. Sir, we all know that with increased competition, invariably there comes increased efficiency, lower prices, more choices and better service. Again, Mr. Speaker, the consumer will benefit from the passage of that legislation.

Public counsel has also been established by law and an officer, Mr. Barry Carrington, has been appointed to the post of Public Counsel. In relation to utility hearings and matters before the Fair Trading Commission in respect of applications for rates, quality of service, *et cetera*, the Public Counsel will assist the consumer, in fact, any objector before the Commission with the preparation and presentation of his case.

Sir, again, consumers now have access to an additional person, free of cost, to ensure that any objections or comments they may wish to make at a public hearing, can be done in a very competent and expeditious manner.

Today, Mr. Speaker, we now have before us, the Consumer Protection Act and what I will say today, will cover both the Consumer Protection Act and the Consumer Guarantees Bill, both of which are before this Honourable Chamber. Sir, both these Bills are designed to confer additional rights and protection on consumers.

It would really, in fact, be accurate to say that the common theme and thread running through the *raison d'être* and the operations of the Fair Trading Commission, really and truly is consumer protection. It is really at the core of all of the activities, whether you look at the Utilities Regulation Act, the Fair Competition Act or now, the Consumer Protection Bill.

Mr. Speaker, what we are doing here today, is having a direct, as opposed to a tangential focus on consumer rights. I do not think anybody could say that consumers in Barbados have been anything but neglected and abused, perhaps from time immemorial. In fact, consumers have largely been more like an abandoned species, who have been at the whims and fancies of businesses over the years, with very little, if any right of redress in any regards.

As consumers, we have been uninformed or misled about what is available in the market:

- We often simply sign or are forced to sign on the dotted line of contracts, without having any say or even any chance to read through the contents of the documents that we are being asked to sign.
- We often sign one document that refers to another document without being shown that other document or contract.
- We are often sold inferior or defective goods and then we are met with refusals by suppliers to fix them at all or in a timely manner. Even on the odd occasion when a supplier would agree that a good can be returned, you can never get a refund on the cash that you paid but often you must take other items. Quite often, items that you have no interest whatsoever in attaining and altogether different from what you, in fact, wanted from the very beginning.
- Sometimes you see signs stating explicitly, no refunds, no exchanges.
- Sometimes you buy a piece of machinery, a household appliance or a motor car, only to find that no proper arrangements, whatsoever, are in place for you to get repairs or spare parts for that equipment or vehicle.
- Sometimes you request a service from one of the established professions, lawyers included, and rather than receiving the quality of service you expect, you get rather shabby and unsatisfactory service.

Mr. Speaker, without going on further, I am sure you would agree that, over the years, consumers have been given a very raw deal from business persons of all sizes, and, Mr. Speaker, I want to stress, of all sizes. We get turned around sometimes as much by a backyard mechanic, as we are turned around by a big enterprise in this country. I am not here focussing on anyone to the exclusion of the other. Consumers have been given a raw deal from business persons of all sizes, micro, medium and big. Every sector of the economy has received its fair share of justifiable complaints from consumers.

11.25 a.m.

In the face of all of this, Mr. Speaker, very little intervention has taken place on behalf of consumers to enhance their rights. In fact, today as I speak to you, to the extent that consumers have any rights at all, they tend to be vague, hazy, ill-defined and scattered across a number of legislation, for example, the Sale of Goods Act, the Hire Purchase Act, the Weights and Measures Act, the Control of Standards Act, the Food and Drug Adulteration Act, the Therapeutic Substances Act, the Health Services Act and others. So clearly the time has now come for proper arrangements to be put in place to adequately protect consumers in the marketplace.

Mr. Speaker, our domestic market has undergone considerable change in the last 50 or so years. There was a time when buying and selling took place almost solely on a face to face basis or on a physical brick and mortar setting, where the buyer meets the seller and vice versa. With technology today, the ways of trading have begun to change. We now have things like telemarketing, mail order selling and other forms of distant selling and more recently internet online business transactions where the buyer and seller are very often unaware of each other. This confers tremendous convenience to the consumer and carries its fair share of risk and danger.

Because of the developments in the international trading arena, globalisation and trade liberalisation, more and more goods particularly foods are now being imported in more significant quantities from countries with which we have never really had a trading relationship. This has presented challenges for us, both from a relation to compliance with our labelling laws and the after-sale services by suppliers of these goods. Given the negotiations taking place between a number of large trading blocs and given Barbados' involvement in these negotiations and our commitment to honouring our obligations to these new trading and economic blocs, it is quite likely in a few years from now that our market could be exposed to goods and services from many different countries with many different cultures and production techniques.

This Government, therefore, has to ensure that consumers, in all the circumstances that I have just outlined, are properly protected, are able to get fair value for money and are able to get adequate redress in a reasonable time and without undue expense when problems arise. It is against that background that this Government has decided to implement a consumer policy with a number of objectives.

This consumer policy that we are implementing will ensure that consumers have adequate access to accurate information on goods and services. The policy will improve the quality and safety of goods and services provided by suppliers, promote fair conduct by all business persons in the marketplace, facilitate timely, satisfactory and inexpensive redress for consumers and promote fair competition in the marketplace. We have already brought legislation last week to address that particular malady. We also want to empower consumers by encouraging the formation of consumer groups to look after the consumers' interests and their rights as well as to honour their responsibilities because they must always remember that with rights come responsibilities. We are not seeking to tilt the scales in such a way that it now goes entirely in favour of the consumer to the entire detriment and elimination of the supplier. We are trying to ensure that the scales will be balanced.

To realise these objectives, Mr. Speaker, we are pursuing a four-pronged strategy. We are using legislation.

We are also going to be using education to educate consumers about their rights and responsibilities. We are going to promote a more competitive marketplace which we have already put the legislative framework in place to do. We are also going to be strengthening the institutional arrangements for the administration of consumer affairs. What is before us today is the legislative framework and it is on that that I am going to focus although I will from time to time or certainly afterward deal with the other areas as well.

Such legislation as exists today dealing with the rights of consumers is clearly inadequate for the protection of the consumer. The Sale of Goods Act, seems to have been based on the premise that the supplier and the purchaser were on equal footing and possess equal bargaining power and that they, therefore, would have been able to insist on terms and contracts which would be beneficial to each other.

The Sale of Goods Act is a very old Act which applies only to goods. You are caught up there in whether a breach is of a condition or a warranty so that much time is spent on a technical evaluation of a contract term rather than focussing on the consequences of the breach which is the more modern way to look at it. Such technicalities are very confusing and unclear to the consumer.

There is also reference to the fact that the goods have to be of merchantable quality but the term merchantable is not defined in the legislation, so the Sale of Goods Act is woefully inadequate as a legislative tool to protect the rights of consumers. In fact, Mr. Speaker, the word consumer, is not even used in the Sale of Goods Act. It talks about vendor and purchaser or seller and purchaser but the word consumer is not used in the Sale of Goods Act because it was designed with the equality of bargaining power in mind and on the assumption that parties of equal bargaining strength would have been able to adequately protect their interest but that is not really the case.

The Sale of Goods Act of 1895 which is based on the 1893 Sale of Goods Act of England is clearly outdated. In Barbados, the supplier and the consumer do not possess equal bargaining power. In fact, there is a serious inequality of bargaining power between consumers and suppliers in Barbados at the present time because the consumers have to go along with the rules which are laid down by the suppliers. So these pieces of legislation today, the Consumer Protection Act and the Consumer Guarantees Act, seek to redress that imbalance of power between suppliers and consumers which is presently heavily tilted in favour of the suppliers.

Mr. Speaker, I am going to begin first by looking at the Consumer Protection Act. The overall objective of the Consumer Protection Act is to make new provisions for the protection and safety of consumers. It seeks to find a balance between the interest of businesses and the interest of

consumers by focussing on a number of things. It focuses on unfair terms in contracts that are not individually negotiated. It focuses on unfair trading practices. It focuses on protecting consumers in relation to distant selling contracts which do not involve face to face contact between consumers and suppliers. It focuses on products and consumer safety including product recall. It looks at industry codes and it sets out enforcement mechanisms.

Therefore, it can be said that the Bill has two main purposes. It is to ensure fairness in transactions among the suppliers of goods and services, and customers and to ensure the general safety of goods supplied to customers. These objectives are achieved by granting certain powers of enforcement to the Fair Trading Commission (FTC) and on occasions to the Minister including the right to have defective or dangerous goods recall and provides a basis for the establishment of standards through the prescribing of industries codes.

11.25 a.m.

Mr. Deputy Speaker, this Bill covers all goods that are normally used or consumed in private households. Surprisingly, the goods that are considered to be consumed in private households include crops, ships, aircrafts and vehicles.

Consumers protected under the Bill are those who acquire goods or services of any kind which has ordinarily been acquired for private use or for consumption and must not do so for the purpose of resupply. If a person acquires goods to resupply them, in effect that person is in business. The legislation is not designed to protect people who are in business. These people will continue to be covered under the Sale of Goods Act which applies to business transaction, while this Act focusses on consumer transactions.

Mr. Deputy Speaker, there is also a rebuttable presumption that a person is to be treated as a consumer. If a person comes forward and makes a claim that, as a consumer, they have been aggrieved, then it is for the supplier to rebut that by saying that person was not a consumer and to prove it.

I would, therefore, proceed to discuss the provisions of the Act under the respective headings of Fairness, Safety and Administration. There are two parts in the Bill which deal with fairness in consumer transactions. Part 2 deals with unfair contract terms. Part 3 deals with the prohibiting of certain unfair trading practices.

With respect to unfair contract terms, we are dealing with contracts that are not individually negotiated. The typical contract to which we refer would be one where a person goes into a store to engage in a hire-purchase transaction and is presented with a pre-prepared contract.

That person is then asked to sign on the dotted line. Very often, the signee is not given the opportunity to peruse the contract. It is also written in technical language and, therefore, one might not understand the terms and conditions set out therein.

What the law is saying is that if there are any unfair contract terms in such a contract, it would be deemed to be unenforceable by the supplier. An unfair contract term is any term that would cause a substantial difference in respect of the parties in favour of the supplier. Once it is deemed to be unfair, it is unenforceable and deemed to be struck down by a court of law.

7. "A contract term is unfair if, to the detriment of the consumer, it causes a significant imbalance in the rights of the supplier and the consumer."

The Schedule sets out a number of terms that will be presumed and deemed to be unfair if, in fact, they are included in these contracts into which one has no input whatsoever. Ultimately, the court would have the power to decide whether or not a contract term is unfair and despite the specification of these examples as are set out, the court does have an overriding power to decide that, in addition to these, other terms could be held to be unfair and unenforceable and would be struck down as being null and void.

"If there is a term in the contract that excludes or limits the legal liability of the supplier in the event of death of the consumer or personal injury to the consumer resulting from an act or omission from that supplier."

To illustrate what this means, one might go into a gym and sees a sign advising that a person uses the equipment at their own risk. If that person proceeds to use that piece of equipment and it is found to be defective in the first place and, that as a result of that defect, that person suffers damage or injury, then the owner of the gym cannot say that the user was forewarned and therefore the gym is not liable. Such an act cannot now stand up in light of the provision which expressly makes it an unfair contract term and would be struck down by a court of law.

Any term making an agreement binding on the consumer whereas the provision of the service by the supplier is subject to a condition whose realisation depends on its own will alone, would be struck down.

A term requiring a consumer to pay a disproportionately high sum in compensation if he fails to fulfil his obligation is, again considered being unfair and would be struck down.

A term that irrevocably binds the consumer to terms with which he has no real opportunity of becoming

acquainted before the conclusion of the contract would be struck down.

Any term that will enable a supplier to alter the terms of the contract unilaterally, without having to get the consent of the purchaser or without any valid reason specified in the contract would again, be too heavily one-sided and would be struck down as being an unfair contract term.

If included in a contract, a term that enables a supplier to alter unilaterally without any valid reason, any characteristics of the product or service to be provided. In other words, if a batsman agrees to buy a long-handled cricket bat, the supplier cannot supply him with a short-handled one. The consumer must get what he has asked for and has paid for.

Any term that provides for the price of goods to be determined at the time of delivery, or allowing the supplier to increase the price without in both cases giving the consumer the corresponding right to cancel the contract, if the final price is too high in relation to the originally agreed price, similarly, any such terms would be deemed to be unfair and will be struck down.

Any term that gives the supplier the rights to determine the goods supplied are satisfactory or in conformity with the contract and gives the supplier the exclusive rights to interpret any term of the contract. Again that is so lopsided that with the naked eye, it would be seen as being unfair and would be struck down.

A term that seeks to state that a consumer cannot take any legal action or exercise any legal remedy particularly by saying that the consumer must refer to arbitration and that he cannot go to court but that any remedy he wishes to pursue must be done by way of arbitration and also restricting the evidence that he could use in seeking to prove his case, those types of terms will be struck down as being unfair, void and unenforceable.

In addition, the court has the power to make its determination as to fairness, taking into account things listed at clause 8 (1) of the Bill, such as the interest of the parties, the nature of the goods or service for which the contract was concluded, *et cetera*.

In relation to this matter, the Fair Trading Commission (FTC) is going to be the consumers' watch dog. Even before contracts are brought before the Fair Trading Commission to make determinations as to the validity of terms, the Fair Trading Commission will be playing a role in checking the standard form contracts that currently exist to ensure there might be no need for a consumer to make a complaint about terms which are going to be deemed to be unfair.

It is stipulated that contract terms must be expressed in clear, plain and intelligible language.

“6(1) A supplier shall ensure that any written contract term is expressed in plain, intelligible language.”

That does not mean if it is not, that it would be struck down as being unfair but it would be wise for the supplier to ensure that contracts are written in clear, plain and intelligible language because where there is any ambiguity in the contract term, it is going to be construed and interpreted in favour of the consumer.

“6(2) If there is doubt about the meaning of a written contract term, the interpretation that is most favourable to the consumer shall prevail.”

Of course, if the language used is very clear and unambiguous, the court is not going to inquire into the nature, subject matter or adequacy of the price paid. In other words, if a contract is very clear and negotiated where a person agrees to pay \$500 for a marble and there is nothing unclear or unfair in the contract, in such case the Fair Trading Commission will not inquire beyond what is clearly and unambiguously expressed in contract form.

The law in Barbados states that if a supplier were to seek some way to designate the law applicable to the facts that arise here, to be a law applicable in some other country which does not have these types of provisions, such a clause would be null and void and the laws of Barbados will still apply.

“10(1) Where the proper law of a consumer contract would, but for a term in the contract that the proper law should be the law of some country other than Barbados (or a term to the like effect), be the law of Barbados, this Part applies to the contract notwithstanding that term.”

11.45 a.m.

Lastly, a supplier cannot contract out these provisions nor cannot include a clause saying that the contract will not be subject to the provisions of Part 2 of this Consumer Protection Bill because any such clause will be void and struck down.

Part 3 of the Bill provides a general prescription of misleading or deceptive conduct by supplier. It specifically says that a person shall not engage in conduct that is likely to be misleading or deceptive.

Sir, as I said before, the court will have the final opinion on what constitutes misleading or deceptive conduct.

There is also false and misleading representation where a person makes false representation about his goods relative standard, quality, grade or he may state that an item was used in a previous fashion and this may not be true. This is considered false representation, will be misleading or deceptive and is an offence under the legislation.

A person may visit a store and see a sign saying that an item is \$300 cash or \$25 monthly but the sign does not specify for how many months. If the item is not purchased for \$300 cash, the sign must now indicate the total number of instalments if the transaction is to be taken on credit. It must also specify the total sum to be paid for the goods or service, the rate of interest to be charged and a deposit if any is to be made. It is important that the customer know of these important factors in advance of his transaction.

Sir, dual pricing where two or more prices apply in relation to the same goods is a big problem in Barbados and this is outlawed by the Bill. For example, often, persons will see \$3.25 affixed to an item but when the item is scanned the customer pays \$6.75 for that same item. The law now says that the customer is entitled to pay the lowest price affixed to that item.

Sir, there is also the trading practice of bait advertising where a supplier advertises a particular item at a certain price although he knows that he does not have the quantity or intends to sell the item at the price at which it is advertised. This is done simply to lure customers into the store so that another item can be sold. Sir, this practice is also outlawed by this legislation.

Sir, people are often encouraged to carry on a business from their homes via the internet or e-mail but you cannot now make any false or misleading statement concerning the profitability of any business activity carried on at a person's residence. Sir, pyramid selling is also outlawed by the legislation.

Sir, people cannot now send you goods which you did not order. This is going to be more prevalent in the technological age because people will easily have access to you through your e-mail address and the internet. Under this Bill, a person does not have to pay for any goods which he did not order and the legislation stipulates that after three months the goods belong to the person and that any expenses incurred because of storage of the item or returning these goods be covered by the suppliers who sent the unsolicited goods in the first instance to the person.

Also, if a supplier makes an unauthorised entry in a directory, for example, a listing in 'Who is Who' magazine, the supplier cannot claim payment because this is an offence and a criminal act which is covered by the legislation. Sir, all those things are criminal acts and there are covered by the legislation.

11.55 a.m.

Mr. Speaker, given the new technological developments, distance-selling is now going to be more prevalent. For example, telemarketing, mail order selling and

internet transactions. It is important that consumers be given some measure of protection, as much as can be given at this time, in relation to these distance selling transactions.

Sir, the Act is saying that the Minister will make regulations to deal with the protection of consumers in relation to distance contracts and ensuring that paper-based transactions are also applicable. Sir, the areas of unfair terms, resolving disputes will also be dealt with in this legislation. This legislation will provide protection largely in relation to local internet selling.

In relation to purchasing goods on the internet overseas that is a more complicated matter and Barbados will stay in touch with developments and trends in the particular area and ensure that any conventions or mechanisms for cooperation between countries that we are party to that we are always abreast of the rights in relation to protecting consumers in relation to distance selling between Barbados and other countries.

Mr. Speaker, safety is another major plank on which the Consumer Protection Act rests. There is the codification of the law relating to public liability, the provision for certain safety requirements with respect of goods and the mandating of the compulsory recall of goods where they pose a threat to public consumer safety.

In relation to product liability, the law says that where death or damage is caused by a defect in the product, the producer of the product or anyone who holds himself out to be the producer of the product and the person who imported the product into Barbados, in the course of doing business, is liable for the damage.

Sir, the Act is not targeting the over-the-counter suppliers in this particular case. The supplier can exempt himself from liability by supplying the name of the manufacturer or the producers from whom he bought the goods. If the supplier does not supply the information, then he would find himself, unnecessarily, on the receiving end of a complaint.

Mr. Speaker, the product's safety would involve an assessment for which the product was being marketed, designed and instructions or warning signs given about the product, so that it can be determined whether the goods were defective.

For example, a pair of glasses is supposed to have handles but the handles are not supposed to be such that when you put them on, they would scrape your face. If you found that the glasses that you are wearing are cutting your face when you put them on, you would know that they are defective.

Sir, there is no way that liability can be excluded by any contract term of any notice or any provision. There are certain defences. Given the state of scientific knowledge, you really could not expect a producer to know that the good had a defect that caused the damage. You cannot blame someone for something that they could not have any knowledge of. Therefore, in those sorts of situations the supplier or producer would escape liability.

