
THE

House of Assembly Debates

(UNOFFICIAL REPORT)

PARLIAMENT 2003 – 2008

HOUSE OF ASSEMBLY

Tuesday, October 16, 2007

Pursuant to the adjournment, the House of Assembly met at 10.00 a.m. on Tuesday, October 16, 2007.

PRESENT

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

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

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

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

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

Hon. Dame B. A. MILLER, D.A. B.C.H., (Senior Minister of Ministry of Foreign Affairs and Foreign Trade)

Hon. R.C. EASTMOND, B.A.(Hons), Dip. Ed., LL.B (Hons.) (Lond.), LL.M. (Leic.), J.P. (Minister of Labour and the Civil Service)

Hon. Miss M. A. MOTTLEY, Q.C., LL.B. (Deputy Prime Minister, Minister of Home Affairs) (Leader of the House)

Mr. R. D. MARSHALL (Chairman of Committees)

Mr. R. St. C. TOPPIN, LL.B.(Hons.)

Mr. D. St. E. KELLMAN

Hon. Miss H. E. THOMPSON, LL.B. (Minister of Energy and the Environment)

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

Hon. T. A. PRESCOD, B.A. (Minister of Social Transformation)

Rev. J. J. S. ATHERLEY, B.A., B.Sc., J.P. (Minister of State, Prime Minister's Office)

Hon. N. A. LYNCH, B.Sc., M.B.A. (Minister of Tourism and International Transport)

Hon. A. P. WOOD, J.P. B.Sc., M.Sc., M.Phil. (Minister

Education, Youth Affairs and Sports)

Hon. R. R. FARLEY, B.Sc., J.P.(Minister of Housing and Lands)

Hon. C. A. MASCOLL, BSc. (Econ.) (Hons.), M.A. (Public Finance) (Minister of State, Ministry of Finance)

Dr. W. F. DUGUID, B.D.S. (Comm.), F.D.S., FDRCS., J.P.

Hon. Dr. J. X. WALCOTT, M.B., B.S., F.R.C.S. (Edin.), J.P. (Minister of Health)

Hon. K. D. SYMMONDS, B.A., LL.B.(Minister of State, Ministry of Foreign Affairs and Foreign Trade)

Hon. D. D. MARSHALL, Q.C., LL.B., (Hons.), L.E.C., (Attorney General and Minister of Home Affairs)

Mr. R. D. JONES, B.A. (Hons.), M.A. (Ed.), J.P.

Mr. M. A. LASHLEY, (LL.B.)(Hons.)

Dr. D. C. ESTWICK, B.Sc., M.B., B.S.

Mr. R. L. SEALY, B.Sc., M.B.A.

Prayers were taken by Rev. Canon Ivan Harewood.

Mr. SPEAKER: The House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, October 9, 2007.

Hon. Miss M.A. MOTTLEY: Mr. Speaker, I beg to move that the Minutes of this Honourable House of Assembly for its meeting of Tuesday, October 9, 2007, which Minutes have been circulated, be taken as read.

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

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

PAPERS

Rt. Hon. O.S. ARTHUR: Mr. Speaker, I am commanded to lay the following:

Representation of the People (Registration of Electors)(Amendment) Regulations, 2007.

Hon. N.A. LYNCH: Mr. Speaker, I am commanded to lay the following:

1. The Annual Reports and Audited Financial Statements of the Barbados Conference Services Limited, for the Financial years ended March 31, 2003 and March 31, 2004.

10.20 a.m.

Sequence 2

Tuesday, October 16, 2007

House 147, Sequence 03, 10.20 a.m.

FIRST READINGS OF BILLS

Hon. Miss M.A. MOTTLEY: I beg to move that the first reading of the following Bill:

1. The Court Process (Amendment) Bill, 2007

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

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

STATEMENTS BY MINISTERS

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

Hon. D.D. MARSHALL: Mr. Speaker, I wish to begin my Statement this morning by advising this Honourable House that the official opening of the new prison complex, Her Majesty's Prison, Dodds, was held yesterday Monday, October 15, 2007 at 2.00 p.m.

Mr. Speaker, this brings to a satisfactory conclusion 20 months of intensive work on this new multimillion dollar facility. It also signals a return to normalcy in the life of Barbados' adult correctional institution.

Her Majesty's Prison, Glendairy was built in 1855 to house 250 prisoners. Over the years, this institution had been reconfigured to provide accommodation for prisoners well in excess of this amount and by 2001, the prison population had surpassed what was considered as a reasonable carrying capacity, with a population of 815 inmates.

The prison authorities were faced with an unacceptable situation of overcrowding, which had serious implications for safety, security and inmate rehabilitation.

As the island's lone adult correctional facility, Glendairy was unique in that it housed, in fairly close proximity, persons convicted of the full range of offences. This situation is no longer the norm in many jurisdictions, where dedicated facilities are provided for each category of inmate.

Effective inmate rehabilitation in such an environment, Mr. Speaker, was most difficult. It was one of the contributing factors to the high levels of recidivism experienced in Barbados. These factors, coupled with Glendairy's aged physical plant, which did not allow for the installation of modern sanitary amenities prompted the Ministry of Home Affairs in 2000 to plan the construction of a maximum security prison, to house up to 600 inmates.

As a result of these circumstances, the Cabinet at a meeting of September 18, 2003 agreed first that a maximum security facility should be constructed at Dodds Plantation, St. Philip, to house 600 inmates sentenced to imprisonment for serious crimes. Second, Glendairy Prison should be refurbished and converted into a minimum security prison facility with accommodation for female prisoners, persons convicted of fewer serious offences, and for those on remand. Third, the Ministry of Home Affairs should advertise for tenders for the design and construction of the new maximum security prison.

The policy brief for this new prison was completed by the end of 2004 and expressions of interest for design and construction were just about to be sought, when the disturbance and ensuing fire broke out at Glendairy on March 29, 2005. The disturbance and fire, now the subject of an ongoing Commission of Inquiry, were of such severity as to render that facility at Glendairy uninhabitable.

The combined response of Barbados' security law enforcement and emergency services was commendable. Control of Glendairy was regained by nightfall with no escapees; a minimum loss of life, only two persons; and relatively few serious injuries to inmates or security personnel, given the initial scale of the threat.

The extensive damage at Glendairy and the need to take swift action necessitated a modification of the earlier Cabinet decision, from a single maximum security prison for 600 people and the rehabilitation of Glendairy to the construction of a new general facility to house up to 1 250 inmates. It also meant, Mr. Speaker, that the 997 inmates, including 51 females resident in the prison at that time, had to be relocated.

Therefore, on April 1, 2005, the Cabinet agreed to the transfer of inmates to three temporary prisons established at the Barbados Youth Service Headquarters, Harrison's Point, St. Lucy; Buildings Nos. 7 and 8, Six

Roads Industrial Park, St. Philip; and the Headquarters of the Barbados Defence Force at St. Ann's Fort, the Garrison in St. Michael.

As an interim measure, the female inmates and some high risk male inmates were transferred immediately to the Headquarters of the Barbados Defence Force and to the District E Police Station in St. Peter. The remaining prisoners were sent to Units 3A and 4A at Buildings Nos. 7 and 8 at Six Roads, until the Barbados Youth Service Headquarters at Harrison's Point, St. Lucy was completely refurbished to accommodate the entire prison population.

Inmates were transferred to Harrison's Point as the refurbishing of individual buildings was completed. Those at Six Roads and District E were relocated in April and those at the Defence Force in May and July of 2005. Sir, all inmates were relocated to Harrison's Point facility by July of 2005. In short, the extensive refurbishing and retrofitting of no less than 12 buildings at the temporary prison in St. Lucy and the transfer of 997 inmates was completed in the space of four months.

The Cabinet at its meeting held on April 14, 2005 agreed that nine local, regional and international firms should be invited to submit proposals to fund, design, construct, furnish and equip the new prison at Dodds, St. Philip.

Mr. Speaker, only two proposals were received. These came from VECO USA Inc., and Prison Construction Services Limited, a consortium comprising, local, regional and international firms. This consortium was supported by TPS, a firm of U.K. Prison Architects; the Barbadian Architect Firm of SRM Architects; Stantec; Tower Buckhall Austin; the Barbados National Bank; and the FirstCaribbean International Bank.

Mr. Speaker, a Technical Evaluation Committee was established. This Committee was chaired by the Permanent Secretary of the Ministry of Finance Mr. William Layne, and included the Permanent Secretary of the Ministry of Home Affairs Mrs. Lucene Wharton-Isaac; the Chief Executive Officer of the Barbados Tourism Investment Inc. Mr. Darcy Boyce; the Deputy Chief Town Planner, Mr. Trevor Leach; the Project Manager of the Office of the Attorney-General and the Ministry of Home Affairs, Mr. Michael McIntyre; the then Principal Crown Counsel in the Solicitor-General's Chambers, Mrs. Laurie-Ann Smith-Bovell; and the Chief Accountant in the Ministry of Finance, Mrs. Trudy Farley. Sir, those were the Members of the Technical Evaluation Committee.

Mr. Speaker, this Technical Committee recommended that their evaluation of the two proposals received determined that VECO USA Inc. had submitted the better proposal, and that the Government should enter

into negotiations with VECO USA Inc. These proposals were evaluated, based on the firms' understanding of the concept, their technical competence and management capacity, their financial capacity and the cost effectiveness of the solution.

House 147, Sequence 03, 10:30:14

Tuesday, October 16, 2007

Hon. D. D. MARSHALL: The Cabinet, at its meeting of May 26, 2005, accepted the recommendation of the Technical Committee and agreed that negotiations with VECO USA Inc. should commence in order to conclude an agreement for the construction and financing of the new prison at Dodds under a publicprivate partnership agreement.

Shortly thereafter, given the great urgency to have the new prison completed, the Cabinet approved a Memorandum of Understanding between the Government of Barbados and VECO's subsidiary, Commonwealth Construction (Canada) Limited, to enable the contractor to start the detail designs so that work on the project could commence while negotiations for the formal Implementation Agreement, which would have been on the basis of the final cost, continued.

The Memorandum of Understanding was signed on June 24, 2005. In addition, approval was also granted in accordance with the terms of the Memorandum of Understanding for the issue of Letters of Comfort by the Ministry of Finance to FirstCaribbean International Bank (Barbados) Limited to enable arrangements for bridging finance by the contractor to be put in place. This would allow for completion of the design activities and for a prompt start of the construction activities. Bridging finance, in the sum of US\$65 million, was later approved by FirstCaribbean International Bank (Barbados) Limited. Mr. Speaker, under the terms of the Memorandum of Understanding, the contractor would own and lease the physical facility to the Government on the basis of what is called a Triple Net Lease, with a transfer fee of BDS\$1.00 at the end of the 25-year lease term, at which time ownership of the prison would transfer to the Government. During the lease period, Mr. Speaker, the contractor would be responsible for the maintenance of the facility while the Government, the client, would be responsible only for the payment of utilities and insurance.

The Memorandum of Understanding has since been incorporated into the formal Implementation Agreement, which sets out the formal contractual cost of US\$144 301 325, as a result of the completion of the final designs. The Agreement was signed by the Government of Barbados with VECO USA Inc. on June 20, 2006.

Mr. Speaker, given the urgency of the situation, site clearing and the preparation of the Dodds site commenced during the latter part of 2005 to facilitate the start of construction activities in January of 2006, all this, while work proceeded on the completion of the final detailed designs. A number of studies, including a geo-technical study and environmental scoping, were undertaken in accordance with building requirements.

During the initial negotiations with representatives from VECO USA Inc., Commonwealth Construction (Canada) Limited and the Government of Barbados, a preliminary estimate of US\$183 228 000 was submitted for the construction and financing of the Prison complex. This figure was considered by the Ministry of Home Affairs to be unacceptably high. The scope of works was therefore reviewed in order to achieve significant reductions in the overall cost without compromising the security aspects of the Prison complex.

Mr. Speaker, after extensive negotiations, this estimated figure was eventually revised to US\$144 301 325, as the project scope was more clearly defined and a more definite cost estimate was made available. Mr. Speaker, it should be noted that one of the key aspects achieved by the negotiators was an agreement that if the company had completed construction after the contract date and over the budget, those increased costs would have been met by VECO USA Inc.

Equally, it was agreed that as an incentive to remain within the contracted amount of US\$144 301 325, any cost savings realised during the construction would be shared by VECO USA Inc. and the Government of Barbados. Mr. Speaker, the contractor is still in the process of completing payments and reconciling figures, but firm indications are that there have been no cost overruns and that the project cost would remain within the contractual amount of the US\$144 301 325.

Mr. Speaker, project progress was closely monitored through weekly meetings in the early stages, through the submission of monthly project reports by the contractor and regular site visits.

Additionally, since the bridging finance facility was made available to Commonwealth Construction (Canada) Limited, that company has, on a monthly basis, submitted certificates for the reimbursement of funds based on the expenditure incurred. These certificates were approved by the Ministry of Home Affairs before FirstCaribbean International Bank disbursed funds to the company. This arrangement, Mr. Speaker, has continued since the approval of the funds was achieved on the US Private Placement Market in September of 2006. The contractor has continued, through the construction of the project, to

submit claims to the Ministry of Home Affairs for certification before submission for payment.

Mr. Speaker, initial intentions were to secure funding for this project from the domestic market. However, based on the parameters of the project and the level of funding required, it was considered that the US Private Placement Market was the most appropriate option for such a transaction. Consequently, FirstCaribbean International Bank, and its partner, Barclays Capital, assisted the contractor with the placement on the market. This placement was successful and it is understood that it was the first time that funds were sought in this market for a project of this magnitude in the Caribbean region.

The contractor had earlier projected, Mr. Speaker, that the Prison complex would have been completed by the end of August, 2007, and, in fact, substantial completion of the project was achieved by that date. However, a request for an extension of time until September 30, 2007 was sought by the contractor so as to complete paving, fencing, landscaping and yard works, on account of the inclement weather experienced during the months of July and August, 2007. Mr. Speaker, permission was granted for this extension and the keys to the complex were handed over to the Superintendent of Prisons, in the presence of the acting Project Manager, on October 01, 2007.

Mr. Speaker, earlier this year, during a site visit to the new Prison, I indicated that the Government had requested variations to the original scope of the works to include the demolition of the fire-damaged section of the Summervale building, the rebuilding of the same, as well as the renovations to the existing portion of the building to provide accommodation, instructional and recreational facilities for prison officers and also for the construction of dog kennels.

In addition, the building which formerly housed the School Meals Centre was converted into a storeroom. The estimated cost for the Summervale building was US\$2 million. Mr. Speaker, it was anticipated that these buildings would have been completed after August 30, 2007, but in fact they have all been completed ahead of schedule.

Mr. Speaker, in light of the fact that the construction of the new Summervale building was not part of the original contract, since that building was burnt in October 2006, some ten months after construction had started, it has been agreed that this would be the subject of a collateral contract with Barbados Correction Services.

At that time, Mr. Speaker, I also made reference to another important feature of the Implementation Agreement in relation to maintaining transparency and accountability for the expenditure of Government funds. Clause 4.4 of the Implementation Agreement stipulates that

all accounting records of the contractor relating to the works would be available for audit by the Government.

Since mid-July, the Superintendent of Prisons and a team from the Prisons Department moved into the new Prison complex to familiarise themselves with the facility and to plan the transfer of staff and inmates. In August, small teams of prison officers benefited from orientation sessions, preliminary training and demonstrations of the new mechanisms that have been put in place.

Mr. Speaker, training of larger teams started in earnest last month as prison officers were more fully exposed to the new systems. Arrangements were also made for prison officers to visit Dodds on a shift by shift basis.

House 147 Sequence 4

10.40 a.m.

Tuesday, October 16, 2007

Hon. D. D. MARSHALL: Mr. Speaker, by the time the inmates move into the new prison, all staff members would have been trained in those areas of prison operations that are of relevance to them.

Mr. Speaker, the efforts made by the contractor have been commendable, and appreciation is extended to VECO USA, Inc., and its subsidiary company, Commonwealth Construction (Canada) Ltd, and the Barbados Correction Corporation for delivering this project within budget and within schedule. Recognition must also be given to all public and private sector agencies and officials who have contributed in anyway to the successful completion of this modern prison complex, which is outfitted with the latest in prison amenities and technology. Mr. Speaker, many people did not believe this project would have been completed within the two years or within budget. It has been done and Government remains grateful to all.