Mr. Speaker, in terms of consumer safety, there is a general safety requirement with which all consumer goods that are offered for sale must comply. If goods are not reasonably safe in all the circumstances, then there are in breach of the safety requirement in the legislation. When we speak of goods not being safe, we look at the purpose for which the goods are marketed or used and any published standards of safety of the goods for the description in question.

Sir, if you fail to supply goods that satisfy this general safety requirement, it is an offence but it would be a defence to show that you are supplying the goods in the course of a retail business and you did not know nor had reasonable grounds for knowing that the goods were not generally safe. These are facts that the court would, obviously, go into before it could make a determination as to whether or not the goods were safe.

Sir, beyond that general safety requirement, the Bill also allows the Minister to make safety regulations to ensure the goods are safe, if they come within the hands of a certain specified set of people, for example children.

There is a recourse in the legislation if you contravene the safety regulations. For example, you can be prohibited for supplying the goods by the Fair Trading Commission or the court. You may be required to supply information in relation to the goods or you may be required to carry out tests or be prohibited from dealing with the goods in any particular way.

Mr. Speaker, with respect to the recall of goods, this legislation will be welcomed by Barbadians. The situation will be, where a person supplies goods and it appears to the Minister that those goods are of a kind that will or may cause injury to anyone and the supplier has not taken any satisfactory action to prevent the goods from causing injury, then the Minister may publish a notice in the *Official Gazette* requiring the supplier to either recall the goods or to disclose to the public the nature of any defect or any dangerous characteristics of the goods and procedures for disposing of the goods or tell the public that he proposes to either repair or replace the goods or refund persons who return the goods to him. So that there is now a provision for the Minister, where the goods out there are a threat to the society, to order a supplier to recall goods.

12.05 p.m.

However, in the interest of democracy, of course, before that recall notice is published in the *Official Gazette*, they are required to publish a notice before that, indicating that a final notice of recall will be published, unless the supplier of the kinds of goods in question or that we are concerned about, indicate within ten days that they want to be heard. Sir, they may want to be heard, to contest the view or the feeling of the Minister that the goods can cause injury to persons.

In that case, you must in ten days indicate to the Minister that you want to have, what is referred to in the legislation, a conference. At that conference, you are entitled to appear and be heard, either by yourself or a representative. Similarly, the appearance by himself or by a nominee, and any other person with an interest in the matter will be entitled to be heard. After the hearing or the conference, the Minister will then make a determination as to how to proceed.

Sir, significantly, at Clause 45 of the Bill, there is a clause that gives the Minister a necessary, overriding and final power which says:

45. (1) Where it appears to the Minister that goods of a particular kind create an eminent risk of death, serious illness or serious injury, the Minister may, by notice in writing published in the *Official Gazette*, publish a notice in relation to the goods, under section 40(1) without delay.

Sir, so that the Minister can issue a notice for immediate recall, without recourse to any hearing, any determination where the Minister is of the view there is an eminent risk of death, serious illness or serious injury.

In that case once that is done, wherever the proceedings were at that time, they cease to apply. If the conference had begun, it is stopped there and the Minister's overriding power kicks in right away because the Minister has to act in the interest of the society. He cannot be minded then to deal with and entertain a set of formalities, to find that he would have complied with the law in relation to formalities but five of six persons might have been seriously injured, Sir, so the Minister has to be able to step in and say, recall the good right away because there is too much of an eminent threat to life and limb out there.

There is also in the legislation, a provision for voluntary recall. If you, as a supplier, know that you have put a good out there, you might have done it in all innocence but you realise, subsequent to putting it on the market, that in fact the good is defective and can cause injury and so on, to persons, you do have the power to do a voluntary recall on your own, but within two days of doing that, you must inform the Minister that you have, in fact, voluntarily recalled the good.

47. (1) Where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, he shall, within two days after taking that action, give a notice in writing to the Minister

- (a) stating that the goods are subject to recall; and
- (b) setting out the nature of the defect in, or dangerous characteristic of, the goods.

So that in this legislation there are, in my view, comprehensive provisions, in relation to the recall of goods.

The Bill also seeks to deal with industry codes. Industry codes are largely codes that are provided by the particular industry itself. I well remember at a consultation held last August at a hotel where all of the stakeholders were invited, and did attend, where the representative of the Barbados Chamber of Commerce made the point that he did not want a situation where the Fair Trading Commission or the Minister would be sitting back and making industry codes for industries, without reference to the industries themselves.

There is every intention from the way the legislation is set out that, in fact, there will be full involvement of any particular industry before any industry code is prescribed. In the words of the legislation, for that particular industry, there is going to be total involvement of industry, in the preparation of industry codes. Of course, some codes will be deemed to be mandatory and other codes will be deemed to be voluntary and those persons who would have agreed to be bound by voluntary codes, those codes will also set out under the prescription.

The administration and enforcement of the Act, fall to the Fair Trading Commission. The Fair Trading Commission may issue prohibition notices to curtail the supply of goods which it considers to be unsafe, except with its consent. It may serve warning notices on businesses, requiring a business to publish a warning about unsafe goods that the business supplies. It can also request any person to furnish it with information and produce such records as the Fair Trading Commission might need.

The Fair Trading Commission can also accept undertakings from individuals, in relation to their obligations under the legislation. Of course, if you breach your undertaking, then you will revert to the original position and must comply with the original order made by the Fair Trading Commission.

Sir, when you speak about the Fair Trading Commission administering this legislation, what you are

really saying is that on complaints received by consumers, the Fair Trading Commission will obviously seek to resolve the matter but, by and large, the Fair Trading Commission cannot fine anybody. It cannot impose any injunction on anyone or any thing of the sort. But what it can do and will do if it finds that the case has merit, it will proceed to take the case to court, on behalf of the complainant but the suit will obviously be entitled, FTC against whoever. So that the Fair Trading Commission will actually be the applicant before the court.

Sir, of course you would probably want to promote, as far as possible, representatives and group actions but persons would not now have to be worried about the fact that they do not have enough money to take their complaints further because the Fair Trading Commission has to ensure, by the law, that the cases which are found to be valid and arguable, are in fact taken to the court of law.

Sir, upon taking the matter to court, the court will have a number of powers in relation to complaints made by the Fair Trading Commission. They include powers to declare contracts void, grant injunctions, vary contracts, order suppliers to refund money or to return property to persons who suffered the loss or damage, order suppliers to pay persons who suffered the loss or damage, in the amount of the loss or damage, order suppliers to repair or provide parts for goods supplied to persons who suffered loss or damage, or order suppliers to provide specialised services to persons who suffered loss or damage. So that there is going to be more than adequate redress now, for consumers under the Consumer Protection Act which largely deals with acts that are deemed to be offences.

Now, those persons who are found guilty of offences under this Act, whether it is misleading or deceptive conduct, supplying goods that are unsafe, failing to comply with recall orders and people suffered damages as a result, whatever the offences are, will be liable on summary conviction to a fine of \$10 000 or imprisonment for six months or both, while corporate bodies will be liable to a fine of \$100 000.

In the latter case, that is, of companies, directors or officers who knowingly authorise the offence or acquiesce in the offence will also be guilty of an offence and liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of six months or both. Of course, the intention of a company is to be established from the intention of a director of that company, so that persons stand to be so advised.

Mr. Speaker, I am next going to look at the Consumer Guarantees Act. This is another Bill currently today before this Honourable Chamber. The primary rights of consumers under the Consumer Guarantees Act, and let me say that this would not really be a Bill focussing on criminal activity in the same way...

Aside.

Hon. R. St. C. TOPPIN: I do not want to say criminal activity, but you are not going to be talking about offences attracting criminal sanction in relation to this Act, in the same way that we spoke about it just now in the Consumer Protection Act.

It is almost as if you could say that the Consumer Protection Act will deal with wrongs against the consumer, a generic consumer, while this Bill will deal with breaches of contracts, in relation to specific and identifiable individuals. 12.15 p.m.

The primary rights of consumers under this Bill are set out as various guarantees that will be deemed to be given or made by the supplier of goods or services. The increase in rights of the consumers will now be dealt with in this way. Whenever a supplier sells goods or provides a service to anyone, he is deemed, whether expressly or not, to have given the consumer certain guarantees in relation to those goods and services.

The contractual rights of consumers in respect of goods supplied to them is currently set out in the Sale of Goods Act which is not designed with consumers in mind but rather to deal with commercial transactions between businesses of equal bargaining power. So no special privilege is accorded to consumers under the current Sale of Goods Act.

The Sale of Goods Act will remain in existence and will be applicable to commercial entities with the intent to resupply but the Consumer Guarantees Act will apply to contracts between suppliers and consumers who buy goods for their own personal use.

Mr. Speaker, just as I have done with the Consumer Protection Act, by highlighting its important provisions I will now do the same with the Consumer Guarantees Bill. This Bill will deal with both goods and services unlike the Sale of Goods Act which deals only with goods. Currently, the law in relation to the supply of services to the consumers is the common law and only requires that the services be provided with reasonable care and skills and that they should be reasonably fit for the particular purpose for which they were bought. This will now change and there will be additional guarantees deemed to be given and implied in relation to the supply of services. I am going to deal with those, Mr. Speaker, a bit later on in my presentation.

This Consumer Guarantees Bill will now cover businesses as well as everyone who can be classified as professionals, like doctors, plumbers, building contractors and candlestick makers. It will also cover manufacturers, importers and distributors of goods as well as suppliers. The goods I am referring to, are all goods that are acquired for

personal, domestic or household use including computer software. So from now on whenever you buy goods, the seller will be deemed to have made several guarantees to you. He is going to be guaranteeing you that he has the right to transfer the ownership of the goods to you. He is going to be making a guarantee as to the title. He is also saying that there is no encumbrance on the property and that when he sells it to you, you can go and enjoy quiet and peaceful possession of the property. In other words, he is saying that he is selling the goods to you as owner.

Mr. Speaker, there is also to be a guarantee to an acceptable quality. This is new. The current guarantee in the Sale of Goods Act speaks of merchantable quality which is not even defined. This Act speaks to the fact that a supplier is making a guarantee to you in relation to the acceptable quality of the good.

Section 7 of the Bill states, and I quote:

“(1) Goods are of acceptable quality for the purposes of section 6(1) if they are as:

- (a) fit for all of the purposes for which goods of the type in question are commonly supplied;
- (b) acceptable in appearance and finish;
- (c) free from minor defects;
- (d) safe; and
- (e) durable

as a reasonable consumer fully acquainted with the state and condition of the goods, including hidden defects, would regard as acceptable, having regard to:

- (a) the nature of the goods;
- (b) the price, where relevant;
- (c) any statements made about the goods on any packaging or label on the goods;
- (d) any representation made about the goods by the supplier or the manufacturer; and
- (e) all other relevant circumstances of the supply of the goods.”

That is what will constitute goods of an acceptable quality. I will illustrate what that means.

Mr. Speaker left the Chair and Mr. Deputy Speaker assumed the Chair.

Mr. DEPUTY SPEAKER: Honourable Member, please proceed.

Hon. R. St. C. TOPPIN: Mr. Deputy Speaker, if you were to go into a market and you were to purchase a box of vegetables which is supposed to contain cucumbers or carrots and when you get home and open the box you found a whole set of swivelled up and sad looking cucumbers or carrots, that will not meet a definition or a guarantee that the goods are of acceptable quality.

This is a pet peeve in relation to a number of consumers. I get many calls in the Ministry about things like this. I used the vegetable example deliberately because that is the one about which I get the majority of calls. This legislation now will ensure that you must supply goods that are not only fit for the purpose but they must also be acceptable in appearance and finish. In that case I just outlined, clearly the goods would fall short of any guarantee that they are of acceptable quality.

If you buy an item and you indicate that you want to use it for a particular purpose, let us say a pair of headphones, in relation to your stereo equipment, the goods must conform to that description. If you buy goods by virtue of there being no description given of the goods, for example, if you buy a leather handbag from a catalogue that looks a certain way, when you get the good from the supplier and you take it home and open it, it must look just like the same leather handbag, not some cheap vinyl or something that looks completely different from what you saw in the photograph in the catalogue.
12.25 p.m.

Mr. Deputy Speaker, what that person sees in the catalogue must be the same thing they receive. Goods must also correspond with their description and with any sample or demonstration model that was bought, pursuant to what they have looked at.

There is now a guarantee of supplier use. In other words, if one sells new goods, there is the guarantee that the goods have not previously been used, except in the case of reasonable testings. If one goes into a store, it is expected that they would receive new goods.

“13. A person shall not, in trade or commerce as a supplier,”

- (a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or a particular previous use.

- (c) falsely represent that goods are new.”

Significantly, this would be a very bad practice. Where no price has been predetermined by the parties the purchaser

will now only have to pay a reasonable price for the goods. Parties should know before the good is bought, what it is going to cost instead of going ahead, have the good supplied, cash to be paid on delivery with no idea as to the cost of that good. What the law is now saying is that the consumer has to pay a reasonable price for the good or service.

I am not here intending to make consumers believe that they have a right not to pay a supplier. What the law is saying is that where previously a price has not been agreed to, the consumer is required to pay a reasonable price. For example, it cannot be expected for someone to deliver a washer to fix a sink and when he delivers it, says that it costs \$500. Clearly, that would not be a reasonable price and the consumer is not required to pay but the consumer, on the other hand, cannot be expected to say, thank you and not to pay anything.

Mr. Deputy Speaker, importantly too, there is now in our legislation and, for the first time, a guarantee in relation to spare parts.

“13(1) Subject to section 49, where goods are first supplied to a consumer in Barbados (whether or not that supply is the first ever supply of the goods), there is a guarantee that the manufacturer will take reasonable action to ensure that facilities for repair of the goods are reasonably available for a reasonable period after the goods are so supplied.”

This is a serious problem and were I in a different place, I would have spoken to it from a personal experience but in this place, I cannot relate to personal experiences. But the issue of the lack of spare parts in this country is a very serious problem and one in which I have found dealers to have shown a callous disregard for the consuming public of Barbados.

Very often one purchases a vehicle which, at some point, malfunctions. The person then tries to purchase the spare part and is being told that the supplier does not have it in stock, neither does the supplier know how long it would take to arrive in the island. I know of a case where someone had to wait for as long as three months for the arrival of a spare part for that vehicle. There was the thinking in relation to this legislation that there would have been an obligation on suppliers to ensure that a stock of spare parts were kept but democratic as we are and fully committed to the process of consultation, I remembered being told by the Barbados Chamber of Commerce, at a consultation last year that, to impose an obligation on a car dealer to stock spare parts would result in the price of the cars becoming inordinately high.

Sir, that was a reasonable point made by the Barbados Chamber of Commerce, to which I see the Honourable

Member for St. Lucy has agreed. Therefore, the obligation is not to supply spare parts but to ensure that the manufacturers take reasonable action to ensure that facilities for the repairing and the supplying of car parts are available for reasonable periods after the goods are so supplied.

Therefore, the suppliers do not necessarily have to stock the spare parts but to get them into the country and into the hands of the consumer within a reasonable period of time. It would be unreasonable to have someone waiting for three weeks before getting a set of brake pads.

Mr. Deputy Speaker, I cannot say what would be a reasonable time in all cases. Matters such as these would be determined by a court of law. The obligation now is that the manufacturer is required to locate the part and have it supplied to the consumer, failing which would attract a liability.

There are also other express guarantees given by the manufacturers. The most important ones which I would highlight relate to guarantees that are made by manufacturers in documents that relate to goods. One might find overseas manufacturers, sending goods to Barbados in boxes. Accompanying the goods will be various brochures and other documents dealing with warranties and guarantees, *et cetera*. What often happens is that the local supplier buys from the foreign manufacturer and is given a twelve-month or two-year warranty on the same good. The local consumer then purchases it from the local supplier and, instead of being given the same twelve-month or two-year warranty that the manufacturer has passed on, the consumer is given a three-month warranty. Section 15 (2) of the Bill speaks against that:

“An expressed guarantee made by a manufacturer in a document relating to good binds the manufacturer, if in connection with the supply to the goods to a consumer, the document is given by the supplier to the consumer with the actual or apparent authority of the manufacturer.

- (3) An expressed guarantee which,
 - (a) is included in a document relating to goods; and
 - (b) purports to have been made by the manufacturer of the goods;
 - (c) is given to a consumer by a supplier of the goods in connection with the supply of the goods

shall be presumed to have been made by the manufacturer, unless that presumption is rebutted by evidence to the contrary”.

One must remember that ‘manufacturer’ is defined in this legislation, where the manufacturer is overseas and

there is no ordinary place of residence in Barbados by that overseas manufacturer, then it applies to the supplier or agent. Therefore, the local agent or supplier will be the person to whom one goes. That person would not be entitled to say that the consumer only has a three-month warranty when the goods that were shipped, in fact, gave the supplier a two-year warranty.

The same warranty that applies to the supplier has to apply to the consumer. This would not be a practical problem because any problem that is referred to the supplier by the consumer could be raised with the overseas manufacturer and, therefore, the local supplier would not be severely disadvantaged.

This simply would be a way of ensuring that the consumer has a direct recourse and that any warranties given in relation to the goods are not arbitrarily taken away by the local supplier.

The Bill speaks to other guarantees that are passed on to the supplier by the manufacturer, such as the replacement of goods, *et cetera*, and which are not passed on to the consumer by the local supplier. This legislation now cures that unfortunate defect.

Mr. Deputy Speaker, with respect to the provision of services, as indicated earlier, this is new in the legislation. The Sale of Goods Act currently deals with goods but this Act deals with services as well as goods. The service being referred to is that of any service that one seeks to secure from a supplier and would be carried out with reasonable care and skill, such as would be applied by any competent member of the trade or profession.
12.35 p.m.

Sir, the legislation deals with services as well as goods and any service being sought from a supplier should be carried out with reasonable care and skill and supplied by a competent member of a trade or profession. For example, if a person takes his car to a mechanic or bodywork man, he should not damage the car, or, if an electrician works in your house he should not damage any of your appliances because this is not reasonable care or skill.

Mr. Deputy Speaker, there is also a guarantee....

Hon. Miss B. A. MILLER: Mr. Deputy Speaker, with respect to the House, we are on Item 10 of the agenda which deals with protection and we should come to closure on that before we move to another matter which is not before the House. Therefore, I am suggesting that we complete the matter of protection and then go on to the matter dealing with guarantees.

Hon. R. St. C TOPPIN: Mr. Deputy Speaker, I am obliged to you.

Mr. D. St. E. KELLMAN: Mr. Deputy Speaker, I rise to speak on the Consumer Protection Bill. Sir, we seem not to understand that trading practices in the world have changed, that at a point in time suppliers had control over the consumers but because of technological changes in the world consumers in Barbados no longer have to depend on the normal suppliers within the country to source goods.

Sir, the consumer is no longer dependent on any supplier in Barbados for a particular item because they are now able to go on the internet and source the items they need, at the price they want without depending on the local supplier.

Sir, the biggest problem facing consumers is the quality of goods coming into the country. I believe that BNSI should have a provision in this Bill which guarantees that goods coming to Barbados are of a particular standard. Otherwise, we would have passed a Bill in Parliament to protect consumers as it relates to the suppliers of Barbados but consumers will bypass the suppliers, go directly to the source and this Bill will not then be relevant.

Mr. Deputy Speaker, I recently read a newspaper which said that goods can be now sourced within the CARICOM directly by persons. Sir, when these things occurred, how relevant is this particular Bill? We have to amend this Bill to make it relevant to suit the marketplace because we are limiting the marketplace to Barbados when we are operating in a globalised situation and the marketplace is now the world.

I want to ask how relevant is this Bill to what is happening in the world market because we have brought a Bill that relates specifically to Barbados when we are in truth and fact dealing with the world.

Sir, the supplier is usually the kingpin who imports the goods and sells them to the consumer but what happens in a situation, Sir, when the consumer is also the supplier since he can go outside Barbados and source the goods.

Sir, as a country we have to be concerned because a supplier, who is also the consumer will see an item at a cheap price but would not know the quality of the item. He then sources the item but when he receives the item, it is garbage. Sir, this is a waste of foreign exchange and I want to know how this Bill will solve this problem.

In order to have this Bill we must have standards to make sure that when items reach this island there is a regulated agency to ensure that the standard suits the demand of this country.

Sir, sometimes an interest rate is quoted in banking or hire purchase and the customer thinks it is the interest

rate but after the document is signed he is asked to sign something called, an effective rate. These things should be explained to the consumer in advance because if a customer believes that the interest on a particular item is eight per cent, he would calculate the item based on simple interest but then would find out that it is compound interest.

We also need to tell the consumer not to buy that item on hire purchase but to have a relationship with the credit union which would make the purchase more effective. Sir, we not only have to look at what the consumer is purchasing but at the effectiveness of the purchase. We need to educate the consumer of the importance of dealing with credit unions as opposed to going to other business houses and buying the goods on hire purchase.

12.45 p.m.

Sir, there is no doubt that sourcing a loan from a credit union to buy a refrigerator is cheaper than purchasing it on hire purchase.

This Bill has to bring other factors into consideration. It must not only focus on the supplier but also to better educate the consumer.

Sir, every day there are advertisements which give the impression that if you are bald you will automatically get hair on your head overnight.

Asides.

Mr. D. St. E. KELLMAN: Sir, interest rates and false advertising are two important aspects of this Bill. We have to understand that whether you like it or not, whatever people see they tend to believe and the effectiveness of advertisements on the television would encourage people to buy things that they do not need.

The impression is given that certain things would be achieved when, in fact, the product that is being advertised cannot deliver what is being advertised to be achieved. It is alright to say that you want to protect the consumer but I think that the most important thing is for us to educate the consumer first.

Sir, we have to operate as though we are still in a globalised economy. This is exactly what this Act is setting out to do. We have to recognise that these things used to occur but because of the changes in the economic and marketing climate in the world, previously the consumer was unable to source goods on his own, because of the internet and cable television, the consumer is now like an importer. We have to recognise this point if we are going to be serious about what we are doing.

Sir, ten years ago I would have come in here and said that this is good because there was no internet or cable

television. Everybody in Barbados is closer to the marketplace, no matter where it is in the world. The only thing that bothers me is that the private sector has to understand that now that the consumer is privileged to international information, if they do not take interest in the consumer, the consumer will spend valuable foreign exchange in travelling overseas to source goods when the same suppliers could be importing the goods to Barbados and giving the consumer a good price.

Mr. Speaker, a lot of people in Barbados are now sourcing the same goods that the suppliers are purchasing from Trinidad. However, the suppliers are importing these goods and telling the consumers that they do not have to make a large deposit on the item but when you work out the true purchase of that item, the supplier has 'ripped off' the consumers under the pretense of doing them a favour. Sir, the Vagrancy Act does not look after those consumers but it looks after those persons who are selling goods to the tourists.

Sir, the law appears to be protecting certain interest but not the poor people. We seem not to be aware when our people are being 'ripped off'. However, we pass legislation to suit those situations but we do not pass legislation to deal with rights of the consumer.

Sir, the Minister mentioned that you can go into a supermarket and find two prices on an item, one lower than the other. He said that when the consumer reaches the cashier, the lower price is the one that the consumer should pay the cashier. The assumption is, the supermarket owner is the person who puts the two prices on the item.

We also have to realise that there are consumers who also remove the price of an item from a product and place it on another product.

Asides.

Mr. D. St. E. KELLMAN: Sir, I am speaking about being fair. Please do not dilute what I am saying.

There are very smart consumers who would remove prices from one item and place it on another and if the cashier is not observant enough, they would get away with it.

Asides.

Mr. D. St. E. KELLMAN: Sir, even though the legislation sets out to protect the consumer, one has to be very careful how the Act is interpreted. We are saying that the legislation, as it stands, allows consumers to go into supermarkets, remove one price from an item and put it on another item and when they challenge the cashier, the cashier has to give them the lower price on the item. I am saying that

cannot be the intention of the legislation. You cannot blindly make that a point in law without acknowledging that there are other circumstances that can affect that law. Minor Offences Act.

Sir, we also have to understand that quality is important. I cannot understand how you can call a piece of furniture mahogany and when you check the furniture properly you realise that it is plywood. Some people believe that all they have to do is put mahogany stain on a piece of furniture and then claim that the furniture is made of the mahogany wood.

Asides.

Mr. D. St. E. KELLMAN: Sir, we have to understand that if we are serious about protecting ourselves and being our brother's keeper, we cannot continue to provide that service to our brothers and sisters. We must also understand that the item stated must be the item delivered, not only in looks but in the quality.
12.45 p.m.

Mr. Deputy Speaker, one must ask the question, was this legislation for 2002, or is this legislation for the year 1992. My answer would be, it is clear to me that we have missed the boat some 10 years and we are now behaving as if we are still in control of the marketplace called Barbados and that we are not aware, Sir, of some things called, trade liberalisation, globalisation and the World Trade Organisation rulings.

Sir, it is clear to me that we do not know what is going on because we are still behaving as if we have control over our marketplaces. We do not have control over our marketplaces and we must accept it, Sir, so why are we putting pressure on our own suppliers, when we cannot really control the suppliers who are coming from elsewhere. If we can, I want you to tell me.

Aside.

Mr. D. St. E. KELLMAN: I agree. No. No.

Mr. Deputy Speaker, I am saying, the same conditions that the local suppliers are bound by, should also apply to the foreigners. This is why I am calling for a greater role for the Barbados National Standards Institution. They are the ones to make sure that when the goods arrive here in Barbados, regardless of whom they are imported for, a decision is made on the goods as to whether or not they suit the marketplace.

If not, we are going to get a situation where consumers rush to buy the goods. I support consumers having the right of choice but it does not make sense to encourage consumers to buy them because of the pretty advertisements which I

sometimes call false advertising, I do not know what you all might call it. A lot of goods land here, at a price that is supposed to be much cheaper than the authentic brands and then we later find out that they are very much inferior. Is that what we want? Sir, we want quality goods at a good price. We want the advantage in the favour in the consumer but as long as you have false advertising, you are going to get this problem.

Sir, do not believe that only false advertising occurred in Barbados. The exposure to false advertising can be seen on cable television because whenever a call is made, you then really understand what is the additional charge and you never see the true cost up front.

Sir, I am saying that we also have to carry out an educational programme. I think the best place to do it is the same Ministry of Trade because they have a right to look after the interest of the consumers and all traders. Sir, some of the people who are importing goods in Barbados seem not to understand that they have an obligation to themselves and also the consumers.

One of the most important things afterwards, Sir, is that in order to get a good exchange, one must have the VAT invoice number. Sir, to say that you can go back to the importer is easily said but not easily done. When that good is returned, you must have the VAT invoice number to return it to the importer or the importer will not look at you. The Act has not taken this particular point into consideration.

Sir, this means that the retailer now, is saddled with a load, when in truth and in fact, it is not the retailer who imported the goods into the country. It is the importer but the retailer now has to pick up the responsibility for the importer.

Mr. Speaker, the intension, as I said, might be good but in my opinion, it is ten years too late.

Mr. Speaker, I thank you.

SUSPENSION OF SITTING

Hon. Miss B. A. MILLER: Mr. Speaker, Sir, I beg to move that this House be now suspended until 2.00 p.m. this afternoon.

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

The question that the House be now suspended until 2.00 p.m. was put and resolved in the affirmative without division and Mr. DEPUTY SPEAKER suspended the House accordingly.
1.00 p.m.

RESUMPTION

Mr. SPEAKER: This Sitting is resumed.

Hon. R. R. FARLEY: Thank you very much, Mr. Speaker.

Mr. Speaker, I rise to support this Consumer Protection Bill, 2002. This legislation is very important. Much has changed since the earliest form of consumer protection legislation, in terms of the way business is done, the relationship between the supplier of goods and services and the consumers. It is, therefore, very important that we take an opportunity to update, by way of revision of law, the relationship between supplier and consumer.

Sir, scattered across a wide range of legislation, the sales of goods, the Hire Purchase Act, the Control of Sales Act, the Weights and Measures Act, the Miscellaneous Controls Act, the Food and Drugs Act, the Therapeutic Substances Act, the Health Services Act and so on, are a range of consumer protection.

However, what is fundamentally different and very positive about this legislation is that it recognises that there needs to be a specific and well-defined framework, in order for us to properly set out in the law, the nature of what should be very fair and in the public interest. Indeed, Sir, that is perhaps the fundamental change in the nature of the relationship between buyer and seller.

Previously, much of the consumer protection or much of the responsibility, really, was thrown on the consumer by way of the old concept in the law, *caveat emptor*, let the buyer beware, on the assumption that there was an equal distribution of knowledge between buyer and seller, as if a buyer was always necessarily in a position to do a thorough analysis of the range of electronic gadgets, of vitamins and other health and medically related substances, of the range of materials, supplies and equipment for the household and the office. Whilst there is an important role for consumer responsibility, there is also a very fundamental role for those who supply goods and services, in our very dynamic economy, to recognise that they have a responsibility, in the way that they represent the public, concerning what their products or services can and cannot do.

Sir, nobody expects a product to be perfect but people want to know what is the extent of imperfection. If a particular gadget can only perform two functions, they want to know because a person may only want a gadget to perform two functions.

Sir, nowadays we have these modern personal computer devices or the hand-held computers as some people call them but when you go to buy any of these gadgets, you

are sometimes confused by the wide range of options available. A person may only want two of seven options, and therefore, the nature of advertising which is done should be able to help the consumer to know just what he is getting for his money, the value for money.

This legislation, Sir, to the extent that it recognises that there is, indeed, a burden of responsibility of those who offer goods and services in our economy and identifies what they need to do, by way of what is fair and reasonable in the public interest, is fundamentally different from what has gone before.

Sir, I want, in the presentation, to look at some of the other things which are being done in addition to the legislation to make sure that it will actually work. While the reform of the law is fundamental and that is what we are here for, we are not discounting that important role, we also need to recognise that mechanisms, institutional and otherwise, must always be in place to support the law and to ensure that it is given every opportunity to succeed.

There were for example, Sir, in this context, the appointment of a public counsel to represent the people's interest and to give people a real chance at having their consumer protection concerns properly addressed, is indeed a most bold, courageous and important step. It is no longer a game. It goes back to that old rule, let the buyer beware. We are not going to seek their rights up front but if you have a problem, you can seek redress. But seek redress how? The how is being provided.

Sir, it is not left to the ordinary citizen alone to fight against businesses that may not want to discharge their responsibility to take care of any problems that occur in the products that they sell, the Government, Sir, is producing the institutional provider, the institutional resource, public counsel, the people's counsel, a skilled and very knowledgeable Attorney-at-Law to work, to fight on their behalf and that, to some extent, levels the playing field.
2.05 p.m.

In other jurisdictions, such as the United States of America, Canada and the United Kingdom there are large corporations which have billions of dollars in resources that are able to retain the services of premier law firms, and those are the entities that individual consumers have to fight. You will remember, Mr. Speaker, that case with Erin Brockovich which shows that you can have one individual who can take on the system and win. We are not prepared in this country to leave that to chance because we know that sometimes that will happen. We are providing the institutional support for the man and the woman to walk off the street to go to the Ministry of Commerce, the office of the people's representative because he is not there to work for the Minister or for the sellers of goods and services, he is there

to work for the people and to advocate their interest, to seek redress. So I want to applaud that initiative.

Sir, now that the legal architecture has been put in place I hope that consumer groups would come to the fore because they have important roles to play. It is my view, Sir, that consumer organisations in Barbados have a fundamental role to play in educating their members as to what to look out for and what their rights and responsibilities are. They have by virtue of their connection with the broad mass of consumers, and I do hope that their membership base is broad, to provide very valuable information to them.

In the United Kingdom there is a magazine called 'Which' that provides very valuable information to subscribers about what is happening with products. There are also annual reviews on health and safety. Coming on to Christmas you are going to see various consumer magazines doing reviews of which toys are safe and which are not. You will see various magazines which are produced by consumer organisations which test motor vehicles to see at what speed they would overturn, to see whether they are safe for this or for that and how the tyres are blown out and under what conditions. So consumer organisations have important roles to play.

Sir, I am not discounting the role of advocates. Advocates have a strong advocacy role to play but advocacy without following through is nothing more than nought, just wanting to be seen and heard and that you have made a big snatch. I want the work of consumer organisations to move beyond advocacy, though important, to highlight the issues and to empower the consumers of Barbados so that they understand what is happening because it is my view that we must not let this legislation push us in the wrong direction.

One may ask what I am speaking about, Sir. There is the matter of individual rights versus individual responsibility. That question comes up again and again about what are the consumers' rights and their responsibilities. I would not want to have the word go abroad in this country that with the enactment of this consumer protection legislation, that the consumer no longer has any responsibility that he merely has rights which is an exercise.

In fact, Sir, the larger question as always, and this comes up in several aspects of national life, is what is the appropriate balance between the exercise of the responsibility of an individual and the role for the State as a protector. The State has a fundamental role to discharge to protect its citizens. It does not, however, strip or otherwise relieve individual citizens of pursuing their individual rights and discharging their responsibility. Therefore, consumers need to examine the products themselves and to satisfy themselves of the wholesomeness and suitability of what they are purchasing and not merely seek to have redress after the fact. That is a fundamental point, Sir.

Sir, the role of the people's counsel needs to be applauded. Sir, the matter of the relative role of the State and what we as a Government need to do and what the individual consumer must do, have been heightened by the rapid trade liberalisation which is going on. Sir, obviously we import a wide range of goods and services from overseas and as the product offerings in the marketplace increase with local production as well and as we look towards the benefits of trade, the World Trade Organisation, the Free Trade Area of the Americas (FTAA) and the Caribbean Single Market and Economy, we have a number of facts to face. This again speaks to the things in addition to the law which are being done and which must be done in order for us to benefit.

Sir, in the past, certainly up until the early 1990s, the Government could legally produce a range of licences which effectively ban the import of a wide range of items but under the World Trade Organisation rules that device is no longer available to us. This has, therefore, increased the responsibility of the Government, and I am pleased to note that they have responded, to properly define what is fair, reasonable, wholesome and suitable and what products are proper for consumption. Therefore, Sir, the continued need to introduce a number of product standards for manufactured goods, for food products, for medicine and for a range of items which are supplied now becomes more important.

Sir, when I look at some of the consumer protection problems which have been identified by the Ministry, it indicates to us what we need to do. For example, the matter of pre-packaged foods being sold after the expiry date. It happens with vitamins too, Sir. If you go into some stores to get some vitamins to give you a little more 'pep in your steps'...

Asides.

Hon. R. R. FARLEY: I am hearing *sotto voce*, Sir, a little more 'life in the pencil' or a bit more power for concentration and some strength and endurance...

Asides.

Hon. R. R. FARLEY: Sir, if you were to go on the store shelves and pick up your vitamins and if you are not careful you will leave the store with vitamins that have past the expiration date but you are buying them as new. Sir, clearly the buyer must discharge his or her responsibility to examine the products and to make sure that what they are buying are not past the expiry date. There is also a role for those persons who are selling those products to ensure that they discharge their responsibility to the public by not buying more of those products.

Sir, in business there is a market for everything and there is a specific international market for products which are

near to the expiry date. If you are a manufacturer of food items or medicines and you are coming within six months of the expiry date you do not want to be stuck with these products in your warehouse so you put on a sale and there are businesses around the world that buy these products that are near expiration in bulk and will then sell them on a bargain market.

2.15 p.m.

These products carry the same labels as their counterparts which say that they are wholesome and fresh but yet unscrupulous people would sell them for the same price but those are the challenges that we face.

We face the challenge of household appliances breaking down soon after they are put into service. We face the problem of, for example, some shoes being not up to standard, where if they are worn once and the weatherman says that it is going to rain, the bottom of the shoes drops off in anticipation of the weather.

Aside.

Hon. R. R. FARLEY: I hear that those are the shoes where someone purchases one pair and gets another pair free. Sir, there are real problems where consumers are faced with the situation where they go into a store, see a product which looks good but in fact, is not good.

Sir, standards are important in helping to give some minimal guidelines which would ensure that what is put out would, as far as possible and in the most vital areas, represent products that meet the minimal requirement.

I am pleased to note that since 1994 when there were only 13 mandatory standards in place, that number has now risen to 44. In other words where, according to the law, these 44 standards now have to be the mandatory standards as defined by the Barbados National Standards Institution (BNSI) and are set out in law.

I look forward to the day when we are able to come up with a new regime to deal with issues such as genetically modified foods. I believe the consumer has a right to know and there is an obligation on the part of manufacturers of food products with regards to genetically modified foods, to let the public know that a particular substance is used in the food process and, therefore, let the buyer make a determination as to whether they feel any sense of comfort from the good words of the scientist who says it is safe, or whether they have concerns in relation to other research that raises doubts about some of the substances that are used.

Sir, we have to ensure that we have standards in place to make sure that where there is any threat of disease in plant or animal life which could be transferred from country to

country or from non-human species to human, that we in Barbados do not become susceptible by virtue of importation of items from those countries or sources from which we have that information.

Sir, in that regard, the Government has not been silent. We are not only speaking of things which have to be done but since 1997, we have appointed a number of standard inspectors who are functioning under the legal authority of the Control of Standards Act. The standard inspectors have been active at the Bridgetown Port in the manufacturing facilities, in supermarkets and wherever business is being transacted to make sure, for example, that products that are entirely in a language other than English do not come on the shelves.

Sir, before standards were in place, there was a type of corn beef where one could have only had a suspicion that it was corn beef because of the fact that the can had a picture of cow head on it. There was nothing written in English on the can.

I know of cases where shipments were seized because they purported to be one thing when, in fact, they were of another kind. Very often, products are intercepted at the Bridgetown Port and samples are sent to the Government Laboratory for testing. If the product does not conform to the standards, then they are prevented from entering the country. To use tomato ketchup as an example, there is a definition for that, for it must contain or be made from tomatoes. It cannot simply be corn starch with red dye added to it and passed off as tomato ketchup. These things happen and people are not aware of them. Overtime there are a number of things that have been going on to protect the consumer and much more will happen.