Mr. Speaker, the new prison has been built with due regard to the residents of St. Philip and great care has been taken to minimise any negative impact on services in that parish. To this end, two 250 000 gallon water tanks have been installed to supply water during times of peak usage and also as a fire protection reserve. The tanks will supply approximately 36 hours of water, in the event of a lack of supply from the Barbados Water Authority. The prison also has its own sewerage treatment plant and the grey water from this plant will be used for irrigation in the prison environs and especially on the prison farm.

Within the contractor's sum, we have spent approximately US\$20 million on security features, which incorporate the use of the most modern technology, as well

as miles of fencing to allay any fears that the residents in close proximity to the prison might have.

Barbados now has a modern correctional facility, which meets international standards. With a proper maintenance programme being put in place, it is expected that this new facility would outlast the previous institution, which has been the home to inmates since the mid-1850s. For the first time, we will be able to accommodate inmates according to the standard classifications of low, medium and maximum security. Those on remand will be completely separated from the convicted inmates. They will have their own sleeping, eating, recreational and support facilities. All cells have been equipped with modern sanitary amenities, signalling an end to the use of slop buckets.

The new industries and training building will allow for the expansion of the programmes started at Glendairy Prison, prior to its destruction. We can now recommence, in earnest, our rehabilitation programmes and expand their reach, as adequate provision has been made for counselling, education and skills training for inmates.

Mr. Speaker, as the new prison at Dodds joins the family within St. Philip, we pledge to continue our consultations with the residents, so as to minimise any negative impact that the prison might have. Again, I wish to thank all individuals, companies and members of the public service, who have participated in ensuring that we could deliver this project to the people of Barbados on time and within budget.

Mr. Speaker, I am obliged to you.

ORDERS OF THE DAY

SUSPENSION OF STANDING ORDERS

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

Hon. J. X. WALCOTT: Mr. Speaker, I beg to second that, Sir.

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

GOVERNMENT BUSINESS

ORDER NO. 8 – SECOND READING OF THE SUPREME
COURT OF JUDICATURE (AMENDMENT) BILL,
2007.

MR. SPEAKER: The Honourable Member for St. Joseph.

Hon. D. D. MARSHALL: Mr. Speaker, from time to time, it is important, in any system, to visit those areas of its administration and to ascertain whether there are any aspects in which there may be any shortfalls, to consider whether there are any areas in which improvement is to be found. This is also true in relation to the administration of justice. It has always been a feature of any system of justice that flexibility and willingness to change must also be embraced.

Mr. Speaker, our Supreme Court of Judicature Act has served us well as a modern piece of legislation, which sets the framework for the administration of justice. However, there are areas where we feel it is important to make a few changes, so as to, in essence, bring that piece of legislation in line with modern approaches. The amendments themselves are not major but they are important.

It is a little known fact that in the appellate jurisdiction, our legislation, as it stands, does not clearly allow for an appeal judge to deliver a dissenting judgment. Sir, while this may seem unimportant, I believe it is important to mention to this Honourable House that over the history of our courts and over the history of the common law courts, dissenting judgments have often been those judgments that lay the foundation for new trends of legal thinking.

Sir, frequently, dissenting judgments set a novel and modern direction for the interpretation of laws and for the application of those laws. However, as our legislation has been crafted, a member of the Court of Appeal, who is not only entitled to have a different view but who feels it is important to reflect in a different way on the law, is prohibited from offering that dissenting judgement. The way in which our law is currently set out, specifically says that one judgment shall be delivered by the Court of Appeal and that no separate judgement is allowed.

I am told that in the history of Barbados, we have only had one dissenting judgement, which presented a few difficulties because that dissent is not known to our legislation. It is certainly a fundamental part of the thinking of any court that those jurists, who form a different view, be entitled to set out those views. It is not just a constitutional right, it is also the kind of thing that allows for the building of jurisprudence. It is the kind of thing that

allows us to reflect on the law in a way that it might not have been seen before. Therefore, one of these amendment is going to give clarity to this position and to ensure that members of our Court of Appeal are able to give dissenting judgments.

Mr. Speaker, another important aspect and one that might concern this Honourable House, more so than others, has to do with the ability of the court to make what is called “a wasted cost order.” The addition of this new Section 85 (a) will allow judges of the Supreme Court to order attorneys to pay cost personally, in circumstances where, by their conduct, a waste of judicial time has been caused.

10.50 a.m.

Tuesday, October 16, 2007

(EDITED)

Hon. D.D. MARSHALL: I hope that it is not an order that a court would have to make with any degree of frequency but the fact is that from time to time, one may even argue often, attorneys, for whatever reason, may cause a court not to be able to proceed with the case. From my own experience - and I believe every lawyer, who has had the experience of practising in the Magistrate’s Court and the High Court knows that - very often you have conflicts. Sir, some times you are expected to appear in two courts at the same time and sometimes you are in the Magistrate’s Court and in the High Court. This does not seek to place a burden on those lawyers who are actually acting in good faith but in situations where a lawyer might ask for an adjournment out of the blues to the tremendous disruption of the work of the court, and to the disruption to the course of the litigation, the court does not now have the clear power to order attorneys to pay, personally the legal costs occasioned.

Mr. Speaker, this is something that certainly exists in many sister jurisdictions and many similar jurisdictions to ours. There are many instances in the UK, in which you could be considered the fons et origo of our judicial system, where attorneys are forced to pay cost personally and this is seeking to bring this particular power into the bosom of the court in Barbados, so that the court can, through this mechanism, not only discipline lawyers who are found to have wasted the time of the court but also to help to keep the course of litigation on track.

Mr. Speaker, the fact is that we have a tremendous backlog of cases in our court system and some of the fault has to be rest clearly at the foot of some of the attorneys and this particular amendment will allow that.

Mr. Speaker, I would like to use that as the springboard to mention to this Honourable House some of the changes that have been taking place in the administration of justice to modernise the justice system of Barbados over the last few years. Sir, with your leave, I want to update the Honourable Members of this Chamber. I believe that everyone would know that the Supreme Court building has started and I want to say to Honourable Members of this Chamber that the project is continuing apace and we expect that facility would be completed in June of next year. Sir, we all recognise that it is pointless putting new wine in old wineskins. Sir, you can change the outer structure of something without, at the same time, changing what goes into it and the understanding must be that both things have to change at the same time.

Mr. Speaker, we have always felt that the administration of justice in Barbados needed desperately to have a new court building. The existing facility is in many respects a very elegant building. I believe there are some of the older schools, who would really hate to leave Coleridge Street. It is a building that has a life of its own and tremendous memories for Barbadians. Sir, just to say Coleridge Street alone conjures up images and causes things to spring into the imagination of Barbadians just like when you say the Main Guard or, Sir, just like when you said Glendairy. Sir, that facility has been outgrown and we now have the situation where some of our judges have to operate from a facility in Roebuck Street. It is a building where we are having environmental problems, from time to time, and there have been occasions, where parts of the roof in the judges' chamber have collapsed.

We are happy to be able to say to this country that in June of next year, we will be able to move into a brand new Supreme Court building. Sir, that alone is not the key to the efficient administration of justice, that is just the wineskin. We recognise that in order to ensure that justice is delivered to Barbadians in an efficient way; in a cost-effective way and on time with a minimum of wastage, several other initiatives had to be taken and, Sir, these initiatives run the gamut.

Mr. Speaker, one of the initiatives that is taking place is the initiative, started by the Chief Justice to remove the backlog of cases. There are cases that have commenced as far back as the 1970s. Sir, when I say commenced, I want to say that you commence a case simply by filing one or more documents in the court but frequently these matters are settled but nobody comes back to court to have them taken off the list of cases. The challenge is that until that case is brought to an end by the filing of documents or by the delivery of the judgement, it stays in the system as a living, active case but, Sir, that is in name only. It, therefore, means that we have had, over the years, many thousands of cases, that were filed but on which no action was taken; the parties settled; the parties died; the parties

negotiated, all kinds of things and so, the court has set up a Backlog Committee. This Backlog Committee has been going through all those old cases to call lawyers to account. The lawyers must come before the Backlog Committee and say what is the position with the case, is it continuing or should it be taken off the docket.

Mr. Speaker, the essence of our new thrust in justice will rely, to a large extent, on the implementation of technology-driven solutions. When we talk about case management, we expect that a judge or a court clerk would be able to pull up on a computer screen a case, see exactly what is the status and take it forward. Sir, these are the things that help to make the system more efficient. Mr. Speaker, as it is now, if you want to know the status of a case, you give the file number, somebody retrieves the file and then you manually search through the file to see what is where. Mr. Speaker, we can only implement this computer run system if we get rid of the backlog.

Mr. Speaker, as small an initiative as it is, it has been proving successful and very much worth the effort by helping to purge from the system all of those cases where some of the parties have died; some of the parties have left the country and often the matter has been settled and the money paid. Sir, something as simple as that has been helping to bring efficiency to the system.

Mr. Speaker, in addition the days of our judges having to manually take notes of evidence is coming rapidly to a close. The court transcription system, where the transcription officer in the court types out word for word, in real time, every word that has been said, so that by the end of the day all of the evidence that has been given can be referred to, not just by the judges but also by the litigants. This is a standard in all modern jurisdictions and it is a system that we have implemented at great cost and with great effort but also with reward.

Mr. Speaker, one of the challenges comes when judges have to sit and manually write evidence, they have to ask people to slow and it interrupts the flow thought; the flow of giving evidence and, in a way, also affects the administration of justice. Of course, then the judge has to go back and read back all the handwritten notes.

H147/11:00

Sequence 6

Tuesday, October 16, 2007

Hon. D.D. MARSHALL: Mr. Speaker, there are even occasions where, sometimes, the note taken by the lawyer may have been different from the note taken by the Judge. Sir, we now have a system of court transcription, where at the end of each sitting, at the end of each day, all

parties, the court, judges and everybody can have the benefit of seeing exactly what was said.

Sir, we are also implementing judicial management of cases, so that the course of litigation can be more controlled by the Judges. This is, certainly, what happens in Canada and England. You will have case management. Sir, the parties to the case will appear the Judge, and directions will be given as to what is to happen to the case, how are things to be proceeded with, to bring justice to the people in a way that is not fraught with long delays.

Sir, we have been able to increase the number of Judges on our Bench. The Court of Appeal and the High Court are now fully constituted. Sir, now that the Supreme Court has its full compliment of staff, 13 Judges, we are better able to plan and organise the case load in the courts to ensure that they work more efficiently.

Mr. Speaker, having been able to fully constitute the Court, for the first time, we are taking the matter of continuing education for Judges solidly in hand. There used to be the idea that a Judge, by virtue of his or her keen intellect, knew everything about the law, or knew everything about anything. Sir, clearly, that is an erroneous position to take. We are now spending significant amounts of resources to allow our Judges to continually retool, to come to grips with new trends in judicial thinking, to travel to jurisdictions and to benefit from the way those jurisdictions are operating. Mr. Speaker, since we are about to implement new rules of the Supreme Court. We have not only been bringing individuals to Barbados to train our Judges and lawyers, but our Judges have been travelling to other jurisdictions where those rules have been implemented and where case management is taking place, to see and experience firsthand how these structures operate. Sir, this obviously allows them to function in that environment with some familiarity, when we introduce the new rules.

Sir, you would also be aware that for the first time in our history, we have established a position of Master of the Supreme Court, a position that has now been filled by a former Deputy Clerk of Parliament, Mr. Roberts. We now have to call him Master Roberts. The position of a Master of the Supreme Court is a very important position. Those duties were formally done by the Registrar of the Supreme Court. Sir, with thousands of cases being filed in the High Court each year, it represented a challenge for the Registrar to deal with the administration of the Court and the administration of the Registry, and also the preparation of Summons for directions and things of that sort. Sir, by establishing the position of The Master, we have been able to bring greater efficiency to the court system.

Mr. Speaker, another area in which we have been able to modernise how we run our courts and how we

deliver justice, is the implementation of Assizes throughout the year. There are a large number of Assize criminal cases that are set down before the High Court, formerly, the practice was to convene two or three Assizes a year, and only during those times would criminal matters be heard. Clearly, not the most efficient arrangement. Now that we have our full complement of Judges, it made sense to abolish the Assizes. Sir, that traditional Assize system meant that there were only allowed 157 trial days in a year, but with the abolition of the Assizes, and holding continuous criminal trials in the High Courts, we now have a total of 207 trial days available each year to dispose of the criminal matters before the High Court.

Mr. Speaker, the implementation of information technology will be central to the new Supreme Court facility. We have invested in a software package called the Judicial Enforcement Management System. I want to say not only will the Courts be a part of that system, but also the Police and the Probation Department.

Sir, I think, emerging from all of these approaches is that the administration of justice is not just a matter for the Courts alone. The Police play an integral part in the how our justice system works. The Court sits at the pinnacle of our justice system, but on the other side we also have the Probation Department. This JEMS, Judicial Enforcement Management System, allows for the effective management of court cases, and it performs a multiplicity of functions, data entry, filing and diarising events, so that Court dates are set with the minimum of conflict. Sir, it also allows us to collate statistical data, so that we could say, on the press of key, how many cases we have, what kinds of cases they were, how many people have been convicted, and things of that sort. Sir, all of this is pivotal to the proper functioning of our new court system.

Mr. Speaker, in addition to that side of things, we will also see greater efficiencies in the Registration Office. Together they all ensure the proper functioning of our judicial system.

Sir, one of the matters we have moved a little slowly on, and I believe we will shortly be regularising this situation, relates to the position of the Chief Magistrate. The Magistracy serves an important role in this country in the delivery of justice, but over the years the position of Chief Magistrate has been in name only. Sir, by virtue of the fact that his terms and conditions are identical to the terms and conditions of any magistrate who has served for, I think, over five years. He has simply not been able to function in an administrative capacity. Therefore, the administration of the Magistracy, in Barbados, has been left to the Chief Justice. That is not what obtains in other jurisdictions like Trinidad and Jamaica, where their Chief Magistrate actually meets with magistrates and has a supervisory role to play in that regard. We think that

moving to regularise this situation, will allow our Magistracy to function in a way that is more efficient and to play a more pivotal role in the administration of justice.

Sir, I mentioned before, the matter of the introduction of new rules of the Supreme Court. Those rules have been fully drafted by the Chief Parliamentary Council. I believe that by December these new rules would be printed and, therefore, very early next year these new rules will come into place.

Sir, we have also done a tremendous amount of training, not just of the Judges, but also of the staff in the Registration Office. Sir, the Registry staff is the unsung heroes of our judicial system. I think that the average Barbadian, when they think of Registry, imagines a place where you go for birth and death certificates, and where you file Wills. Sir, the Registry is responsible for a large volume of activity, way in excess of its administrative responsibilities, with deaths, marriages, births and matters of that sort. Sir, all of our Registry staff, over a period of time will be receiving training, not just in technology, but also in human resources.

Mr. Speaker, further, once the new rules of the Supreme Court come into force, we will be urging parties to resort to alternative dispute resolution. Sir, while it is arguable that the courts are there to solve disputes for parties, the fact is, the parties are often aggrieved with the decision. It is clear that using the route of alternative dispute resolution or mediation, the parties themselves are able to come to a decision to resolve their dispute...

H147

Sequence 7 11.10 a.m.

Tuesday, October 16, 2007

House 147, Sequence 8, 11.10 a.m.

Hon. D.D. MARSHALL: Sir, by being involved intimately in it in this way, it removes a lot of the contentiousness out of the disputes, where parties agree to a settlement that they arrive at together, as opposed to being put on the witness stand, being battered by the other person's lawyer and being examined, cross-examined and reexamined, which cause the experience in a court to be one that is hardly relished and one that you would hardly want to repeat.

Mr. Speaker, that system has resentment built into it, and people feeling that the judge unfaired them. If you lose, you say that your lawyer and your son went to school together, so he would never have worked for you properly. There is a whole set of resentment and mistrust that is part

and parcel of the current contentious approach that we take towards court cases and the administration of justice.

Mr. Speaker, that will not go away. I am not suggesting that we are going to be shutting down our courts. There are cases where people simply cannot agree, and the place for them to go is to the courts but in circumstances where appropriate, recourse should be had to alternative dispute resolution and to mediation, these kinds of approaches are going to be built in. There are not entirely novel for us. In fact, in our Family Law Act, it is a requirement that parties are sent to counselling, so that it is a statutory requirement that you must recommend counselling to your clients. Sir, we are taking this significantly forward and we are going to put provisions in place, which will allow the court to cause the parties to seek alternative methods for dealing with cases.