Sir, I want to applaud the Ministry of Commerce, Consumer Affairs and Business Development for doing the work that it has been doing. I am sure that strengthened by this legislation, they will do even better and greater things on the behalf of consumers in Barbados.

Mr. Speaker, speaking to those things which must be done in support of the law to ensure that it is a most efficacious instrument for the protection of consumers' rights, let me say that the passage of this legislation completes the three important functions that were identified in 1998 as the key roles of the Fair Trading Commission: the utility regulation, competition policy and consumers' protection.

The Fair Trading Commission is, therefore, fully charged and fully expected to discharge responsibility on the behalf of the business community on the one hand and the consumers on the other. In rewriting the commercial constitution in Barbados, the role of the Fair Trading

Commission is key and I would, therefore, want to urge the Commission to take up this task but to recognise that as it discharges both administrative and more particularly judicial roles as a tribunal, to decide on a number of matters before it under the law, the Fair Trading Commission is bound by that dictate that justice delayed is justice denied. As an institution which would have a fundamental impact on the conduct of commerce in this country, it cannot be immune to the rapid changes that are affecting the business community.

One of the most rapid changes affecting the business community and the world of commerce in general is the notion of speed. Yesterday is no longer the answer. There is a legitimate and natural expectation that things would happen at a faster pace. In the past when a person wanted to travel overseas, the only form of travel was by boat and that person knew then that the trip would have taken a few months.

Today, air travel has heightened the expectation as to the ability of crossing greater distances. Such other things, for example, telephones, fax machines and the internet, have all increased the expectation concerning people's response to time. When, as consumers, we order a product, we expect to get a quick and an efficient delivery. When businesses have matters before Government, the courts or tribunals, they expect to receive speedy decisions and responses.

It is important that in discharging its responsibility and in administering these three sets of legislations, the Fair Trading Commission should lead by example and be one of the speediest, most efficient, yet most thorough agencies that both consumers and business persons alike, would be able to have full confidence in the work of the Commission by virtue of the fact that the necessity to put matters before it and to await decisions should not impact adversely on the ability of persons to get on with their lives.

I would want to urge as the Fair Trading Commission begins to discharge the third of its three major responsibilities, that it keeps that matter ever before it. Time is of the essence. Time is money. Justice delayed is justice denied. We live in the digital age and not the stone age and, therefore, the Fair Trading Commission needs to lead by that very great example in relation to matters that are before it.

Mr. Speaker, I conclude by saluting the Honourable Member for St. Michael North for the work he has done in bringing this matter before us.
2.25 p.m.

Mr. M. Z. WILLIAMS: Mr. Speaker, I would also like to lend my support to this Bill before the House and to compliment the Minister and Ministry of Consumer Affairs for bringing at this time, this piece of legislation that will make wrong things right as far as the consumer is concerned.

For many years several unfair practices were carried out to the benefit of the trader and this legislation now gives the consumer some protection. It is good to have this Bill before us but it must be policed to make sure that the practices carried out before will now cease.

Over the years a lot of paid advertising has been done to entice the consumer to purchase but the products advertised are not what the consumer receive. Many consumers purchase products on hire purchase but the product displayed in the showroom is not delivered to them. A faulty product is taken from the warehouse and sent to the consumer's home and because it is bought on hire purchase the company is reluctant to exchange the product. Sir, this is not fair to the consumer because it was bait advertising that caused the customer to purchase the faulty product in the first place.

Sir, I am happy to see in this Bill that fine print in the hire purchase agreement must be made legible because people usually sign a hire purchase agreement without realising the implications of the fine print written in the agreement.

Mr. Speaker, a lot of these advertisements are not genuine or accurate. Various financial institutions and banks advertise loans but if you try to access those loans you will find that the criteria required is different from what has been advertised.

Sir, products are advertised but the instructions for these products are not written in English. Last month I purchased a water heater but there were no instructions written in English. Mr. Speaker, people like to have a bargain but they may end up purchasing an item that will not work.

Mr. Speaker, this Bill also speaks about service. For example, one of your utilities may be disconnected, you settle your bill but there is still a long time before the reconnection is made. Sir, we are speaking about consumer protection and service. Sir, for example, let us look at Cable and Wireless Barbados. Your telephone has been disconnected and you subsequently paid the bill. After paying your bill you have to wait three or four days before that service is reconnected. I believe that it is a disadvantage to the consumer.
2.35 p.m.

There are also situations in some utility companies and government agencies where a utility service is disconnected. For example, the Barbados Water Authority, the bill is paid for re-connection and you have to wait a very long time before the water is reconnected. If the utility company has the right to disconnect the service, then after the bill is paid the consumer has the right to have the service reconnected in a very short time. I believe that if you are talking about

consumers' protection, then these are the little things that the average person should benefit from.

Mr. Speaker, another situation, for example, Cable and Wireless Barbados or the Caribbean Broadcasting Corporation, where people apply for telephone or MultiChoice Television and are waiting for months and the service is not being delivered. I feel that it is unfair to the consumer to take their hard earned money and pay for a service in advance, make an application for a service, then in order for you to get that service you are being disadvantaged. Sir, if we are talking about the word 'fair' we are talking about people being given the opportunity to be treated equally, then we must see it as fair trading in all exercises. I am concerned about the things that I mentioned earlier and it is the average man who is being affected by it.

I hope that when this Act is implemented the government agencies that are guilty of such acts, would set the example by improving their service and making it better for the consumer.

I am also concerned when an item is advertised. There is a new trend in Barbados where people walk around the stores in Bridgetown and take prices off one item and put it on another item and it is checked as what is shown on the item. However, this Bill states clearly that if an item is advertised for the consumer to see, the consumer must pay the price as advertised, this is where policing has to come into the picture.

Mr. Speaker, if you have a situation where people are going into stores in Bridgetown and taking the lower price off an item and placing it on an item that cost more, when it reaches the cashier and the cashier demands the correct price of the item, problems are going to arise. I think that price tagging is something that we need to address in this Bill. Sir, as far as I understand, price tagging is an important issue of the Fair Trading Commission.

Mr. Speaker, I am also concerned about the guarantee on vehicles. For example, when you purchase a vehicle, you have 'X' number of miles allowed before you get a free service. When you have done the 'X' number of miles and you take it to the garage for the free service, you are denied that free service and you are charged for it. I am wondering what the word 'free' means. Does it mean, when we are told that we are entitled to something free, that we have been misled when we take the vehicle back to the garage for a free service?

Mr. Speaker, I identify with all of these things because I consider myself to be a man who is out there in the street. I know that there are legal aspects of this Bill that the average man may not understand. This is a Bill for the legal minds to understand more so than the average man. The

average person is mainly concerned about the product that he is buying and the service which he should get from that product.

Sir, businesses in Barbados must understand the benefit of the customer to the establishment. The customer is very important to any business. I object to the type of treatment that a customer receives after standing in a long line to pay a bill and when the customer reaches the cashier, the cashier puts up a sign which says, 'next cashier' or 'closed'. Sometimes these customers drive for almost two hours in heavy traffic to pay bills and then get this kind of treatment. I do not think that this kind of treatment can be fair to anyone. It cannot be fair that you should be treated shabbily by the person who is benefiting from your payment. Sir, people who exhibit this kind of behaviour do not care about their customers.

We as Members of Parliament are responsible for our constituents understanding of what is in this Bill. They must also understand that we did not bring this Bill for big manufacturers but this Bill is for the benefit of the average person.

Mr. Speaker, an Honourable Member spoke about the expiry dates on products and that the language on the labels is not written in English. These products can be detrimental to consumers who cannot read what ingredients are in the products. The sales person is only given the 'marketing pitch' for that product which says that if you use this product it would stop your heart from palpitating and reduce stress. However, the consumer cannot read the label regarding any side effects from using this product.

Mr. Speaker, these are the kinds of things that have to be policed. I am happy that this Government can find it proper to bring this Consumer Protection Bill, which gives the consumers the right to feel comfortable and safe when they are dealing with a company.

There is also a situation in Barbados where the owners of boutiques go to Miami and other places and buy second-hand garments and sell them to people who do not know the difference between used clothes and new clothes. Some of these clothes are bought from containers and warehouses and high price tags are attached to them and the owners get away with murder. Those things must be policed, Sir. If the consumer is to benefit from something that is new, I do not think it is fair to allow people to shop overseas and exploit Barbadians. Whenever a consumer purchases an item, he must be guaranteed something new, that will last and the price paid is equitable.

2.45 p.m.

Sir, I am not going to be much longer on this Bill, based on the fact that I think what I have said here, basically deals with the man in the street. I stood up here to put my

case for this Consumers Protection Bill so that the man in the street would fully understand that he has a right to challenge and make sure that this service is provided to him. Whenever he purchases something, he has the right to make sure that the item is the correct one, it is not one that is going to give him a problem, and he can have a refund.

Mr. Speaker, if we are supposed to pass a Bill here in this Honourable Chamber, as far as fair trading is concerned, the example must be set by the Government agencies, so that one can say that the Government agencies have done what is right.

In repeating, Mr. Speaker, we have a particular situation in Barbados as far as the consumer is concerned. Let us take for example, people trading in shoes in Barbados. We have several shoe shops across Barbados and it is quite strange that you can go to one shoe shop, see shoes at one price, walk to another shoe shop, see it the identical shoe at another price and walk to yet another shop and see the shoe at still another price. Sir, it is the same identical shoe but the price varies and it is obvious that the person who is selling the shoe the cheapest is likely to have it sold.

My argument about this is, if it is the same shoe, the same manufacturer, the identical product, how is it there could be three different prices on this particular item. That is why I believe that this Bill before Parliament will make those things right.

Sir, I will tell you of a situation from my experience. A lot of you might not know that there are several store managers who send out their staff to walk around with a piece of paper and a pencil. For example, if you are selling clothing, the staff member who works in a clothing store will walk around to the next clothing store to look at the clothes, record the price, and go back and tell the boss that the store (Cave Shepherd) has the identical dress at \$6.00 so then they reduce it to \$4.00. It happens and it is a practice.

Asides.

Mr. M. Z. WILLIAMS: Mr. Speaker, in so doing, somebody is likely to be placed at a disadvantage.

I support this Bill before Parliament and hope that the Minister of Consumer Affairs, who is responsible for bringing this Bill to Parliament, would have the Bill policed, for the benefit of those people who are consumers in Barbados.

I thank you, Sir.

Mr. T. A. PRESCOD: Mr. Speaker, my contribution will not be that of the professional legal mind but one of a quasi professional in the specific area. I certainly will not

dwell too much on the tenets of the legislation but I would like to put both pieces of the legislation within the philosophical context in which, consciously or subconsciously, the two instruments were introduced.

Sir, this piece of legislation must be described as very progressive. For over 100 years the instrument that governed many aspects which this legislation now touches upon, was introduced and sanctioned in the late 19th Century, in the form of a Sale of Goods Act.

Sir, for over 100 years and since the 1890s no major piece of consumer legislation was introduced that is comparative with the present piece of legislation before us. During the time of colonial rule and subsequently, the black self-Governments of Barbados, and all successive Governments, have failed to touch on the heat wave that is likely to create shock in the parochial sector. They are likely to have a reaction that might not be too favourable to the tenets in this paramount legislation.

The point, Sir, is that this piece of legislation is counter to everything that capitalists strive for because capitalism, guided and underpinned by the principles of Calvinism, or a philosophical or sociological theory called the Protestant Ethics, always strive for maximum profit. This piece of legislation now puts an obstacle in the way of maximum profits and demands reasonable profit. The price on the goods must be reasonable. Sir, this is not jurisprudence but I assume that reasonable can only be determined if one understands the cost of production of the unit and matches that against the profit that the person applied to the cost of production, which includes the labour and material costs of manufacturing the product.

Marx talked about it as surplus value or surplus labour cost. The Calvinist theory is a little different. It indicates, clearly, what I call post capitalist theory more so than capitalist theory. Sir, what we are actually attempting to do, is to create a post capitalist environment when we introduced this progressive legislation.

When a society accepts, not only progressive legislation that places emphasis on the consumer but progressive legislation throughout our history and the history of black Government that speaks to the question of welfarism and social policy, that is what I call a post modernisation or a post capitalist approach to the problems which we have in the society.

Sir, both instruments of this Consumer Act empower the masses of people who before were at the mercy of the business sector, especially when the business sector can create artificial costs by controlling demand and supply. All they have to do is to withdraw their availability of goods and allow a limited amount of a specific kind, to be available to

suit the demand of the day. Then, the price escalates as a result of a high demand and a limited availability of those goods.

I would hope that the legislation would be able to address that kind of artificial methodology, in order to arrive at a very high profit. Sir, that is why I say the Capitalist theory of Protestantism has influenced a claim by religious commitments and is a reward that comes from a divine force, whereby you become wealthy.

Sir, you get material wealth because of the Divine. You have not just chosen to acquire wealth but because the Divine has blessed you. Sir, they give a rationalisation and justification as to why they are rich in the society, when all of us know that they are rich because they exploit labour and sell inferior goods to the consumers.

Sir, it is not a communal system that existed in Africa prior to communism, where the community itself shared in whatever resources that were available. It is a system that derives from people becoming selfish and individualistic, who use all kinds of methods to get maximum profit so that they end up with maximum profit and minimum cost. Sir, that is what happens in a capitalist environment.

The corporate sector strives for maximum profit and uses whatever it can get from the goods and whatever it can exploit labour or even produce a product that is inferior but has a patent image, as though it is equally as good as the genuine product. These are the realities. We see it in electrical equipment and even in clothing.

There are popular stores in Barbados called 'Miami' stores which produce goods with names where they take out one letter of the brand name and insert another. They then charge a price, which is a little below that of the brand name item, when they know that the quality of the product is far more inferior. This is what we are talking about, Sir,

Sir, there is a political thinker, a wise man by the name of John Chrumpeter and this is what he said:

"Social structures, types and attitudes are coins that are not easily melted. Once they are formed, they persist possibly for centuries."

2.55 p.m.

He was talking about the corporate sector. He is saying to you that the transition will not occur tomorrow simply because there is a new legal instrument that empowers the consumer but that it is going to take them a long time to make the transition into understanding the importance of fairness because you cannot have fairness and maximum profits, you have to have some relative point. You cannot have maximum profits which are created by withholding

goods, sensitizing the public and developing and increasing the demand for the goods and then putting up an artificial cost on the products. That is not the maximum profit we are talking about, we are talking about reasonable profit on the items because if we are to have a provision in the Act that states that the price should not be unreasonable, then there must be a recognition to determine what reasonable is. It might not be left to the instrument itself but it might be left to the interpretation of the tribunal or whatever judicial body is responsible for the interpretation of what is reasonable in the circumstances. However, in the political sense, I would love to be able to interpret what reasonable means in the circumstances.

Sir, we are living in a capitalist environment that is vulgar and indifferent to the concerns of the consumers, so I am very supportive of this legislation. I want to compliment the Minister for having the courage to bring this legislation here today. There are many persons who came to this Parliament before who would have been very reluctant, especially if one takes into consideration the timing, to do this because some people believe that you should not launch an assault on the capitalist entities in a society on the eve of a very important historic period of your electoral life. Therefore, they would have been reluctant at this time to bring a piece of legislation that restricts the capitalist entities from abusing and exploiting the consumers, but the State has an important role to play at all times. That is why I am an opponent to anyone who advocates that the State is not an important and major institution in ensuring that the governance of the society continues or in developing a form of equity and equality or fair play and social justice within it. I believe that the State has to govern and must be a major player in the decision-making process even as it relates to how the corporate sector behaves in this society.

Sir, the State is the major consumer in this society because it has to purchase items for many different institutions. It has to buy goods and services for the hospital, whether it is corned beef or whatever is required, so it has to protect its interest as well as the people's interest. It has to buy items for the Prison and for the children's homes, so the State understands the burden when people inflate prices or when inferior items are sold to it. We have had such an experience recently at the hospital where items that were sold to the hospital were of an inferior quality. Sir, this legislation addresses all those problems, that is why I am saying that it is a progressive piece of legislation.

Mr. Speaker, that culture we are talking about which we intend to launch this assault on is not a culture that is unique to Barbados but is a universal culture that behaves the same way. It does not change overnight. Sir, the society might not see the benefits of this piece of legislation until major test cases come before the tribunal and we look to see how long the consumer will have to sit and wait for redress

or for a remedy to be provided as a consequence of the provisions within the instrument itself.

Sir, this legislation is only the beginning of a major challenge, that is why I welcome it because I believe it is fundamental especially at this time when most of the products which we consume are imported. Through globalisation the industrial countries will be producing items and products at a much lower cost than what we can produce them at within the Caribbean and we are already seeing signs of an increase in imports from those markets. Through our agreements with the Free Trade Area of the Americas (FTAA) and the World Trade Organisation (WTO) we are forced to open up the market by removing all the protectionist mechanisms that would have protected the market to allow even local products and produces that will be much cheaper, to be competitive on the local market. So we have to have legislation in place that will protect the consumer.

As I said before, the Minister has done a courageous job. This instrument empowers us and gives the consumer organisations greater teeth to act because they have been struggling for a long time. This provision gives them an opportunity now to go to the consumers with a package that will help them to understand why it is important to have the collective strength of these bodies out there advocating and helping them to seek solutions to the disadvantages that exist within the capitalist framework in these societies.
3.05 p.m.

I want to compliment those persons such as Rabbi Hinds who, years ago, used to be one major consumer icon walking the streets of Barbados. His life was surrounded by the role which he played as an agent representing the rights and the interests of the consumers in society. Since then, I have heard of a number of consumer organisations which have only played a nominal role and were unable to make any great demands for change on the cooperate sectors in Barbados. In many cases, these organisations had limited powers in terms of using the legislation to seek redress.

Sir, now that the legislation is here, I would hope that the Ministry would go into a public relations programme to make the general public fully aware of what it contains. I have been told that the Fair Trading Commission will take on that responsibility. They must work assiduously and must use contemporary techniques to ensure that the listening public would understand what positive tenets are in this piece of legislation and how they could use the legislation to seek a remedy to all the inequities that are in the system.

Sir, over and over again, individuals have experienced going into stores both in Barbados and in the Caribbean and purchasing items for a specific purpose, sometimes with labels misrepresenting the facts. Individuals purchase these

items, then discover that the purpose for which the item was advertised is contrary to the use of the actual product itself, which sometimes results with persons having no means, whatsoever, to a recourse.

Sir, this example can be found in Swan Street where there are a number of characters who sell all kinds of strange materials, including watches where if a consumer buys a watch and hold up one's hand and in less than five minutes, the watch hands drop off. First, because these businessmen want to meet the demands in taste of the trend-setters in the neighbourhood, they buy inferior products, then exploit the ignorance of the society by selling these inferior merchandise which after being purchased become short-lived.

I am happy that these provisions are put into the legislation, including compensation for items that were bought and then returned and, if not compensated, there is now a recourse to the Tribunal. If the Tribunal cannot handle the situation, it then goes to the law courts.

Sir, we also have to deal with not only the poor standards but with deliberate misrepresentation based on deceit where one advertises. I think the lawyers use a technical term by calling it an invitation to treat which means that though it is in the storeroom, do not assume that it is an offer.