Mr. Speaker, another important matter that has been canvassed by the Chief Justice recently is the matter of night court, not necessarily appropriate for High Court proceedings, but we have thousands of court cases in the Magistrate's Courts that are still to be heard. In one year alone, I believe we had in the region of 30 000 traffic offences being laid against individuals.

Sir, with such a large backlog in the Magistrate's Courts, we have to find ways of breaking that long jam, and night court is one that is being actively considered by our system here in Barbados. In fact, arrangements are being made for three members of a working group to go to Jamaica to see how their night court functions. The point is we have the physical plant that is available and we believe that we have the expertise available. Therefore, there is no reason, in order to reduce some of the backlog of the many cases in the Magistrate's Courts, especially traffic cases, that we cannot move to a night court scenario.

Sir, we are going to be making initiatives in the area of a drug treatment court. The fact is that drug offenders now in Barbados appear before the court and they found guilty or not guilty. If found guilty, they are sentenced and they serve their time.

Sir, while that may follow the crime route, we recognise that it is hardly the best way to deal with drug offenders in a modern society like Barbados. We feel that we need to have a special drug treatment court so that individuals who are drug offenders can be shepherded through a process, which does not just deal with punishing them for the crime, but it also sees them through a rehabilitation process, such that the Barbadian society would benefit from an individual who, if sent to prison, may not have solved any of his problems. Mr. Speaker, we feel the management of the situation through a drug treatment court, would be able to achieve significant results.

Mr. Speaker, we are looking at a series of small amendments to allow for the improved working of our Supreme Court. Our Supreme Court of Judicature Act, has served us well and it is a testimony to the fact that we only have to make a few changes from time to time, so as to tweak it. Sir, these changes are highly commended.

Mr. Speaker, the other small matter is that we are going to make an amendment to allow the Community Legal Services Commission to make its own rules. I want to say here that the Legal Aid Department has been working exceptionally well in Barbados. In fact, Mr. Speaker, every year, we have to come to this Chamber for a Supplementary to increase the amount of money to that agency, to be used for the payment of legal fees.

Sir, it is a fact that most attorneys do participate in the Legal Aid Programme. The Legal Aid Programme in Barbados is a shining example of how a Legal Aid system should be run. Sir, more and more Barbadians are having recourse to it, especially in the area of family law matters. There are many individuals who need to have recourse to justice and for them, our legal aid system is their saviour. It is a system that works well, but all that we are doing here, is clearing up an anomaly. Mr. Speaker, with that brief overview as to some of the initiatives that are taking place, I believe that it would be clear to Honourable Members of this Honourable House that this administration is paying serious attention to the delivery of justice, not just to the matter of housing a court - the building they are operating from - but we are making sure to put all of the other systems in place that will see improvements to our justice sector, and a reduction in delays for the delivery of justice.

Mr. Speaker, I believe there is that maxim that still holds true today, justice delayed is justice denied, Sir, and the delays in the judicial process has been one of our biggest challenges. Therefore, these amendments together with all of the other initiatives that we are taking place in this country, are not designed for the judges but for the litigants.

Mr. Speaker, these amendments are designed to ensure that Barbadians can have recourse to their courts with confidence of a fair and an impartial judiciary; with confidence of a justice system that works and with confidence that their justice and their day in court will not be unduly delayed. Sir, these amendments, taken into the context of the physical things that we are doing in terms of new facilities and the implementation of technology, and in partnership with the continuing education for the judges, and the training for the members of staff of the Registry, also will see the community benefiting.

Permit me though, Sir, to say on an analogous matter that our efforts in improving the physical condition of the High Court will also be mirrored in the physical condition

of our magistrate's courts. Many of our magistrates courts such as Boarded Hall and District C, are operating from physical spaces that are hardly appropriate today. Sir, over the course of the next few months, you would actually see concrete being poured heralding the way, Sir, for new magistrate's courts in several places.

Sir, a new magistrate's court is coming to Tamarind Hall in St. Joseph. I heard the court in Horse Hill being described years ago as a fowl coop, because it was not much better or bigger than a fowl coop. Therefore, we are making sure that in the delivery of justice, we also bring along the magistracy. We are also going to be seeing a new magistrate's court in Belleplaine, District C, and I believe, in St. Thomas. Sir, we are not only catering to the needs of justice from a supreme court point of view. The fact is that most Barbadians, who petition for justice, appear before the magistrate's courts and therefore we need to improve those physical circumstances as well.

There is going to be a police station in Wildey but not a court.

House 147, Sequence 08, 11:20:14

Tuesday, October 16, 2007

Hon. D. D. MARSHALL: All of the matters in St. Michael are dealt with in the St. Michael magistrate's courts of which they are several.

Mr. Speaker, with those words, I wish to commend these short amendments to this Honourable Chamber and to urge the continuing support of all Barbadians for a system of justice.

Mr. Speaker, when we look across the region, and we do not have to go far, we could see the effects of a judiciary that is embattled. We are very fortunate in Barbados that we have been able to maintain our judiciary at the highest possible level.

With those words, Sir, I beg to move that this Bill be read a second time.

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

Mr. D. St.E. KELLMAN: Mr. Speaker, there is no doubt that once you have been in Parliament for as long as I have been that you would definitely have to say something on this particular matter.

Mr. Speaker, you would have been here when we would have dealt with an amendment previously when the impression would have been created that this would have solved all the problems as it relates to this matter.

Mr. Speaker, we are now here today dealing with an amendment to it again, with a promise that we would be getting another amendment by December, which means that we are 'piecemealing' the justice system in Barbados, when what is really needed is a comprehensive amendment so that we can revamp the whole justice system in order to achieve fairness and justice within the system.

Mr. Speaker, whenever we deal with this matter, we speak about judges and then we gloss over magistrates. Mr. Speaker, there was a time in this country when one got the impression that if you wanted to be a judge all you had to do was to go and sit on the magistrate's bench and do a good job and you were assured of an elevation to the higher courts in Barbados. Today, Mr. Speaker, we have magistrates who have served well, but we are now getting the impression that you need not sit in the Magistrate's Court to become a judge, because no matter how well you perform in the Magistrates' Court, you would not be assured of a position at the higher level.

In my opinion, Mr. Speaker, if we do not watch what is occurring within the justice system, sooner rather than later, we will not have any magistrates in this country because the road to elevation within the judicial system is not that long and practised system that worked previously for us, it is now a new system.

Mr. Speaker, we are seeing people who are now coming into this system without the necessary groundwork that one expected previously and we have to ask ourselves what message we are sending to the magistrates or whether we would be able to attract magistrates to sit in those lower courts because previously the impression was created that all you had to do was your training within the Magistrate's Court and you were assured to receive that appointment.

Mr. Speaker, in this day and age where money matters, it is clear that judges would not now look to the Bench in the Magistrates' Court for elevation, what they would do is go toward their own private...

Mr. SPEAKER: You mean the other way around. You said judges would not look to the Magistrate's Court for elevation.

Mr. D. St.E. KELLMAN: I am sorry, I mean lawyers. Sir, lawyers would not look to the Magistrate's Courts anymore because one gets the impression that all you have to do is to go elsewhere, perform well and you would get 'a pick'. One has to also be very careful because what one can easily see is that there is a kind of protectionist system being put in place to ensure that certain positions are kept in bond for certain persons to receive at a later date. Sir, we have to watch that because it is unfair to have a Chief Magistrate who has been serving so long and so many appointments came afterwards and

that Chief Magistrate cannot get that 'pick' that one would have expected him to receive.

What we are also seeing, Mr. Speaker, is that many magistrates are going outside of Barbados to seek positions because they believe that once they remain within the system that there is no progress for them.

Mr. Speaker, I need an assurance from the Attorney-General, when he gets up to speak, that under his mandate this is not a fact because the impression out there, as I am hearing it from the magistrates and those who serve, is that it is a waste of time being a magistrate now because you do not have to be a magistrate any longer to become a judge, that you are being overlooked, you are being underpaid, and all other persons... Sir, what they are actually now saying is that it is better to be in the private sector to become a high court judge than to be a magistrate.

Sir, I do not want to call any names, but if challenged, I would demonstrate by the number of names I could call.

Asides.

Mr. D. St.E. KELLMAN: Sir, I hope that now that this matter has been raised that this matter will be dealt with.

Sir, in terms of remunerations also, there is no doubt that the Chief Magistrate cannot be paid the amount of money he is being paid. If he has a title, he has to be paid for the title. If he is asked to do additional work, he has to be paid for the additional work. Mr. Speaker, you are not going to get many magistrates who would want to take up that position because they see it as a waste of time. Sir, we cannot see anything within our judicial system as a waste of time, what we have to do is to ensure that we make it exciting and create the right atmosphere. Mr. Speaker, I am hoping that the new Attorney-General, with all his vigour and all the changes, would take these points into consideration and would not continue to undermine the system. I am also hoping that he would do everything in his power to ensure that there is room for elevation so that those trainee judges, as we used to see them, can see that as progress again.

Mr. Speaker, there are too many complaints and when you are hearing these things, especially within the judicial system, you just cannot ignore them because one day we would have magistrate's courts, but we would not have anyone to sit on the Benches and we have to worry about that.

Sir, there must be a system that will create an atmosphere for elevation. Sir, I am not saying that there are not certain positions higher that you could look towards the

private sector for but at the same time you cannot build a system and then undermine it. One has to be very careful.

Mr. Speaker, in terms of legal aid, there is no doubt that the masses of people in Barbados seem to only get legal aid for the negatives. Sir, I am saying that we need to provide legal aid for certain other things such as the protection of property. Sir, if a man feels that his property is being threatened, he should be able to get legal aid. Sir, persons should also be able to get legal aid in civil matters to protect their constitutional rights, if they believe that they have a good case, they should not just say that they cannot fight the case because they do not have money.

Mr. Speaker, I am calling on the Attorney-General to also look at this matter. I know he understands it quite well. He is a man who represents constituents of that which I speak. Sir, I know the Honourable Member would have heard these things unless he has now elevated himself and is ignoring these matters, which I do not believe.

Mr. Speaker, I agree with the Attorney-General that the staff in the Registry works very hard and people sometimes do not understand the role asked of them. Sir, I am saying that you cannot admit their responsibilities, but when it comes to compensation you ignore it. Sir, this is another matter that the Honourable Member has to look at.

Mr. Speaker, I heard the Honourable Member making the point that lawyers would now have to pay for wasting the court's time. I want the Honourable Member to study this very carefully.

Asides.

House 147 Sequence 9

11.30 a.m.

Tuesday, October 16, 2007

MR. SPEAKER: Honourable Member, please.

Asides.

Mr. D. St.E. KELLMAN: Mr. Speaker, there is no doubt that this cost would be built in, therefore, the Attorney-General has to be very careful that this cost would not be passed from the Government to the members of the public, where lawyers would believe that there is a possibility this could occur. It would, therefore, increase the fees of the persons they represent. Sir, I hope this would not be a backhanded approach to increase fees for attorneys, without their clients ever knowing.

Sir, there is no doubt that cost would be passed on to the clients. We have seen it throughout Barbados. We have

seen that if a lawyer knows there is a possibility he has to pay an additional fee, then that fee would be passed onto the client. Therefore, it is easy to say that the lawyer would pay but who would pay the end cost? Sir, I am saying it is not fair for the client to have to pay that end cost, when the error would have been committed by the attorney himself. Sir, that is something we would have to monitor, to make sure it does not occur.

Mr. Speaker, the Honourable Member spoke about new wine in old wineskins. Sir, I only hope that with the coming of the new courts and with all the information and new technologies we are now hearing about, that we would not read of cases that would have occurred five years ago that are now being tried today. We would hope that with the improvement in technology, we would see a faster and fairer delivery of justice. We should not be hearing about files having gone missing and cases being discontinued. One would expect that now there are new changes that persons would not only rely on the technology but would also ensure that some of the old systems are kept as backup. Sir, in Barbados, most people believe that once the new technology is introduced, you should ignore the old ways of doing things. In doing so, they have to pay a high price for it.

Mr. Speaker, I support the right of a Court of Appeal judge giving a dissenting opinion. I think it is the right step. I believe if we are to follow the Constitution of Barbados, this is something that should already have been done. Sir, I believe there are judges who go along with the majority opinion, when they have a different view. I believe if judges have a different view, they should be able to express their views, so that every view could be looked at. If the majority decides that is the way to go, there is nothing wrong with another judge having his dissenting opinion. Sir, I believe this would protect the people of Barbados.

Mr. Speaker, I believe that training for judges is another step in the right direction because as the world changes, one would expect that people would change to suit the necessary changes within the world.

Mr. Speaker, I recognise there is a Bill coming to deal with another issue with which I would want to deal. Sir, there is no doubt that we need to speak about the Court Marshals, but I will not preempt that Bill. There is a lot to be said on that matter but I would not delve into it at the present moment.

Mr. Speaker, we also have to recognise that, on a yearly basis, the magistrates are asked to waste much of the court's time, in dealing with matters that should not even reach them, for example, the renewal and not the application for liquor licences. Sir, I believe that if the police and the Public Health Department have both agreed, I do not see why we should allow so many thousands of

Barbadians to be treated like cattle, where every year they have to line up in the hot sun, to say yea or nay, when the police and Public Health Department would have already spoken. It would then be for the magistrate to agree with the police and the Public Health department, therefore, there would be no need for Barbadians to have to line up, as if they are begging for something.

Mr. Speaker, too often in this country the masses of people in Barbados have to line up and beg. Sir, the new politics of Barbados would have to change because the masses cannot continue begging politicians, who should know better. This is something of which I have spoken about for many years and it needs to be changed. Sir, politicians believe that once we have people begging us, that we are doing them a favour. All we would be doing would be wasting productive time, therefore, I would want somebody to put a cost to it, so that people would see the millions of dollars that are being wasted on a yearly basis, on this particular issue.

Mr. Speaker, I thank you.

Hon. R. C. EASTMOND: Mr. Speaker, I make this very brief intervention to reflect on a few matters which are here before us today. As you know, there was a time when the Judicial Committee of the Privy Council, based in Britain, was Barbados' final Court of Appeal. In those days, there was an established legal procedure by which appeals were taken to the Privy Council.

Since the abolition of the Judicial Committee of the Privy Council as our final Court of Appeal, there has been something of a lacuna, which was attempted to be put right through a practice direction. Sir, in circumstances where the law should be crystal clear, something stronger than a practice direction is required. Therefore, part and parcel of what we have before us today, is to amend the law to allow for a proper procedure to be put in effect, when appeals are taken to the Caribbean Court of Justice.

Mr. Speaker, I am also attracted in the same way that the learned Attorney-General and the Honourable Member for St. Lucy have been, to the question of cost in court. Sir, throughout the ages, we would have heard of cases that were frivolous and vexatious, and which were troublesome to the courts. We would have also heard of instances of conduct of lawyers, which amounted to wasting the court's time. There is now going to be a provision called "Wasted Cost Orders", where when people are frivolous and vexatious in their approach to the court or where they otherwise waste the court's time, cost can be awarded against lawyers.

Mr. Speaker, I am also attracted to the amendment that touches and concerns legal aid. At present, the Judicial Council, which is itself heavily burdened with work, is

allowed to administer legal aid. Sir, we also have a Community Legal Services Commission, which is also part of the process of dealing with legal aid. The question, therefore, arises, how is there a Community Legal Services Commission administering certain matters of legal Aid, while the Judicial Council also shares responsibility in so administering the same legal aid. This amendment is going to get rid of the problem, it is going to stop there being any ambivalence and allow the system to function better.

Mr. Speaker, perhaps so, I should reflect and echo the feelings and sentiments expressed by the learned Attorney-General, when he mentioned the question of a new thrust in the legal system towards alternative dispute resolution. In the real world, the beauty of alternate dispute resolution is that parties can settle their differences out of court; parties can sit and resolve difficulties. By contrast, when a person, who is involved in a business relationship with another, puts that person in court, at the point when that matter goes to court, a bitterness or hostility arises, which can impair relations between those parties for good.

11.40 a.m.

Tuesday, October 16, 2007

(EDITED)

Hon. R.C. EASTMOND: Sir, let me make the point again. If you have person A and person B, who have been longstanding commercial partners having a dispute and if they go to court and seeing that at the point when the partner is taken to court, a bitterness and hostility can develop between these two parties, however, if through a system of alternative dispute resolution they were able to sit, haggle, bargain and come to an amicable solution, then their business relationship would never be jeopardised.