Sir, I am supportive of the legislation. We still have to wait to look at the technicalities we have to face as we test the material facts of the various cases that would go before the Tribunal.

I hope that the Tribunal would be very clear and that competent persons in the form of the Public Counsel would be very clear as to how we would determine some of the elements in the instrument itself and that on interpretation, we can see clearly what is a defect.

One of the troublesome areas is an argument relating to what is a reasonable price. What this legislation says is that this instrument will not entertain or tolerate artificial pricing. How are we going to deal with a situation in a modern environment where demand and supply could also influence price? Can a person still hold onto those traditional principles in the marketplace and say that a chair which costs \$10 to produce, is now being sold for \$10 000? Can he justify the surplus cost of the item by stating that there is only one of its kind and since there is a demand by 20 persons for this specific item, the price should be pushed up?

Sir, would that be considered in the interpretation as being reasonable because of the traditional practices in the laws of economics or are we going to have a situation where price would be determined. Are we going to be able to determine price based on the cost of the production of that

item and then say only a reasonable profit would be applied? In total, it is consummate in the provisions but it is a matter of how does one apply and make it a practical instrument to be able to achieve all of the goals that the legislature and the Ministry have set out to achieve. My concern is exclusively the practical application and the success of these two pieces of legislations.

In general, I want to support the courage. I want to support the Minister for bringing this, a very challenging piece of legislation and which the Government itself would have to be committed to the interest of those who are vulnerable and that Government could be prepared to look at any opportunity cost that is likely to come as a consequence of introducing legislation of this kind, on the eve of a very special historic period in electoral process of Barbados. Sir, that is my small contribution to this discussion.
3.15 p.m.

Hon. Miss B. A. MILLER: Mr. Speaker, I rise to make a short contribution and to congratulate the Honourable Minister for bringing this legislation before the House.

This is another piece of legislation which speaks to what the Government is doing in relation to the protection of the consumer and consumer rights in Barbados. For many years we have had a national standards institution and Barbados will be the headquarters of the Caribbean Regional Standards Institution from January next year.

Sir, we must not believe that this legislation means that the consumer does not have to abide by the old maxim, buyer beware, as Barbadians are not foolish and they will not buy a 'pig in a poke'.

Mr. Speaker, we have to remember that suppliers and buyers have rights as well and I want to add my voice to those who are calling for the Ministry of Consumer Affairs to look to consumer education because Barbadians must now be more selective and they must exercise basic commonsense. They must also be prepared to keep the receipt for at least one year if a purchase is made for a large amount. They must be prepared to read labels and instructions on items purchased.

Sir, traditionally, the distributive trade has never been interested in servicing large consumer items sold to persons. I believe this legislation will go a long way to protect those who buy large appliances like refrigerators, stoves, washing machines or motor cars but we still have to exercise common sense. Barbadians boast about literacy and they must learn to read labels and to understand that if a label says Orange Juice Drink that it is not orange juice but something parading as orange juice. Mr. Speaker, the buyer must be aware and they must expect to pay more for quality.

Mr. Speaker, the Honourable Minister said there is a market for everything and that is perfectly true because you get exactly what you pay for and at the end of the day the market will determine the price to be paid for an item and the consumer will have to decide whether he can afford to buy an item or not because what the consumer wants and what he needs are two different things.

Mr. Speaker, I do not want people to believe that when this legislation is passed that the consumer does not have to exercise judgement, common sense and wisdom. Sir, this legislation will help the consumer to make an informed choice but we must understand that suppliers have a duty to sell us goods that are fit and suited for the purpose intended.

Sir, we have some virtual monopolies in Barbados and I am very concerned about this. The Barbados Light and Power have power surges which damage the equipment of people and I have suffered because of these surges but, Sir, somebody will have to refund me for paying to put my service right but at least, with the Barbados Light and Power Company you pay for the energy used because there is a meter and it is read before you pay but this is not so with the telephone company.

Sir, my telephone has not worked for four days yet I have to pay the same rate at the end of the day. This is the kind of protection that Barbadian consumers must look to particularly with services because we tend to fall down where services are concerned.

Sir, particularly in respect of utilities, we are hostages because we are totally dependent on them and, unfortunately, in Barbados there is no private sector consumer association such as you will find in other countries that will help the movement for better services.

We are pleased to see that there is going to be a body that will monitor this situation and to which complaints can be made but first of all you have to be able to prove that you have purchased the item so you must keep your receipt and be more aware as a consumer. Sir, it will have to be a well-informed complaint. You have to prove that you bought the good or the service. You have to keep your receipts and be more businesslike as a consumer.
3.25 p.m.

I do not think that you can be so unreasonable as to believe that somebody is going to give away things. There is nothing wrong with advertising. Sir, everybody wanted to look like a film star so they used Lux soap.

Asides.

Hon. Miss B. A. MILLER: Sir, that is a form of advertising that drives the sale of goods and services. Michael Jordan wears a certain type shoe or jersey so the

young people feel that they will wear them too. Mr. Speaker, that is not going to disappear and it does not mean that there is no truth in advertising. There is a line that has to be drawn there and part of the Commission's job will be to monitor that.

I think that Barbadian consumers need to be far more educated in respect to what their rights are and it needs to start at the level of the schools. I think that Barbadian consumers have to be more selective and this legislation will help them if they are going to a shop and they are not happy with the goods, they are entitled to say that this is not fit for human consumption.

Asides.

Hon. Miss B. A. MILLER: Sir, years ago there used to be inspectors who visited shops. I do not think that any shop in Barbados should be offering for sale a can product that is rusted and past the expiry date. It does not obviate the need for me, as a consumer, to arrive at a judgement as to whether this is really a fit item to be bought. Although there is a saying that 'every pig has a buyer', so people would come to buy it.

Sir, as the Minister pointed out, the health and safety of the consuming public has to be protected. In fact, they are some people who would have to be protected from themselves.

Mr. Speaker, you only have to hear that something spilled in the road and everybody goes to see it or to get some of whatever it is. There are other practices, from a health point of view, which were unacceptable in Barbados. However, we do not see them nowadays. Happily we have moved away from that.

Sir, I would wish to give my support to this Bill that is before us and to urge wide-ranging and further public education, so that we, as consumers, can get a fair deal. I would wish to, particularly, to draw the attention of the Minister to those who offer services in Barbados and who have virtual monopolies in Barbados, therefore, who are in a greater position to abuse consumer rights, than, perhaps, if they were in a more competitive situation.

Mr. Speaker, those were the points that I wanted to make and I oblige you of the opportunity to be able to do so.

Mr. D. T. GILL: Sir, I rise to make my contribution to this new and exciting Bill. In so doing I would like to congratulate the Honourable Minister who, in recent times, has been piloting some very modern-day and progressive pieces of legislation through this Chamber. For example, Electronic Transaction Act, Bankruptcy and Insolvent Act, the Fair Trading Commission Bill, The Small Business Development Act and now the Consumer Protection and Guarantee Bills.

Sir, this year seems to be the year for the Honourable Member for St. Michael North. It only goes to show from whence we came. The Honourable Member for St. Michael East made mention of people like Rabbi Curtis Hinds and other persons who would have agitated and gone the length and breadth of Barbados trying to bring some respectability and decency to the consumer.

Sir, sometime ago I bought a car and a few months later a small speck appeared on the windscreen, which looked like a manufacturing defect. Over time the speck became larger and I contacted the garage regarding the problem. I was given the run around by the garage which lasted a very long time and at the end of it all, they did nothing about it. Fortunately, I met the Area Manager who was visiting at Barbados and I explained what transpired. Incidentally, he spoke French and thank God I was able to converse with him in French. He told me to meet him at the manufacturer's representative that afternoon, a Fax was sent off to the manufacturers and my windscreen was replaced because the speck was getting bigger. Sir, when I was driving the car at night, this speck made it very difficult.

Mr. Speaker, when a consumer spends money the consumer wants to have some form of compensation or recourse without necessarily having to take the matter to court.

Sir, everyone wants to live long and as the Honourable Member for St. George South says 'enjoy the good life'. When trading is easy, where markets are more open and trading hindrances are being reduced, the consumer must be protected.

We have persons who go to the various health stores and purchase all types of health products in the form of supplements in order to live long, restore virility, increase mental stress, potency and be able to run a 100 metres in less time than the holder of the world record.
3.35 p.m.

Sir, these are the things of humankind because they are not only specific to the male species but also to the female. You want to restore that beauty and charm which you would have had ten to twenty years earlier. Notwithstanding, Sir, the fact that there are existing legislation such as the Food and Drug Act as well as the Therapeutic and Health Services Act, there is still something lacking and that void, once it is cast, is going to be completely filled, as the Honourable Member for the City said, but it would bring great representation to the void which currently exists.

I remember sometime ago, Sir, seeing on television a drug, which when taken, they showed restored hair growth and stopped the loss. It was used as a drug to treat hypertension, then, at the same time, they came up with a

simple way of treating hair loss and restoration. The English said, if you allowed a cow to lick the ball spot on your head, that is as effective. You would have seen many men lined up and bowing as if they were going to the Chalice to allow a cow to lick their head.

Asides.

Mr. D. T. GILL: Sir, you know the English are very good at that, or you see in a magazine, restore hair loss and maintain growth, or lose 20 pounds in seven weeks and things of that nature and you do not know what risks you are exposing yourself to, so protection and consumer safety must be paramount.

Sir, not being in possession of the statistics, I feel I could say quite comfortably that more than 40 per cent of our adult population, 40 years and over, suffer either from one, or a combination of the following ailments: hypertension, diabetes, glaucoma, high cholesterol.

Therefore, Sir, our consumers must know what they are consuming. They must not be misled, as the legislation said, and they must not be deceived. They must know what is present in what quantities, what are the adverse effects, if it is going to make you giddy or if it would interfere, during the first three months of pregnancy, or if you are nursing a baby. They must know these things so the countries from whence they came must state them quite clearly.

Sir, not too long ago, there was the Noni juice craze.

Asides.

Mr. D. T. GILL: If you had any boy days and you were going crabbing, you had to get something called a piece of wild pine and that is related to the pineapple family.

Sir, Noni juice was supposed to treat everything possible from HIV/AIDS to Alzheimer's disease. Sir, that craze has gone off with time but that also ran into its problems. I am not saying that it did not help some people. I cannot be so rude but you must be very careful as to what you purchase. As Honourable Members said earlier, you must read your labels. If they are no labels, then do not use it, but if you are tempted, you can have some sort of recourse.

Sir, daily we see on the international television channels which is a common place for things being recalled in North America particularly. They recalled car tyres. They would say, bring back in those car tyres because in the manufacturing process it was contaminated with a heavy metal that was used in manufacturing. Therefore, this could lead to A, B, C, D, bring it back in or you hear bring back in this over the counter preparation because it could increase

your blood pressure, or bring back in this food item because it has been contaminated with a yeast or fungus and therefore, it is lethal, *et cetera*.

Sir, even mechanical devices but I find that sometimes our community seems more concerned about the malfunctioning of mechanical devices, rather than the malfunctioning of their health. It is commonplace and we have to start thinking. We cannot just say that we are a part of a new high-tech world and we are not doing the things to put ourselves in line with the practices which are executed and carried out in these countries.

For instance, Sir, DDT which is the best pesticide known to mankind, is the most dangerous. It finds itself into successive generations, three, four or more generations but as I said earlier, you cannot beat DDT.

Sir, you had the days of the thalidomide, which is a good sedative but we found the deleterious effects which it had in the unborn and newly born babies where they had defects in their limbs and growth, *et cetera*. It is that I think, Sir, which turned the world over and sort of lined them up to be a lot more careful as to what to use therapeutically.

Therefore, it is not that the prescription drugs could get off because they are safer. Oh no, prescription or otherwise, they all have their short comings or what is called their adverse or untoward effect.

Sir, they are more vigilant in the United States of America when it comes to things like these and even if they export them to third world countries, they must put in what they call a black box. If you get the original container and peel off the label and you open it, they must put in that black box, the adverse effect or the untoward effect that the consumption of that preparation could elicit.

Sir, we cannot let the males get away. A friend of mine said once that they are some who would scratch the chromium off a bumper of a car, if it is known that this would help to restore potency and virility, but you must protect the individual. Sir, that person must know, notwithstanding the fact I said that there are other pieces of legislation, on consuming that preparation, they should first find out what it would cause and how it could affect or how it could enhance what they themselves are currently consuming, maybe to treat a similar condition, or related condition.

Sir, this legislation is not only about going to town and buying a video or stereo and when you get home it is not working, or as my friend from the east said, you buy a watch and then you find out that the hands are not in place and that they have fallen off. It is all encompassing and it must not be taken in isolation. You must also see how it will impact with

the Fair Trading Act which we looked at and we have to see how it links up with the other piece of legislation which is to follow later on in the evening.

Therefore, Sir, it is a piece of legislation which some people say is long overdue. I suppose our moment in time fashions the legislation rather than the legislation fashioning our moment in time. Yes, it has been needed for some time now.

3.45 p.m.

One cannot say that it is that long overdue. This would give or bring some level of security and feeling to the consumers. I think it is fair on both sides because it could also cause the representative, the dealer, the purchaser or the manufacturer to sit up and take stock because it could protect him or her or the company from serious litigation in the future.

Sir, this legislation is not only progressive but it is fair and far-reaching. So once again, I want to congratulate the Honourable Minister, this is his year, for bringing such a meaningful and real piece of legislation as it applies to the current times.

Mr. Speaker, I am most obliged.

Hon. R. D. MARSHALL: I too, Mr. Speaker, would like to offer congratulations to my colleague, the Honourable Minister of Consumer Affairs, for this legislation that is before this Honourable Chamber today.

Barbadians have recently been exposed to international television stations where they are able to see programmes of interest on stations like Fox, Cable News Network (CNN), Discovery and the British Broadcasting Corporation (BBC). Through those stations I became aware of Ralph Nader from the Green Party who is a very strong advocate for consumer protection.

Mr. Speaker, I want to look at this legislation here from the biblical injunction which states that, in confession, I have done those things which I ought not to have done and I probably have not done those things that I should have done. I said that because some of the suppliers out there, over the years, have been doing things that they should not have done and not doing things that they should have done.

As a young boy growing up years ago, I remember seeing persons having or keeping aerated drinks or what we call soft drinks which contained foreign objects as souvenirs. There was this guy who had such a bottle at one time which contained a piece of masking tape.

Asides.

Hon. R. D. MARSHALL: The Honourable Member for St. George South said he would see slugs in these things.

I remember this gentleman having this bottle with masking tape in it which he kept as a souvenir. He said he took it to the company by name and they told him that they would give him a case of the soft drinks free. This guy who had this bottle was a joiner and he kept it and showed it to people all the time. I remember also seeing parts of roaches in some of these drink bottles. People who found themselves in this position were compensated with a case of the beverage. Today, I am glad to know that people can bring damages against these companies for things which are known as anguish and distress.

I remember as well that as a boy we talked about buying items that did not have labels. There was a man in Bank Hall called Thomas who had a shop and one day a man called one foot Warren went into the shop and told Mr. Thomas that he wanted something to cook for his food that day. He said he was tired of mackerel and he did not want salmon. He pointed to a tin on the shelf which had no label and said to give it to him. He took it home but when he opened the tin and threw it in the frying pan, it was orange juice. What I am saying, Sir is that these things without labels can hurt the consumer.

Mr. SPEAKER: Did he cook it though?

Hon. R. D. MARSHALL: I do not know, Mr. Speaker, because I never asked.

The other point I want to make is that sometimes people would go to a store to take back something they had purchased. The Honourable Member for the City, the Deputy Prime Minister, said that whenever she purchased items, she always kept her bills for at least a year before she threw them out.

It is a regular thing in Swan Street with the Indians stores where the Indians have this belief that if someone brought back an item to them before they make a sale for that day, that was bad luck and they would tell you to come back at such and such a time and when you go back and you did not have the bill, they would say that you did not buy the item from them.

I was in Miami a few weeks ago for one day and a friend of mine from Barbados was there. He was wearing a pair of shoes. He went to the store in the mall and told them that the bottom of the shoes were beginning to unstick. He has had the shoes for about one to two months. He went to the store, in my presence, but he did not have the bill with him. The store owner asked him when he bought the shoes. The gentleman gave him his name and the date he bought the shoes. The owner went on his computer, found the name and

the credit card number and was able at that particular time to exchange the shoes without any bill and without any kind of confrontation with the customer. These are things that this piece of legislation would probably help as the suppliers of Barbados trade with the consumers.

There are reputable garages in Barbados, for example, Nassco which is the supplier of one of the best cars in the world, the popular Toyota cars. However, there are other people who go on the internet and bring in the same types of cars for people. Some of them bring in four or six cars and sell them to people. I would like the Minister when he replies to say what would happen in a case where a small supplier who is not a reputable garage owner but who brings in four or six Toyota cars and sells them to people and the cars give trouble, who would be liable? Would this person be liable or the legitimate supplier in Barbados of the Toyota cars? This is a question I want to put to the Minister who is responsible for this piece of legislation.

The other thing I want to mention is these small roadside mechanics. The Minister told me already that they are liable to people. I believe that people hearing the debate on this piece of legislation from the Floor would be more attuned to what is happening out there and they will know their rights. As I understand from the Minister, all these people who are offering services will be liable and persons can have redress to these things.

The other point I want to make, Mr. Speaker, has to do with the Fair Trading Commission (FTC). In the past we had what was known as a Public Utilities Board (PUB) to which service providers like BARTEL and the Barbados Light and Power Company had to apply when they wanted increases in rates and so on. The late Wendell McClean was very much involved with these hearings. The PUB used to have hearings and many people went there when these utility companies were asking for increases in rates and so on.
3.55 p.m.

Sir, the Fair Trading Commission Act and the Utilities Regulation Act have now replaced this Public Utilities Board. Sir, quoting from the document, it says:

“The Minister of Commerce, Consumer Affairs and Business Development was given responsibility for the setting up of a Fair Trading Commission engaged in a process of a widespread consultation on the matter on the support of Cabinet and Parliament and the legislation was established on 2nd January, 2001.

The Fair Trading Commission is responsible for these regulations. I know that the local and international telecommunications all come under the Fair Trading Commission. It would also be regulating the Barbados Light & Power (BL&P), the National Petroleum Corporation

(NPC), Barbados Water Authority (BWA). It is good that we can have such because I do believe that all of these entities would be asking for a rate increase at some time in the future but before they could do so, they would have to satisfy the Fair Trading Commission that they are, indeed, giving the necessary service in order to merit this increase.

Mr. Speaker, the BWA, like the other utilities companies, are all monopolies. At present, it serves approximately 100 000 customers. It also serves approximately 1 500 people with sewerage system around Barbados. Sewerage services are also expected around Bridgetown to another 3 200 persons when the South Coast Sewerage Project is completed in early 2003. At present, the BWA is presently supervising the completion of the design stage for the West Coast Sewerage Project which, when finished, should be servicing approximately 3 500 persons.