I conclude though, Sir, in this brief presentation by looking at that aspect of the amendment that deals with dissenting judgements. Mr. Speaker, way back in England right down through the ages, perhaps having its genesis in the ancient Common Law, courts consisting of more than one person have always been seen, where there are three, five, seven or nine judges, a chance for majority judgements. At the moment, in our system, our judgements are supposed to be unanimous, thereby ruling out the opportunity for dissent.

Mr. Speaker, one of the beauties of dissenting judgements is that they add to the store of learning of the law. In law, we talk about something called learning; we also talk about something called jurisprudence and one of the beauties of dissenting judgements is that they add to the store of knowledge and sometimes their reasoning is extremely difficult to fault.

Mr. Speaker, in 1952, in *Kanler v Crane Christmas*, a dissenting judgement laid down that one could be sued for negligent misstatement, that dissenting judgement was in the minority. Sir, in 1964, on a similar fact situation, the highest court in the land of England, the House of Lords, in a case called *Heley Burn vs. Heler and Partners* held that the judge, who had delivered the dissenting judgement 12 years earlier had been correct in law. This is one of the curiosities of the legal system. The reason why I mentioned it is that whenever more than two people sit to look at a fact situation or a legal situation and they are going to be independent, then the system should encourage such independence. If there is a system of jurisprudence, where one is bound by one judgement and where two other people there have to follow it blindly, I am saying that impacts unfavourably on independence of the judiciary.

Sir, independence of the judiciary has to be also taken in the context of each judge having independence in a relationship with another judge. When people think of the whole concept of independence of the judiciary, they mean independence from politics; independence from being persuaded from the public and such like, Sir, if judge A is going to be truly independence then he should not be bound by judge B in the exercise of his independence; judge A should be his own free, moral and judicial, jurisprudential agent.

Mr. Speaker, I have no difficulty in backing a proposal put before this Honourable House that majority judgements can now become normative, that minority judgements would be allowed and that the system, in the future, will benefit from it.

Mr. Speaker, it is a great challenge to any system of jurisprudence, where you have strong judges who are all independent of each other and who are all prepared to give written judgements. One of the disappointments in Barbados' jurisprudence in the period between 1900 and 1980 was that there was an insufficiency of learning. The Barbados Law Reports were, generally speaking, full of cases that were too brief; very often the law reports reflected what you call "facts scepticism". There were fact sceptics, where judges in the far gone period used to play on the facts and create a form of fairness and justice on the facts. Since 1980, as our judiciary has markedly improved, we are now at the stage where we should encourage learning and learning means written judgements that provoke thought.

Mr. Speaker, with these remarks, I enter and intervene in this debate and bring to it my full support, as I commend this in the same way as my learned friend, the Attorney-General, did as being fit and proper to be approved by this Honourable House.

Mr. Speaker, I thank you.

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

Mr. R. St.C. TOPPIN: Mr. Speaker, I rise to support this amendment today and to recognise that change is always necessary in the area of our legal jurisprudence. I support it, especially when it is going to ensure that we are going to see some speeding up in the delivery of justice. As the Honourable Attorney-General has said and as we all know, justice delayed is justice denied.

Mr. Speaker, I want to compliment the Attorney-General for the measures that he outlined and for the achievements that have been made to date in the area. I also want to say that I congratulate him and also congratulate the Honourable Chief Justice as well for facilitating a number of improvements that have redounded to the speedier dispensation of justice in this country.

Mr. Speaker, it is undeniable that now matters are taken to the court and concluded in far less time than hitherto was the case. In fact, I would single out, and certain Honourable Members in here would agree with me, the Honourable Member for St. Philip North would agree, that now virtually any application that is made in Chamber that you can have that application made and have a decision made within three to four months. Sir, that is unprecedented in our judicial history. Further, in relation to matters involving minors, where you have personal injuries to minors and the two lawyers agree, you still have to go to court to get the court to sanction the agreement, but whereas before those matter had to stand in the queue, now you can actually make an application in relation to that matter and have it heard by a court in a matter of two to three days after your application is filed, so some improvements have been made and I fully support them and commend the Honourable Attorney-General and the Chief Justice for great strides made in this area. Doubtless, Mr. Speaker, more work has to be done but the Honourable Member for St. Lucy had to be somewhat fanciful to believe that you can have a once-and-for-all amendment in the area of law because one thing that is extremely dynamic is the area of law and change has to be constantly made to keep track and keep up with changes in the society.

Mr. D. St.E. KELLMAN: Mr. Speaker, on a point of order. The Honourable Member is misleading the House by giving the impression that I believe that once an amendment is made that there should not be any more amendments. I am saying that it does not make sense to come to this House and put forward an argument that you are making an amendment today and that by December, you know full well that you would have to make another amendment. The mere fact that you know you have to make an amendment, I am saying you should bring the amendment now instead of wasting Parliament's time by delaying it. Sir, that is all I have said.

Mr. R. St.C. TOPPIN: Mr. Speaker, I will not respond to that. Sir, the Honourable Member for St. Lucy also sought to give the impression that the Attorney-General was breaking some new ground in introducing this measure about attorneys-at-law having to bear costs for wasted time and so on. In fact, that was in place in the United Kingdom since 1981 and in other territories in the region, that is already the case, so Barbados is not really breaking any new ground at all.

Mr. Speaker, I do not see why anyone would want to oppose a measure like that because wastage is wastage and whoever commits an act of wastage, should be asked to pay the cost of that wastage.

H147/11:50

Sequence 11

Tuesday, October 16, 2007

Mr. R.St.C. TOPPIN: Mr. Speaker, or he is amazing, the Honourable Member for St. Lucy, I would not go as far as the former Prime Minister of Barbados, the Right Excellent Errol Walton Barrow, when he made the statement that the legal profession is the profession with which he had the dishonour to be associated with. I would not go as far as to say that. I went into the legal profession in 1982 and I found a number of very cooperative lawyers. I also found some who were uncooperative and even obnoxious. I came out of the legal profession in 1995, when I went to Cabinet, and I left that same structure in place. I have gone back to the legal profession and I have found the same situation. Sir, they are some lawyers who are willing to give cooperation and bring matters to a speedy conclusion, and others who take every conceivable, sometimes, non-point, to prolong matters unnecessarily. I see nothing in imposing in our local jurisprudence, a legal provision that says that lawyers who behave in that manner, and who unnecessarily prolong and protract matters should be called upon to bear the cost.

Sir, I would say that in this regard lawyers are no different from any other professional. Therefore, while I support it, in relation to the legal profession, I will also be prepared to support it in relation to other professions as well, members of whom, sometimes cause their patients, in some cases, to incur a lot of unnecessary costs, and, in fact those clients have no recourse.

Sir, while I commend the adjustments that have been taken in the area of reform, obviously, it is an ongoing process. In some other matters, I would like to draw to the attention of this Honourable Chamber, that I would wish to see as well tackled.

Mr. Speaker, I heard mention being made about the whole dispute resolution approach and mechanism. I believe that the time has come in this country, when we need to see the establishment of a Small Claims Court. Sir, we need to have that.

Sir, when I was Minister of Commerce, I was able to say that I had been able to establish a Consumer Claims Tribunal. That Tribunal is working beautifully. It allows a number of people, who cannot afford lawyers, to pursue claims, knowing that if they win or lose, they are not going to incur any legal cost. They go before a court setting, where the adjudicator is empowered to take into account, and does not have to follow strict rules of evidence, where on some occasions you can allow hearsay evidence, and so on. That happens in the Consumer Claims Tribunal, and it is working beautifully.

Sir, there are a large number of people in Barbados who have small niggling civil matters, and they are discouraged from going to court. Sir, for example, a man is interested in seeking to recover \$3 000 or \$5 000, he knows that if he goes to a lawyer, the lawyer would probably charge \$1 500 to \$2 000. If he loses, he has to pay the other lawyer as well, and he is discouraged from going to court. Sir, I believe that we need to bring those small people onboard in the knowledge that there is an established location, a structure, institution, a court, where they can go and take those small matters, well knowing that win or lose they would have had their day in court, and they would not be disadvantaged in any of their rights. Sir, this would also assist in the speeding up on the dispensing of justice, while reducing much of the pressure from the courts, now, who have a number of those small niggling matters before them, that would just invariably drag on unreasonably long, in some cases, and when in fact, the client stands to be penalised in cost if they lose the matters, and in some cases they just abandon the matters altogether, for fear of losing them. I believe that can be overcome, if we establish this Small Claims Tribunal.