Traditionally, when requesting a rate increase, the Board of the BWA will present a paper which goes to Cabinet. Cabinet in the past would have decided what kind of rate increase. The last increase which the BWA had was in 1991. As in the past when Cabinet would have approved any such rate increase, the Fair Trading Commission must now be satisfied that all necessary improvements are put in place, for example, having a 24-hour service. I believe that management is still in discussion with the trade unions and before they could present themselves to the Fair Trading Commission, those things have to be in place. The rate fixing mechanism has now been changed to reflect the Fair Trading Commission's regulation with the requisite amendments made to the BWA Act, Cap. 274A.

As part of the preparation to make the application for this increase for water rates, we have put on board a consultant who is doing the necessary work to present it to the Fair Trading Commission. The Fair Trading Commission's regulations would require that the BWA maintains its equipment in such a condition as to enable and to provide an acceptable level of service to the public. It would, therefore, be obliged to make all necessary repairs of all equipment, alterations and extension as necessary. The BWA will also ensure universal access to the services that its supplies.

In spite of these challenges of operating in a water-scarce country, the BWA has been able to provide universal access to its customers with water and has maintained a quality that meets international standards. This achievement is all the more significant when, at a recent seminar in Curacao, in a recently taken survey of water rates within the region and the Caribbean, it was found that the domestic rate in Barbados was in the midrange. Out of those surveyed, the commercial rate was the lowest of all the other territories in the Caribbean.

Mr. Speaker, I do support these measures which were brought by the Minister of Consumer Affairs. I do hope that when the BWA is in a position to go to the Fair Trading Commission, the Barbadian public would be the ones who would be better served. I wish to say at this time, that the utilities companies in Barbados should give of their best. I believe that the Fair Trading Commission is the right thing for them.

I do remember with the development of the Swan Street area, we were doing work in the Baxter Road area and found that the rates that were being charged by utility companies were horrendous. When we discussed it with them, we found that the BWA, BARTEL and NPC were able to reduce the rates they were charging while the BL&P was still maintaining for such figures we believed to be horrendous. The BL&P was trying to charge the Government in excess of \$3 million for doing work on what we call fully-depreciated assets. I do believe that when we go to the Fair Trading Commission, they would have to satisfy the Fair Trading Commission in order to get these rates increases.

Mr. Speaker, I am obliged to you.

Hon. R. St. C. TOPPIN: Mr. Speaker, I wish to thank all Honourable Members who have spoken and at this stage and beg to move that this Bill be now read a second time.

Hon. R. D. MARSHALL: I beg to second that.
4.05 p.m.

On the motion of Hon. R. St. C. TOPPIN seconded by Hon. R. D. MARSHALL the House resolved itself into Committee, Mr. D. CARTER in the Chair.

COMMITTEE

Mr. CHAIRMAN: The House is now in Committee

Part 1 was called and passed.

Part 2 was called and passed.

Part 3 was called.

Hon. R. St. C. TOPPIN: Mr. Chairman, Clause 3 is amended as follows:

Clause 18, subclause 5 on page 10, the word “and” after the semicolon is to be changed to the word “or”.

Subject to that amendment, I beg to move that Part 3 stand part.

Hon. R. D. MARSHALL: I beg to second that.

The question that Part 3, as amended, was put and resolved in the affirmative without division.

Part 4 was called and passed.

Part 5 was called and passed.

Part 6 was called.

Hon. R. St. C. TOPPIN: Mr. Chairman, Clause 3 is amended as follows:

Clause 38, subclause 1 on page 33, “National Standard Institute” should read “National Standard Institution”.

Subject to that amendment, I beg to move that Part 6 stand part.

Hon. R. D. MARSHALL: I beg to second that.

The question that Part 6, as amended, was put and resolved in the affirmative without division.

Part 7 was called and passed.

Part 8 was called and passed.

Part 9 was called and passed.

Part 10 was called and passed.

The Schedule became the Schedule to the Bill.

On the motion of Hon. R. St. C. TOPPIN, seconded by Hon. R. D. MARSHALL, Mr. Chairman reported to His Honour the SPEAKER, the passing of one Bill with amendments in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of Hon. R. St. C. TOPPIN, seconded by Hon. R. D. MARSHALL, the Bill was read a third time and passed and cited as the Consumer Protection Act, 2002.

ORDER NO. 11 – CONSUMER GUARANTEES BILL, 2002

Hon. R. St. C. TOPPIN: Mr. Speaker, at an earlier time I dealt with a number of provisions in this Bill and I do not plan to repeat them but will merely continue from where I left off.

Mr. Speaker, I want to remind Honourable Members that the Consumer Guarantees Bill relates not only to goods but to services as well and that with the provisions of services we have a number of implied guarantees in the same way that there are implied guarantees in relation to goods.

With respect to services the first guaranteed is that the service provided will be carried out with reasonable care and skill.

As I said before, if a person takes his car to a mechanic or bodywork man he should not damage his car or if an electrician does work in your house he should not damage any of your appliances. There is also a guarantee that any materials supplied with the service will be fit for the particular purpose made known to the consumer.

The legislation is tighter in relation to implied terms and fitness for the purpose than it is in relation to goods and services must be provided as described when they were requested. This will cover a situation where a ticket was bought to see the 'Mighty X' perform at a calypso show but instead the 'Mighty Y' performed. The customer should obtain a refund because the purpose for which the ticket was specifically bought was not supplied.

If there is no agreement as to how long the service will take to be completed, then it is implied that the service will be completed in a reasonable time. This will cover building contractors that are of such concern to the public of Barbados so that contractors and professionals must now complete the provision of their services in a reasonable time. Sir, similarly, if there is no price predetermined in relation to the provision of services, it would be implied that a reasonable price will be paid for the particular service. 4.15 p.m.

Mr. Speaker, in terms of redress now available to a consumer against a supplier, there are now some fundamental changes regarding the rights of a consumer. Now, where there is a failure or a defect that can be remedied, the consumer can take the good to the seller and ask him to fix it. If the seller refuses to fix it or does not fix it in a reasonable time, the consumer can take the good elsewhere and have it repaired and present the bill to the original supplier. Obviously, you cannot present an unreasonably high bill but once you are reasonable in procuring its repair. Also, if the supplier refuses to fix it or replace the good, you can reject the goods. If you opt to reject the good, you can claim either a refund of the cash you paid or a replacement for the rejected good. The choice of receiving a refund of cash or the placement of the good is yours and not the choice of the supplier.

Mr. Speaker, if you have a failure or a defect that is substantial that cannot be remedied, you can also reject the good. This means that the signs that are displayed in business places which say, "no funds" or "no exchanges" will now mean absolutely nothing to the consumer. No seller will now be entitled to say that he will not refund or exchange your good. Further, since the Bill makes it clear that you cannot seek to contract out any of the provisions, since contracting

out or attempting to contract out is unlawful, it means that not only will the clause be meaningless but sellers who seeks to impose upon you a 'no refund' or 'no exchange' term, will now find themselves running afoul of the law and could attract a criminal sanction.

Sir, you can also recover from the seller damages for loss or damage to the consumer resulting from the failure that was reasonably foreseeable being liable to result from the failure. Sir, that is legal language but all that it is saying is that you can recover your consequential loss in addition to an exchange or a refund.

Sir, if you have a refrigerator and it is defective, which results in the spoilage of your foodstuff, you are entitled to claim the cost of the food that was spoilt. If you have a washing machine that is defective, due to no fault of your own, and you have to take your clothes to the Laundromat to have them clean, you can claim the cost of securing Laundromat services. Consequential loss would include distress, which the Honourable Member for St. Michael North West spoke about, inconveniences, disappointment or vexation will be considered as direct failure of the contract and you can recover for those as well.

Mr. Speaker, the guarantees also apply to items on sale as well as gifts. People say that items are on sale so you cannot get a guarantee. If a shirt is on sale that has a long sleeve and a short sleeve, you cannot buy it and say later that it is not of good quality because you have seen what you were buying. In principle, the guarantees are also applicable in relation to goods bought on sale, second-hand goods and gifts. However, this does not apply to private sales such as garage sales and auctions.

In addition, if a supplier can be shown to have committed a wilful and knowing violation of the Act, and you can infer that if you behave the same way towards other consumers before in other transactions, then you can also be awarded exemplary damages.

Mr. Speaker, another interesting point is, manufacturers cannot now escape their statutory obligations by giving 'express guarantees'. Section 57 says:

"An express guarantee may not disclaim, exclude or limit a guarantee set out in section 5 or 6, or in any of the sections 8 to 13."

Sir, this means that if you were to give a warranty of an item and you seek to say that I will cover you for six months, the Act also says that you guarantee that an item is going to be of an acceptable quality. If you give somebody a warranty for six months and in the seventh or eighth month the item starts to malfunction, you cannot plead that you only gave them a warranty for six months. A good that fits the

description of an acceptable quality should not, in the ordinary course of things, cease to work shortly after a warranty period expires. Sir, you cannot exclude your statutory liability to provide proper goods by giving an express guarantee or warranty for any short period of time.

Mr. Speaker, the parol evidence rule has now been abolished. This Act says that if I contract the Honourable Member for St. Lucy to sell him an item and all the contract says is that the Honourable Member for St. Michael North is selling the Honourable Member for St. Lucy a microphone, however, if at the time when I sold him the microphone, I said to him that if he sings through the microphone any mistake that he makes in his falsetto will be concealed, no mistake will be revealed, remember, however, all the written contract says is that I have agreed to sell him a microphone. As the law currently stands, you cannot abduce oral evidence at the time of making the contract to vary, alter or modify to further explain the written contract.

For example, if you went to court and said that he told me that if I bought the microphone I would be able to sing like Phillip Bailey of Earth, Wind and Fire, the court would say that is an oral thing. You cannot abduce that in evidence. The written contract is what we look at.

Sir, any oral assurances given at the time of making the contract will be admissible into evidence to further explain, not vary the written terms of the contract.

The doctrine of privity of contract no longer applies. If I were to buy an item from a supplier and I gave it to a third person, that person, in relation to the supplier from whom I bought the item, now assumes all of my rights although they did not contract with the original supplier and can in fact enforce them against the supplier. The rule of privity of contract would normally say, that person being a party to the original contract cannot seek to enforce any benefits in relation to it. This Act makes an exception to gifts and allows the transferring of a warranty unto a donee of an item. 4.25 p.m.

Mr. Speaker, in relation to enforcement, the first thing that a consumer, who is seeking redress under this legislation has to do, is to try and solve the problem him or herself. We are not here trying to promote a country of people anxious to rush into courts and get into legal battles.

The first thing that has to be done, the consumer has to make the effort, himself, to try and resolve the matter with the particular supplier from whom he bought the item. If he does that, he can then proceed onwards. He can go to Public Counsel who will be there to assist him.

Sir, once the Public counsel forms the opinion that the complaint is valid and worth pursuing, by law, he will then attempt to settle the matter with the supplier against whom

the consumer is complaining. Therefore, Public Counsel works on behalf of the consumer to try and settle the matter in the consumer's favour.

Sir, we have established a Consumer Claims Tribunal to handle small consumer complaints for claims under \$10 000. The consumer will be able to go to that Tribunal, with or without the assistance of Public Counsel, to have his case heard.

This Tribunal will be very practical. It will not be bound by all the rules of evidence. I am sure you would have seen some of the types of tribunals, or courts operating on television in the United States. You might think of the Judge Judy type setting where, in fact, hearsay evidence and so on will be admissible, and the Judge will be able to inform himself of various facts...

Asides.

Hon. R. St. C. TOPPIN: The consumer will be able to go to the Tribunal. He would not be bound or restrained by any hard core rules of evidence. The Chairman of the Tribunal will, in fact, make a determination based on what evidence he gathers. As I said, he is not bound by the rules of evidence.

Sir, although the Tribunal is going to be in existence for claims under \$10 000 in value, you cannot legislate that a consumer cannot decide to go straight to a court because the consumer must always have that right, instead of going to the Tribunal, he may have the means and the desire to go to one of the established civil courts of law in this country to pursue his claim.

Certainly, it is expected that the Tribunal will work fast and it will be a practical tribunal. Certainly when a few cases are done and you get certain precedents established, you would expect that businesses and suppliers would know the kind of things now that the tribunals or the courts are saying, should or should not be done.

In the early days, you might find it to be a busier time and after precedents are established, people would know what they should and should not do. The Tribunal is, certainly, a very important innovation in relation to the rights of the consumer.`

Mr. Speaker, obviously, as part of the development of a comprehensive consumer protection system, there has to be the development of vibrant consumer associations. The fact is that really, in terms of a voice on behalf of consumers, we are really up to now only hearing one voice. That is the voice of Mr. Malcolm Taitt from Consumers Research Incorporated. We used to hear the late Wendell McClean's voice quite a lot but he is no longer with us. It took a time before we were hearing any other voice. It does seem that

Mr. Taitt is now ably equipping himself of the issues and it was once said of him, and I suppose I can say it now of him as well, that at first we were not necessarily hitting it off that well, but in recent times, we have come to a position of more mutual respect for each other and the work that we do. I would wish to say I believe that certainly in the writings we see in the newspaper, he is a busybody in relation to consumer rights and I would certainly want to urge him to continue to grow from strength to strength.

Now, consumer organisations, of course, have to be largely consumer driven. You really cannot legislate a consumer organisation into existence. Consumers must have the will to band together and agitate for their rights. The major difficulty in relation to the formation of consumer organisations is that it is well known that there is a free rider approach where you can benefit from the activities of a consumer organisation without being a member of the consumer organisation. Sir, you can sit back in the comforts of your home and let others go out there and work for you in terms of agitating, in relation to consumer rights, while you sit back and get the benefits. If that could happen, obviously there is no motivation to get up and join the organisation and help it to perform.

Mr. Speaker, that attitude has to change because there needs to be at least one or two vibrant consumer organisations in Barbados. I would just want to urge consumers to ensure that in deciding to align themselves with the consumer organisations, they take great care to ensure that their interests will be really protected, since it is quite easy for some fly-by-night operations and organisations to spring up all over the place, ask people to subscribe to them, and in fact do not have a clue about what they are doing but certainly, the development of independent self-sufficient consumer groups will aid in enhancing and developing consumer rights and will augment the role of the Fair Trading Commission, in enforcing consumer rights.

Obviously, there has to be a massive education programme and the Fair Trading Commission as well as public counsel intend to mount educational programmes to inform and educate consumers about their rights and responsibilities. Programmes as implemented will be taken across the length and breadth of the country, including primary and secondary schools. We hope that the consumer groups as well, certainly the one I just referred to would assist in the educational process.

Sir, as I said earlier, the Barbados Consumer Research, Incorporated is certainly actively involved in this regard and already it writes a weekly column.

The Ministry of Commerce also intends to engage in some institutional reorganisation to ensure that it is better able to handle the area of consumer affairs. There is going to be a revamping of the Price Control Division, the Price

Control Inspectorate and the rates and Standards Inspectorate. We are going to have a Department of Commerce and Consumer Affairs.

Sir, one Honourable Member spoke earlier about the issue of labelling where an item was on the shelf with Spanish wording that nobody could understand. Our laws clearly state that this is not to happen. The truth is, if you cannot police it, it will happen.

Mr. Speaker, when you consider that you only have two standards inspectors to police 44 mandatory standards, it could never happen. Mr. Speaker, when you have only three weights and measures inspectors to deal with so many issues out there that have to be dealt with, it cannot happen. On the other hand when you have a fairly large Price Control Department, with about eight or nine persons, and you have really only about eight or nine items on price control, it can be seen that the situation is right for bringing together those three sections and combining them into one, called the Department of Commerce and Consumer Affairs, and thereby having a far more effective consumer policy in place.

Sir, in the Consumer Affairs Section of that division, obviously there will be a focus on formulating and reviewing consumer policy and programmes which will assist the Ministry greatly in keeping in touch with consumer issues and ensuring that we stay on top of consumer protection policy.

Mr. Speaker, I want to thank all the persons who assisted me in getting here today, my Permanent Secretary as always, the Public Counsel and the consultants who were involved in assisting us. I want to say that there has been a process of consultation.
4.35 p.m.

I recently saw in the newspapers, consequence upon the passage of the Bill last week, some people giving the impression that there was no consultation but nothing can be further from the truth.

The Ministry of Consumer Affairs has a committee which is very broad-based. It is made up of representation from the Barbados Chambers of Commerce, the Barbados Manufacturing Association, the Consumer Research Organisation, the Small Business Association and lawyers. This Advisory Committee was in on the act from the ground level with respect to the Fair Competition Bill because I saw headlines in the newspapers about this. The Advisory Committee was served with a copy of the same Fair Competition Bill that was taken to Cabinet so that they could review it. At the same time they were reviewing it, the Ministry continued to review it to see if there were any changes that were needed to be made. The Attorney General's Chambers also reviewed it to see if there were any changes that were needed to be made and then it was taken

to Cabinet to be reviewed. Out of that process there was then distilled the Bill that was laid and debated in Parliament.

Mr. Speaker, people have to understand what consultation means because there is a difference between consultation and consensus. When you are indulging in a consultative process you give persons an opportunity to express their views and no one can say that was not done. In respect of the Fair Competition legislation there was a seminar where the general public was invited to input their views. In respect of this legislation before us today the general public was once again invited to input its views. Out of those views the Ministry then has to distill what it is going to go with because you get a number of conflicting views as each interest group will have its own views. You cannot take all into account because you will have a Bill that will be doing everything for everybody which as you know, Mr. Speaker, you cannot have.

I want interest groups to know that they should never say that my Ministry does not consult. If anything my Ministry has been guilty of over consultation because everything we have to do, we consult on. Therefore, I want to give the assurance that the consultative process was complied with here but people mistake consultation with consensus. I think they mistake being consultative with being able to determine the content of the final product which only a sovereign Government can do.

I am satisfied, therefore, Mr. Speaker, that I have discharged my responsibility and I would like you to kindly inform the Right Honourable Prime Minister that I have today completed my mandate in relation to the establishment and the total empowerment of the Fair Trading Commission (FTC).

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

Hon. R. R. FARLEY: I beg to second that.

Mr. D. St. E. KELLMAN: Mr. Speaker, I rise to speak on the Consumer Guarantees Bill. Mr. Speaker, even though at the end of the day we will be giving some type of guarantee to consumers, one has to recognise that there will be a cost to be considered in to all of this. One has to recognise that the person who supplies the goods has to consider that the risk of litigation will now be higher, so in arriving at a cost to pass on to the consumer this factor will also be considered. We must understand that consumers have rights but what is the cost that will be attached to those rights. I cannot see anyone who now have to sell these goods not attaching a cost to them now that we have passed these particular Bills.

The Minister also said that guarantees must be given on second-hand goods. That is a rather dangerous thing for the simple reason, am I to believe that second-hand goods should

not be imported. If that is the assumption, then it must be said. I can understand how you would expect someone to give a guarantee, let say, on a new car but you cannot expect someone to give the same guarantee on a second-hand car when everybody who buys a second-hand car must expect that the second-hand car would not give the same performance as a new car. So we have to be very, very careful in what we are doing here today because even though we might be protecting the interest of a particular group of persons we might be creating a litigation society.

This is what I fear because people will want to sue for the slightest thing now even though there are certain expectations when they buy something. It is not beyond certain people to treat an item badly and because they have protection now through a Bill that has been passed, they will then expect the person they have purchased the item from to compensate them for something they knowingly would have committed. In these things I like to look at it from both sides because it is only fair that in the drafting this legislation you should not have focussed only on the consumers because it sounds good but you should also look at the opportunity cost of the decisions that you are making.

At the end of the day, the question is, are we creating a situation where something that normally would have cost \$100 will now end up costing \$150? The person supplying that particular item has now to consider in a factor that was not there before because only a fool would have a situation where he or she knows that if the item is sold and something occurs that they automatically will have to repair it and would not make the provision for that cost in pricing the particular item. It sounds good to say consumers guarantee, consumer protection and all of those things but at the end of the day we have to ensure that the consumer gets the best items at the lowest price.

We also have to be careful that we do not create a situation where the business sector of Barbados will become depleted by encouraging Barbadians to ignore our local business sector and to source outside of the country. We also have to be careful that we do not destroy our manufacturing sector because the sector is now seen as a high risk industry where people believe that it is better to play it safe than to get involved in manufacturing. I am not saying that these things would occur but as a debater I have a right to look at the other side and recognise that even though we are trying to protect the interest of consumers that we were destroying the Gross Domestic Product (GDP) of the country. This is a particular point that must be acknowledged because if the slightest thing that happens can be the focus of the law courts now, people might ask themselves why should they get involved in business. At the end of the day you are protecting the consumer but you are destroying your economy. These are things that must be taken into consideration. This legislation sounds good, but have we really looked at the opportunity cost of all of this legislation as it affects our own people.

4.45 p.m.

We have to understand that the external capacity and resources are much greater than the internal ones. We have to understand the type of risk the external exporters could take because of the large capacity they have, the local manufacturers cannot afford to take.

Sir, who would judge whether a claim is one based on negligence or is a genuine claim? Sir, it sounds good that we have passed these things but, at the end of the day, when we are finished, we might have created a bigger headache than we had originally thought.

Mr. Speaker, I hope the Minister understands that I am not knocking him from bringing these things to Parliament and for being able to say that he has completed his duty but that after completing his duty, he might have created more headaches for someone else. The person for whom he might be creating the headache is that person who might be interested in the expansion of the economy of Barbados and now, instead of having young, exciting men ready to become involved in the manufacturing and other productive sectors of the economy, they suddenly realise that this trade is now too risky and that it is better to close down and to buy the item from someone more competent, instead of they trying to produce it.

Mr. Speaker, ten years ago I would not have had a problem with this legislation but we have opened to become the dumping ground. We have to understand that the playing field is not level anymore and that we cannot use licenses to blow up or to protect our trade. We have to be careful because we might be cutting out our own people at the expense of foreigners. In other words, whereas we would love to have a perfect manufacturing sector in Barbados, through our actions we might now be destroying the manufacturing sector because we do not have the capacity nor the resources to compete with the others, neither do we have the large market share that we could easily absorb these types of charges when they are loaded onto our doorsteps.

I hope that what I have said is being taken in the right light and that we reconsider what we are doing. We might only be pushing our country backwards instead of forward. I thank you very much.

Hon. Miss H. E. THOMPSON: Thank you, Mr. Speaker. I would wish to congratulate the Honourable Member for St. Michael North. I think this is a piece of legislation which has become imperative in today's marketplace and in a Barbados that is rapidly developing.

I do not share the view of the Honourable Member for St. Lucy that to develop a body of consumer protection legislations would put the economy at risk. I cannot think of any society, developed or developing, where the existence of such legislations has jeopardised any fundamentals, nor can

we renege on our responsibility to the consumer or to the average Barbadian by saying that we have a greater duty to protect businesses. What we must do is to create a climate in which business operates with a vision of what is right, *vis-à-vis*, those persons who are their customers.

All of us are consumers and there is a tremendous need for that compendium of legislations which we have seen emerged over the course of the last few weeks and under the portfolio of the Honourable Member for St. Michael North, which protect us all in the marketplace. As purchasers, we are always vulnerable to those who sell, whether they are manufacturers, producers, retailers or distributors.

There are myriads of examples of how consumers are abused and unfairly in the marketplace. We must now develop a culture where that kind of activity comes to an end, where the consumer understands that they have a right to protection from those who are seeking to make profits, sometimes unreasonably, at the expense of the consumer.

I do not believe this legislation has any provisions that are so extraordinary or unfair that it puts vendors, manufacturers, retailers, shop owners, business persons, at any kind of disadvantage. I share in this regards the view of the Honourable Member for the City who has said that commensurately with the responsibility of developing this legislative framework for consumers protection, there is the need to educate the public as to what rights have been bestowed on them by the development of this legislative framework. It is critical for everyone in the heights, terraces, villages, lanes and alleys, to understand that there is now a framework of legislations that protect them when they go to the village shops, automats, supermarkets, Swan Street, Broad Street or wherever.

This legislation seeks to put an end to those practices which disadvantaged the consumer. Who is the consumer? The consumer is not someone out there who cannot be identified. The consumer is you, me, the housewife, the employed and the unemployed. The reality is that for years in the marketplace, the consumer has had unequal bargaining power, *vis-à-vis*, the retailer, whether the retailer retails in the position of manufacturer, producer or distributive sector. Very often small people, who the Honourable Member for St. Lucy likes to talk about, have been greatly intimidated and disadvantaged in the marketplace.

I am going to give some of the kinds of examples which this legislation seeks to remedy so that people would understand how it impacts upon their daily lives. This is not a piece of legislation which deals only with a particular cohort of the population. This is a piece of legislation which seeks to address the needs of everybody, particularly the small man who is often powerless against big businesses generally.

What are some of the problems that consumers face? One buys a car or an appliance, afterwards, that person is told that there are no spare parts for that car or that appliance because the supplier does not stock them.

The truth is that when one purchases items on hire purchase agreement the retailers tend to replace them but if one buys these items for cash, very often, the retailer refuses to repair, replace or service the item. This legislation seeks to deal with that.

This legislation seeks to deal with situations where, for example, one buys an electric kettle and is given a three-month warranty by the retailer but when the purchaser gets home and reads the warranty from the manufacturer, it actually comes with a twelve-month warranty.

Another example is, someone gives you a watch for a birthday or for Christmas. The watch states that it is water resistant but eventually water gets into it and it stops working. When the watch is taken back to the retailer, without the receipt, the retailer now has to replace or to repair that watch. In the past there were circumstances regarding the law of privity of contract, which meant there was a relationship between the vendor and the purchaser which did not extend to the third party, to whom the purchased item was given. Now this legislation deals with gifts.

Mr. Speaker, I remember once a lady came to my office and collapsed in tears. She said that she has six children to send to school and had bought shoes that were on sale in a store on Swan Street. One of her children wore the shoes only once which became undone after the first wear. She carried the shoes back to the store but the store said they could not be exchanged because they were bought on sale. I went with her to the store on Swan Street and it was only then that the shoes were exchanged.
4.55 p.m.

Sir, the average consumer should be able to go to the marketplace and get a refund or an exchange but very often stores in Barbados will put up a sign which states that there will be no refund or exchange and that the customer is buying at his own risk. Sir, these things must be brought to an end because poor people in particular have suffered in this way.

Sir, people also have tremendous problems in the supermarket. They buy a pound of beautiful pork only to find out when they get home that they have three quarters pound because the remainder is fat. Sir, if you buy vegetables, the ones at the top are good but the ones at the bottom are decayed and have to be thrown away.

These are all commonplace practices which the average person has to live with every day because, up to this point,

they did not have the right of redress. Sir, businesses are notorious for not giving customer service or following-up on items which they sell and it is time we let people in the marketplace know that consumers have rights and that they must be protected.

There is also dishonest labeling and people will represent goods as being fit for a particular purpose and they are not fit for that purpose.

Sir, it is absolutely amazing to me that medication will be sold and when the pamphlet is taken out, you find that it is produced in a Latin America country, the contra-indications and information on how to take the medication is in a foreign language and it cannot be exchanged because the seal has already been broken.

I am going into these examples because I want the public to understand that this legislation is about the small man to give them a body of rights and to empower them in the marketplace.

The Honourable Member for St. Lucy in his remarks spoke about purchases made via the internet and catalogues and we must be cautious when buying in the new marketplace about our own protection because I often see on the e-mail things like, "no guarantee as to quality"; "This price is valid for 30 days"; "The supplier has the right to vary the quality of the goods", or some language which tells you that there is a disclaimer.

I am particularly pleased to see that the legislation specifically gives guarantees which say that the goods should be of acceptable quality and must be consistent with the description provided about the goods.

There is also a guarantee that the item should be unused. This is critical to the hire purchase market where items are repossessed by the store, are then resold to another person without proper guarantee or warranty and at the exact price as when the goods were new.

There is protection against suppliers who may be tempted to charge exorbitant prices and a requirement for manufacturers to make adequate arrangements for the provisions of spare parts and there is also an express guarantee that the supplier must honour any guarantee given on the package. All of these provisions are critical to how business will be done now that the legislation is being enacted. Sir, protection is needed particularly against monopolies and there are monopolies in this country. I am very glad to see that the legislation extends to the provision of services including services by professionals, doctors

and lawyers, who themselves have caused some dissatisfaction among people seeking to access services from them.

5.05 p.m.

Sir, particularly in the profession which I belong, there is a complaint that lawyers make people wait too long in order to have work done. Whether that is a reasonable thing, lawyers will argue in some instances that it is, but I believe that there are matters that can be done a little more expeditiously. Sometimes it may be a matter of explaining to the client what is the particular process, consistent with that piece of work that is being done that will cause it to be protracted. It is absolutely critical that not only the supply of goods to be incorporated into this legislation but the supply of services, whether professional, quasi-professional or any service should be included, particularly to services by monopolies who hold us all to ransom.

I am hoping to see the day when the Government breaks the stranglehold of monopolies on this economy. There are many sectors in which large companies, whether local or multinational, operate as monopolies and disadvantage consumers and that too has to be dealt with.

Sir, the hire purchase sector is another sector which really needs to be controlled. A lot of people opt for hire purchase agreements because there are convenient or so it appears. The reality is, the cost of acquiring goods by means of hire purchase is so high and the requirements which you have to meet are so stringent, I do not know if it is worth it in the end. If you could have the discipline to save the money over the three or six-months period and buy the item cash or to use the credit union, which was encouraged by the Barbados Labour Party in the 1976 to 1986 period, you would be far better off and pay less cost than using the hire purchase agreement which is extremely rigid and very unfair.

Sir, in my view, what is perhaps one of the most critical provisions of this legislation is the provision of a tribunal to hear matters and to give redress. I agree entirely with the Minister that consumers must first go to the person who sold them the goods and seek redress from them. Only when there is dissatisfaction should they resort to the tribunal.

The reality is, prior to coming into force of this legislation, where a difficulty existed and you went to the vendor and you got no redress, it made no sense to tie up the time of the courts and the expense of lawyers to deal with a matter of \$50 for a pair of shoes or a \$20 blouse which you bought. Poor people in this country would have to end up losing \$20 or \$50 for items bought and the vendors are aware that no lawyer is going to take on a \$20 case. Therefore, the consumer would not pursue it and the vendors would end up with the profit in their pockets and the poor

consumer would end up with nothing because there was no mechanism for redress and the court system was not an adequate place to take these matters.

With the existence of a tribunal that is empowered to hear claims up to \$10 000, it means that you can go to the tribunal for redress for any amount less than \$10 000. That is, perhaps, in my view, one of the most critical pieces of the legislation.

Sir, the legislation does not only produce a framework which says that you have rights but it provides the mechanisms through which you can seek adequate and quick redress outside of the court system, which took too long, was expensive and often outside of their financial reach. Sir, that provision in the legislation is a critical one and it gives teeth to the legislation.

Sir, I wish to congratulate the ministry for the appointment of the post of Public Counsel. It is the Public Counsel to whom individuals will carry matters before the consumer's tribunal. I must confess that I know the person who holds the post of Public Counsel. He was a very effective prosecutor and litigator. We have had the pleasure of working against each other in court and we have had the pleasure of working on the same side in court. I know that apart from being a very good lawyer, he is a person with the milk of human kindness in addition to blood running through his veins and would, therefore, be sensitive to the needs of those poor people who are going to come looking for him to champion their rights in respect of this legislation.

Sir, this is critical that the person who holds that post should understand the very valuable social role that he has to play. It transcends that of being a mere lawyer. Being the first person to hold the post, the style which he will bring to the office, the degree of energy and intellect that he will bring to the execution of his duties, will forever define in the minds of the public how that post is perceived and the value of that person to the public.

Sir, we have a situation in Barbados where a lot of people go to the Ombudsman because they feel that there is nobody else to turn to. Now, with the post of Public Council *vis-à-vis* the rights of consumers, here is a person invested with power to act on behalf of the poor and the disadvantaged. It is really a very important position.

I know that he brings to this position scholarship and good legal skills. He would also need to bring a willingness to listen to and to fight for the common man who may feel that there is nobody else who is willing to hear them, take them on or to whom they can turn.

Sir, it may also mean that he will have to come up against his fellow attorneys who people complain about.

Therefore, he must find in his bosom the courage to stare his colleagues in the face and say: "You have done wrong and my client must have redress."

Asides.

Hon. Miss H. E. THOMPSON: Sir, they were those persons who questioned the legitimacy of the need for the work and role of this Ministry. We have seen over the last few months the enactment of the Small Business legislation, Fair Trading Commission, Consumer Guarantees Act and now Consumer Protection legislation. It should now be apparent to everybody what the role of this ministry is, what social service it provides and how, by extension, it has a role to play in the economic development of Barbados. 5.15 p.m.

I congratulate the Minister for bringing all of this legislation before the House. I wish the Public Counsel well in the execution of his duties and really, Sir, I am absolutely delighted today, to have the opportunity to speak on this piece of legislation in this House and to say that I really look forward now to seeing...

A lot of legislation is on the Statute Books, much of it is not acted on, a lot of it is not pursued, some of it is forgotten but this body of legislation, is in my view, far too important for us not to give it the appropriate thrust and drive. I would urge, Sir, that all those involved, while I congratulate them, bring an energy and effectiveness to the very important social and economical role which this legislation and their existence, compels them and should compel them to perform.

I am much obliged to you, Mr. Speaker.

Hon. Sir HAROLD St. JOHN: Mr. Speaker, my contribution is going to be short. Sir, I feel that the importance of this Bill has been well underscored by the speeches of the Honourable Member for St. Michael North, and by the speech of the last speaker.

I would just like to trace through, the Bill in its historical context because I do not think it is generally realised that the Sale of Goods Act of Barbados, which is being reformed by this Bill, was a piece of legislation that was passed in this Parliament in 1895.

This Bill seeks to modernise and replace that legislation. Students of law will recall that we must be one of the few countries in the Commonwealth that have not updated that law and I congratulate the Minister on remembering his student days and relieving by this enactment, a large number of Barbados students of the necessity for search, for precedence which are contained in law books which are out of date to a large extent.

The second point that I would like to make and I think it is very important, that we recognise it, is that the Sale of Goods Act did not apply the same principles and terms to services. The importance of this Bill is that for the first time in Barbados, a regime providing guarantees against service providers are being implemented in our legislation. This is of great importance. Particularly, it will redress problems that all of us as Members of Parliament and members of the community hear about and have to face from time to time.

The most important area in my opinion is not the professional people so much, because the doctrines of negligence and the obligations of providers of service under a contract are fairly well known, and there are remedies in breach of contract and of negligence which, to some extent, covers deficiencies in deliveries when they occur.

It is against people, who provide both goods and services, such as house builders and others, which, at the present moment there is a great difficulty in finding a remedy.

In many countries the professional associations of these persons or entities provide what is called a warranty which, if you are to remain a member of the association, you have to provide this warranty.

I was recently in Canada and I looked carefully at the provisions in relation to house building in Canada. I was very glad to realise that Canada had a house builders association which as a condition of membership, required that house builders, in order to carry their stamp, had to give a warranty which was sanctioned by the Counsel of the House Builders Association.

Now, we do not have any such thing. In our society, one of the largest industries is totally unorganised or unregulated. Construction in Barbados is a great contributor to the gross domestic product. I cannot find anywhere where there is an organisation which provides for membership and which embraces the multiplicity of disciplines that are required of such an industry.

We do not even have an Architects Registration Bill, which is a shame and I hope that such a Bill reaches this Parliament. Sir, because of interest, people have been bombarding me to bring a private Bill for them because they tell me that they have a Bill that has been circulated and everybody agrees to it but they cannot get it before Parliament. I told them to write the relevant authorities and tell them that they have a Member of Parliament who is willing to bring the Bill as a Private Members' Bill. Sir, I will do it because I do not think that our experience, now, particularly after the little blow with the high wind we had recently and the defects in relation to some construction techniques became so obvious, that we can afford not to have such a Bill.

Sir, under this Bill, part of the problems that can arise as a result of negligent activity by people who supply the service, will partially be remedied. I look forward to a reaction by the relevant professionals to this legislation and the reaction that I hope and wish that would take place is that we would have some kind of a holistic Bills council or something which would try to mitigate, the so-called impact of this Bill.

The Honourable Member for St. Lucy mentioned a question that the passage of this legislation may provoke some things. The answer to that is that they must band themselves into an association, weed out the bad ones, lay down the human standards and I am positive by organising themselves, they will be able to protect themselves like other professionals protect themselves. Sir, I hope that would be one of the consequences.
5.25 p.m.

The supply of goods and services has also been regulated in Britain and in other parts of the Commonwealth with the passage of the legislation which we are now adopting. So I have no fear that this Bill will bring great benefits to the consumers.

May I say also that I agree with the concept that this Bill imposes obligations on suppliers but it also imposes obligations on the consumers because the consumers themselves must become educated as to their rights and the limitations of their rights. For this legislation to become truly effective it should be backed by an educational campaign. Regrettably, we only now have incipient consumer organisations in our country. Therefore, some mechanism ought to be found to ensure that the consumer education which is necessary to give full impact and to provide fairness between both sides take place and I look forward to that.

The Resolution of disputes clause in the Bill provides for a consumer claims tribunal, a kind of small claims court. It is interesting how the legal system and the disputes resolution systems via the law courts are constantly being bypassed in a number of pieces of legislation whether it is employer/employees and now vendor and purchaser with respect to goods and services. It is the fault of the traditional judicial machinery for the simple reason, as the Honourable Member for Christ Church East and others have said, that it does not command respect when it takes a long period of time to give a decision. So that the legislation is reacting by the creation of alternate mechanisms for disputes regulations to the failure of the recognised judicial systems to response in a manner in which the users of the system regards as being providers of justice. Justice delayed is justice denied. Therefore, it must be recognised, in this country and in other parts of the Caribbean, that the hallmark of an efficient judicial system is that there must be speedy decisions at all

levels of decision-making. There cannot be any question about it. This has become recognized throughout the countries in the world, whether there are the common law systems, the civil law systems or indeed in some of the Muslim systems in the world, that the system is too summary and too draconian, so that is why it is not regarded as justice.

The small claims court is going to be an interesting exercise because the people in Barbados are accustomed to the kind of Solomon justice that they see on television in the small claims courts which is swift, does not have any lawyers around it and where decisions are given based upon commonsense and fairness to both sides. I hope that the tribunal will not operate in that theatrical fashion with the television meeting the people before they go in, when they are coming out or asking them what they think about the judge's decision, we do not need that. What we need though is the concept of having an informal presentation which is not bogged down by any strict legal and evidential requirements and then a quick decision. That is the important point.

The last point that I want to make is that the public counsel is being introduced. I believe that this public counsel will not be a single individual, it would just be an office of public counsels because I doubt that a public counsel as an individual will be able to service both this, the public utility and the other areas of specialisation on consumer law which they would have to monitor.

Sir, this legislation is an excellent piece of work, so we must not take long to appoint the tribunal. However, we must not appoint the tribunal without regulations if there are necessary because we will then have the whole fundamental objectives of the laws being frustrated by the failure to have the administrative machinery in place to bring it into effect.

I commend the Minister for bringing this Bill here. I think that he has been fortunate to be in charge of the Ministry at a time when these major amendments are taking place. This is not the last amendment because there are other things that have to be done. The Minister can be proud of the fact that he has brought eight pieces of legislation here but he is not yet finished because there are other areas of legislation that need to be amended to deal with a full modernisation of our laws. He has to grapple his mind with the contract, the Third Party Rights. That is the law that allows me and you to have a contract and if the contract provides that you are to provide a benefit to a third party and you fail to provide it, the third party can sue. All of that have been modernised and brought up to date. So his job is not finished yet and I look forward to the other pieces of legislation.

Thank you, Sir.

Hon. R. St. C. TOPPIN: Mr. Speaker, I want to thank all Honourable Members who spoke because all of them made points worthy of consideration. The Honourable Member for St. James South is normally good but today she was certainly at her finest. The Honourable Member for Christ Church South was able to impart to us a certain level of knowledge particularly historical knowledge.

It is my intention to move as expeditiously as possible to ensure that this tribunal comes into being. There is not going to be the need to make any regulations to bring it into being because the Schedule is quite clear that the tribunal should regulate its own procedure and may make rules for that purpose.

Sir, one point that has not been touched upon is that there will be no cost to individuals who initiate proceedings, except filing cost. In that regard, the tribunal is not empowered to award any cost against the party who loses, so the small consumer need not worry that if he or she takes a matter to the tribunal and failed to win that they are going to be penalised in any way in cost except perhaps in paying back the other side for the cost of filing a few documents and any other necessary expenses incur but they certainly would not be facing the sort of financial sanction they will be looking at if they were to go to the conventional court where if they lose they will have to foot a fairly moderate or heavy bill.

Mr. Speaker, I am indebted to all Honourable Members who contributed to the debate which has been a very rich one. This has been the result of some lengthy consultations where the Ministry was kept very busy. I was able today during my presentation to refer to some specific and individual comments that were made by the Barbados Chambers of Commerce in relation to this consumer legislation thereby evincing that we did have a very wholesome and robust consultative section.

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

Hon. R. R. FARLEY: I beg to second that.
5.35 p.m.

On the motion of Hon. R. St. C. TOPPIN, seconded by Hon. G. A. CLARKE, the Honourable House resolved itself into Committee. Mr. D. CARTER in the Chair.

COMMITTEE

Parts 1 – 8 were called and passed.

Hon. R. St. C. TOPPIN: Mr. Chairman, with respect to Part 8, there are a number of amendments. First, at

section 56, there is a typographical error in the marginal note in relation to the word “parole”. The correct word should spell “p-a-r-o-l”. I am asking that the “e” at the end be deleted.

Mr. Chairman, I am asking that this Part be amended by having, after section 59, the following new section 60(1) which now reads:

“The Minister may make regulations under this Section for carrying out the objects of this Act.”

60(2)

“Regulations under this Section are subject to affirmative resolution”.

I beg to move that Section 60 should now be amended by being renumbered Section 61.

I beg to move that Section 61 should now be amended by being renumbered Section 62.

I beg to move that Part 8 with those amendments stand part.

The question that Part 8 as amended stands part was put and agreed to in the affirmative without division.

The First Schedule was called and passed.

Hon. R. St. C. TOPPIN: With respect to the Second Schedule, there is one amendment.

I beg to move that (Section 60) be amended to read (Section 61).

Subject to that amendment, I beg to move that the Second Schedule be the Second Schedule to the Bill.

The question that the Second Schedule as amended be the Schedule to the Bill was put and agreed to in the affirmative without division.

Hon. R. St. C. TOPPIN: Mr. Chairman, I beg to move that you now report to His Honour the Speaker the passing of one Bill in Committee with amendments.

On the motion of Hon. R. St. C. TOPPIN seconded by Hon. R. R. FARLEY, Mr. CHAIRMAN reported to His Honour the SPEAKER the passing of one Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of Hon. R. St. C. TOPPIN, seconded by Hon. G. A. CLARKE, the Bill was read a third time and passed and cited as the Consumer Guarantees Act, 2002.

ORDER NO. 7 – A RESOLUTION TO APPROVE IN ACCORDANCE WITH SECTION 5 OF THE CROWN LANDS (VESTING AND DISPOSAL) ACT, CAP. 225 THE VESTING IN THE NATIONAL HOUSING CORPORATION OF THE PARCEL OF LAND, SITUATED AT FORDES ROAD, CLAPHAM IN THE PARISH OF CHRIST CHURCH FOR HOUSING DEVELOPMENT

Hon. G. A. CLARKE: Mr. Speaker, this is a small parcel of land at Fordes Road in the constituency of Christ Church West. It is approximately 35 000 square feet or 3 511 square metres and is situated within a densely populate area.

This portion of land was identified by the Representative who, in his quest to provide relief to the constituency, has realised that there are a number of families who need land lots. This piece of land will not only provide access to those families at Fordes Road but we would be able to get approximately 10 lots at this area.

As you know, Mr. Speaker, because of the demand for housing at this time, this will help the many people who are demanding house spots in the area. In fact, I will say that for every parcel of land we have, there is a demand of more than 10 persons. This demand continues to be very strong, especially in the Christ Church area.

We expect not only to vest this parcel of land to the National Housing Corporation so that they could start the development very soon but, in fact, as soon as this property is vested, the NHC has assured me that they have the development plan for this area and that access roads would be provided very shortly. Even though areas of land at Coverley are Crown lands, we have to vest them in the NHC so that the Corporation could enter into negotiations, not only with the developers but that it would also be possible to sell these lands. If this process is not completed, the Corporation then is unable to sell the land to the number of people who are requesting house spots.

Mr. Speaker, with those remarks, I beg that this Resolution do now pass.

Hon. Miss B. A. MILLER: I beg to second that.

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

ORDER NO. 8 – RESOLUTION TO APPROVE IN ACCORDANCE WITH SECTION 5 OF THE CROWN LANDS (VESTING AND DISPOSAL) ACT, CAP. 225 THE VESTING IN THE NATIONAL HOUSING CORPORATION OF PARCELS OF LAND SITUATE AT BAY STREET IN THE PARISH OF SAINT MICHAEL IN THIS ISLAND FOR THE PROVISION OF RECREATIONAL FACILITIES

Hon. G. A. CLARKE: Mr. Speaker, this Resolution before the House seeks permission to vest 2 804.1 square metres of land at Bay Street, St. Michael for the provision of recreational facilities. It is my understanding that there will be hard courts and other facilities which will be explained by the the Honourable Member for the City.

The site consists of three parcels of land which is to the east of the London Bourne Towers. In the area of Bay Street, Nelson Street and the adjoining area there are no playing facilities and Government deems it fit to provide these recreational facilities. This is part of the Government's programme to provide recreational facilities in every major development area and we have been acquiring parcels of land throughout the island to provide these facilities for residents in those areas.

This facility has been long in coming and once it is vested in the National Housing Corporation we can enter negotiations with the Urban Development Commission or private developers to develop the site at Bay Street.

This is part of the Bridgetown Redevelopment Programme and we will be seeing other sites similiar to this one within the City of Bridgetown as well as providing other open spaces for the people of Barbados.

With those remarks, I am obliged to you, Mr. Speaker.

Hon. Miss B. A. MILLER: Mr. Speaker, I feel a sense of relief because this has been long in coming. When the London Bourne Towers were completed the Prime Minister said that, as far as he was concerned, it would not be truly completed as a project until recreational facilities were put in place.

The Honourable Minister is perfectly correct when he said that in the uptown area of Bridgetown there has never been any recreational facility. I came to the city 25 years ago and all that time I fought in vain for a little area for the young people to play.

On this land it is proposed that there will be a play park for small children which will have a high fence and will be well landscaped and next to that will be hard court facilities with a small pavilion and a club house for the bigger people. Sir, young children have had to play in the streets for years and in this 21st Century, as Bridgetown is about to celebrate

its 375th year as a city, it is only fitting that this development should come to pass.

Sir, the Urban Development Commission is to be responsible for the construction of these recreational facilities as the money is coming from the Poverty Alleviation Fund. The Honourable Minister of Social Transformation is not in his seat at the moment but I believe he can hear me and I want to tell him that this project can start tomorrow and that I will not rest until the project come to fruition.

Sir, it has taken me years to come to this stage so I will fight to the end for this. This makes me happy tonight and it will make all the people from the Pondsides Development, Beckwith Street, Wellington Street and all the areas around Bridgetown happy now that they have an area for recreation. This will bring a certain sense of completion to the London Bourne Towers which I am proud to say are as well-kept and in the condition as when they were first built. I want to use this opportunity to congratulate the tenants living there for the fine way in which this facility is kept.

Mr. Speaker, I am sad and very upset in another respect. Yesterday, the point was being made on the call-in programme that there is too little night time recreational activity in the City of Bridgetown for local people and visitors alike.

For years the fish sellers on Baxters Road were part of a recreational facility and it became known for this across the world but then we lost market share to Oistins Town as it referred to by the Honourable Member for Christ Church South. Sir, not many of these ladies are from my constituency but they provide a valuable service in the City of Bridgetown and, Sir, I promise you that we are going to regain market share in Baxters Road again and Oistins Town will have nothing on Baxters Road when it is finished.

Sir, I am deeply disturbed because on four occasions a delegation of those ladies and myself along with members of the Ministry of Public Works visited Baxters Road where these ladies ply their trade and found that they are trespassing on other people's property or that they ply their trade on what can be considered an apology for a sidewalk and I am happy to say that finally, we will now have proper sidewalks.

The Government owns the land at the junction of Westbury Road, Barbarees Hill, Passage Road and Baxters Road and this junction is going to be something spectacular when it is finished and lighted, it is going to be the place to be every night of the week.

Sir, there is also a piece of land across from this junction which belongs to Government, there are plans

already drawn up and it has been agreed that this is the place from where these ladies would eventually ply their trade.

Sir, the kiosks are already marked out showing that there would be toilet facilities, seating and umbrellas outdoors where they could trade at night and during the day people could go there for lunch to get their Bajan fry fish.

Sir, to this day, nothing has been done with these plans but these ladies are made to endure dust and lost of trade. We have already discussed the appropriate menus and, Sir, it is not fair to these ladies that they should be now pushed away in this fashion because all of these proposals are already known to them.

Mr. Speaker, tomorrow morning I will be in battle dress. I will be wearing red and someone will have to explain to me why this has happened because we have had meetings on site about this situation for many years with the Chief Technical Officers from the Ministry of Public Works. Mr. Speaker, I have the patience of Job. It is twenty-two years that I have waited for this matter which is before the House today. Since 1980, we started acquiring all of these places described in the first and second Schedules to this Resolution. This land was acquired parcel by parcel over the years, London Bourne Towers was built and then other lands were to be acquired. Objections were raised and I waited until all the objections were dealt with. The people of Baxters Road have put up with all kinds of interruptions of business, dust and noise because they know that at the end of it, Baxters Road is going to be transformed.
5.55 p.m.

Sir, all of the wirescape is done, there are going to be nice sidewalks and drainage. When the lights are installed, that is going to be the defining features of Baxters Road. The four crossroads will be the place where people can go, I would like to think day and night, that Baxters Road would again become a place where, not only tourists but locals can go. Baxters Road was the place where returning nationals and tourists used to go at Crop Over time. We are hoping that during the Crop Over time and on other occasions we can close off a part of Baxters Road and have a street fair. This will be a place again for recreation and for people to enjoy this aspect of Bridgetown.

Sir, it pleases me greatly that it is coming to fruition in a celebratory year, 2003, the 375th Anniversary of the establishment of Bridgetown. I am happy that we are reaching this stage but the unhappiness I feel is about what is happening in respect of recreational facilities at the other end of Bridgetown. The Honourable Minister of Public Works will find a way to make me a happy lady tomorrow.

Mr. Speaker, I am very much obliged for this opportunity to have spoken to the Resolution and I give it my full support.

Mr. D. St. E. KELLMAN: Mr. Speaker, I rise in support of this Resolution and to say that one has to understand that in order to create happiness for one's citizens the necessary infrastructure must be put in place.

Sir, what worries me about what I heard this afternoon is, Baxters Road has been for many years the playground for many Barbadians. I think that it is regrettable that Swan Street, where people do not live, could have taken priority over Baxters Road. One would have thought when one looked at the economic value and the 'opportunity cost' of the particular project that priority would have been given to Baxters Road and Swan Street would have been second.

Asides.

Mr. D. St. E. KELLMAN: Sir, from the time I was a child I always heard Baxters Road referred to as 'the street that never sleeps'. One would have thought that the importance of Baxters Road would have been recognised, not only for the social aspect of it but for the economic aspect of it.

As Barbadians we should feel proud when we look at Baxters Road and recognise that is the street where people invested in business and that one would have thought of the importance of putting the necessary infrastructure in place to carry on that old tradition.

Mr. Speaker, we have to understand that vending cannot be looked at the way we used to look at it. Vending is now a very economic tool. Sir, because they are not operating in a large commercial building we still have to recognise that the majority of the vendors are the ones who sell the local produce. I am saying that if these people are promoting our local produce, then priority should have been given to them because they are saving valuable foreign exchange.

We also have to understand that it is because of the vendors, the people in the agriculture, fishing and the manufacturing industries, three vital industries, are the ones who are moving the produce for these industries and they should be treated as the movers and shapers of this society and our economic future.

Sir, for example, when the people in Baxters Road cannot sell fish, it impacts on the livelihood of the fishermen. It was really regrettable to hear the vendors speaking about their plight and making the point that they have been begging and beseeching people to understand that they are being affected. We cannot say that these people were being reactive. They have been proactive. They were able to put their point to the particular ministry that instead of waiting until they are put out of business that something should be done about the situation.

6.05 p.m.

Sir, we saw the same thing on the Black Rock Road. I am saying that the genuine Barbadian cannot continue to be treated like this. People must understand that these are the movers and shakers of this society and they are the ones who helped to develop this country the way it is, Sir. The same way that priority can be given to people who do not understand the cultural feelings of Barbados, priority must be given to those people who work in the fields to develop this country.

I am saying this is what is sadly lacking in Barbados. People must understand, Sir, that at the end of the day, the vendors of Baxters Road do not have anywhere else to go because when the economic crunch comes, they cannot get back on a plane and run and go anywhere. They have to stay and help us take the country out of all the problems.

Sir, people talk about Oistins, Baxters Road and Paynes Bay and they do not even understand the economic benefits of these projects to tourism. I am saying that if we are to fully develop our tourism in this country, projects like the Oistins, Paynes Bay and Baxters Road must be given the necessary impetus to help develop community tourism and tourism on the whole.

Sir, it provides a cheap source of night-life without impacting on the economic resources of the country in a negative way. We have to understand that when you look and you read some of the comments coming from the tourists, one of their main criticisms is that there is not enough night life in Barbados.

Sir, they are getting a cheap source of night-life in these areas and they are happy about it and they brag about it and they go back to their countries and they tell people about it, Sir.

Sir, how is it we are getting this free promotion from these people and we cannot appreciate it. Is it because they are from a particular stratum of society that we cannot recognise their contribution?

Asides.

Mr. D. St. E. KELLMAN: I have to go there because when one looks at the prioritising of certain projects, one would understand exactly what I speak of, Sir, Baxters Road has been with us for a long time. There is a history to Baxters Road and we must appreciate this.

We have to understand that wherever people congregate, the necessary lighting and parking facilities must be put in place, in order to support the particular projects. People who get involved in these projects do not have to at such a national level. They can be selfish but they are not. They are also playing a role.

I think that the Ministry of Finance sometimes has to do an opportunity cost on these particular projects to see the contribution to the economy that these projects are making so that we can fully understand what is occurring within the particular areas.

I am saying, Sir, that especially at a time when you have a globalised economy where everybody is looking for market share, wherever you have a resource that is impacting in a positive way, it is for the Government to push and make sure they maximise what they want from that particular project.

Sir, that is why I hope that the Minister of Agriculture and Fisheries would understand that something has to be done with the market at Half Moon Fort.

Asides.

Mr. D. St. E. KELLMAN: No. There is a history to the market in Half Moon Fort. There was a school on that particular project and you cannot come and bulldoze there without understanding the significance of the market at Half Moon Fort.

It is not just a fishing market. It is the foundation of a previous school and that is why the fishermen would prefer, Sir, if the Minister understands that he can put the market further, bring back the jetty and let us continue to have what is known as the 'market-place school' and the jetty for St. Lucy.

Sir, we do not mind sharing but whatever we have that is unique, we want to keep for ourselves because whenever people budget their budget do not include us, and we want to remain.

Asides.

Mr. SPEAKER: Honourable Member, I have allowed so much latitude, please. Have you concluded?

Mr. D. St. E. KELLMAN: Yes.

Mr. SPEAKER: Could you wind up, Sir.

Hon. G. A. CLARKE: Mr. Speaker, I just want to say that the development at Baxters Road is part of the outer ring

road which is planned for the entire area. It is really important to note that these developments take place because they add, not only value to the businesses but in the end you will see that what the Government has done, especially in places like St. Lawrence and Bay Street and in Baxters Road that it would help to improve businesses in those areas.

Mr. D. St. E. KELLMAN: Mr. Speaker, on a point of order, Sir. The Honourable Member is misleading the House by giving the impression that St. Lawrence is in Bay Street.

Asides.

Mr. SPEAKER: No point of order. Could the Honourable Member wind up on the Resolution that is before the House, please.

Hon. G. A. CLARKE: Mr. Speaker, we are saying that this Resolution is important to the development of Bay Street in particular but since we are looking at Resolutions for improvement in facilities, we are just making the point that the ring road at Baxters Road is important for the full development of the City area in particular.

With those remarks, Mr. Speaker, I beg to move that this Resolution do now pass.

Hon. R. D. MARSHALL: I beg to second that, Sir.

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

ADJOURNMENT

Hon. Miss B. A. MILLER: Mr. Speaker, this brings us to the end of Government Business for the day and I beg to move that the House be adjourned until Tuesday, November 19, 2002 at 11.00 o'clock in the morning.

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

The question that this Honourable House be now adjourned until Tuesday, November 19, 2002 at 11.00 o'clock in the morning was put and resolved in the affirmative without division and Mr. SPEAKER adjourned the House accordingly.
6.15 p.m.

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