Sir, I am not advocating anything necessarily as disorganised as Judge Judy, and some that I see on television, but, certainly, along those lines, I think we can proceed to see a more rapid, fair and equitable distribution of justice in this country.

Mr. Speaker, the next point is the issue of confessions before the court. This is a dogged issue, but it needs to be mentioned from time to time. Sir, it is archaic to believe that we should remain in a situation where, predominantly, individuals are convicted based on written confessions, when, in fact, we see that the individual goes to court afterwards, denies that he made the confession, the courts time is again wasted when you have to through what is called a voir dire, which is heard in the matter in the absence of the jury, invariably, the presiding Judge allows

it to go to the jury, anyhow, and considerable time is wasted because one person is alleging that a person made a written confession. I did not make it voluntarily, and then a considerable time is wasted.

Sir, I believe that if the court can have the benefit of seeing the individual as he confesses, the matter would be put beyond doubt. Therefore, I am calling for the wholesale introduction of video taped confessions. I am aware that, some time ago, may be six years ago, a room at the Glebe Police Station was actually equipped to do the taping of confessions. Training was undertaken and was supposed to have continued, so that the whole system would have spread and permeated throughout the Barbadian community. Sir, I do not know if that matter has become stuck in the mud, somehow. I would ask the Honourable Attorney-General, if, not in his response today, at some time in the future to give us an update on where we are in relation to the large-scale implementation and introduction of video taped confessions. Sir, it has been mentioned for years. I think that it is the only way we are going to be satisfied that justice is being done and a man is really confessing his guilt. I believe we need to do that posthaste.

Sir, I support Press freedom. I entirely support Press freedom. Sir, with any freedoms and rights also come responsibilities. I believe that in our legislation we need to curb this right of the Press to display the names and pictures of accused persons, splashed across the front page, back page and all over the newspaper. I think that extremely unfair to people. We live in a society where, even if a man is acquitted of an offense, he is still scarred, because we live in society where a man is presumed guilty unless he proves his innocence. Even if a man is acquitted, he is still scarred for life.

Sir, a situation becomes even more unfair, where in sexual offence cases, the name of the victim is never displayed, and I fully support that. The name of a victim is never mentioned in a sexual offence case, and I fully support that. It should not be mentioned, but in contrast, you have the name of the accused person, and his picture splashed across the newspaper, and on television as well. If that man is acquitted, that person is no better off than if they were in fact convicted, because they go through the rest of their lives, with people saying that where there is smoke, there is fire. They continue to point their fingers at that man. Sir, I am calling for the curbing of that right of the Press. It is, in my view, very dangerous. It is a dangerous practice to continue to allow.

Mr. Speaker, I believe that we have now moved away from having our court cluttered with a lot of niggling foolish matters. It is unbelievable that in 2007, we still have to go to court with a bicycle bell case. Sir, can you imagine that a bicycle bell case still goes to court. We have just sat and came up with a number of proposals in relation to a

Traffic Act. Perhaps, it was an oversight, of course, this sort of thing was not the focus of that particular Committee. Certainly, we have a lot more serious traffic offences in this country than to ask a court to spend its time dealing with a bicycle bell or a reflector.

H147

Sequence 12 12.00 p.m.

Tuesday, October 16, 2007

House 147, Sequence 13, 12.00 p.m.

Hon. R. St.C. TOPPIN: I believe that ticketing and other methods could be utilised to deal with those matters.

Sir, I can safely say that the minibuses and ZR men would take up all of the judicial time, in this country and the magistrates need to have time to spend on minibuses and ZR men alone. I believe that bicycle bells and that sort of trivia could be removed from our judicial calendar.

Sir, as I understand the issue of dissenting judgements, the position is that a judge in the Court of Appeal has to get the consent of the Chief Justice to deliver a dissenting judgment. I do not even see how it could have been constitutional to tell a judge that he does not have a right to deliver a dissenting judgement. It is a restriction on your freedom of expression, which is guaranteed in the Constitution, unless, of course, it is lilelous, et cetera.

Therefore, to have had this provision in our laws that a judge could not deliver a dissenting judgment, unless, as I understand it, he got the permission of the Chief Justice, in my view, was unconstitutional in the first place. I am happy to see today, Sir, that this amendment, which is before us today, clears up that ambiguity, anomaly and unconstitutionality once and for all.

Mr. Speaker, I conclude by saying that I fully support the Amendment brought to this Honourable Chamber today. I support the very good work being done by the Attorney-General and the Government of Barbados, in relation to reform in the area of law. Sir, as I said earlier, it is not a process for a one-shot solution that the Honourable Member of St. Lucy would have us believe, but I do believe that we are gradually achieving the level that we need to achieve in this particular area of our development.

I thank you, Sir.

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

Mr. M.A. LASHLEY: Mr. Speaker, I rise to make my contribution to this debate. I listened to the Honourable Member for St. Lucy and he spoke about the magistrates, and the role that they play in the administration of justice.

Mr. Speaker, the workload starts at the magistrate's court. Sir, at that level we have, what we call, the preliminary inquires. The indictable trials start at that level. Therefore, they have to take all the evidence. They have to prepare for appeals. They have to make decisions. They have to do sentencing. Sir, when it is a "call day", they have to hear the new charges for the day. Therefore, we must recognise the contributions of the magistrates in the administration of justice.

Sir, calls have been made and, in fact, I will make this call that we provide some constitutional protection for magistrates in this country. Sir, their jurisdiction has increased, based on certain amendments over time and so, their workload now becomes heavier. I practise in the magistrates court and I understand the conditions under which they have to work.

Sir, only last week I was in the Oistins court on a matter and the court had to adjourn other matters because in the area where they keep the prisoners awaiting trial, there was a problem with the toilet, which started to overflow. The magistrate then complained that they need air-conditioning, and a police officer went and got a fan. Therefore, I understand the trying conditions under which the magistrates work. Sir, we must provide some constitutional protection for them, put them on the same footing as a High Court judge, and make sure that they have security of tenure in their jobs. Sir, I will get back to the magistrate's court as I go on further.

Sir, I looked at the present Legal Aid System in Barbados, as well as the Community Legal Services Act and the provision of legal services as documented in the schedule, and I want to go through the areas in which legal aid is provided.

Sir, as you know, any capital offence, manslaughter, infanticide, concealment of birth, rape and for all of the offences, where a person is charged as a minor, legal aid is granted. Sir, in any indictable offence, the trial of which is certified by the trial judge to be or is likely to be of difficulty, that is where the case is complex or there are some issues that an ordinary layman or an unrepresented accused, will not be in a position to put his case properly to the court, so the court also has a discretion to grant legal aid in that particular instance. Sir, in the Court of Appeal, where the case is of public importance, of course, the Court of Appeal can also, of his own motion, grant Legal Aid Certificates. Sir, it goes on to family matters, except divorce. Therefore, if you are seeking a divorce and you are

out of pocket, then you have to find the services of an Attorney-at-Law and you cannot get legal aid.

Sir, then it deals with matters of minors, under the security of tenure, Small Holdings Act, Tenancies Control Act and basically with matters under the Constitution, where you can get legal aid. I do recall being involved in some constitutional matters, in which legal aid was granted.

I want to make the call because daily, Mr. Speaker, I see a lot of clients and they mention that they have been employed with a particular company, they have been dismissed after working sometimes for less than a minimum wage but when they put the facts to you, they have a good and arguable case before the court, be it magistrate's court or high court. Sir, some lawyers would take up the matter and I would take up the matter.

House 147, Sequence 13, 12:10:15

Tuesday, October 16, 2007

Mr. M. A. LASHLEY: Mr. Speaker, if a man of straw is wrongfully dismissed from a company that could afford an attorney-at-law, even a Queen's Counsel, to defend his company, that man of straw cannot run to the Community Legal Aid Department and made an application for legal aid to be represented in a Magistrate's Court in order to receive whatever he is entitled to from his years of work with that company.

Mr. Speaker, it is high time that we make provisions under the Community Legal Services Act so that cases involving employment law could be, as some lawyers would say, legal aided. Persons who work on a plantation for four or five years or persons working in a store should not be dismissed out of hand.

Mr. SPEAKER: Sir, does the Labour Department not take care of that?

Mr. M. A. LASHLEY: No, no, no. They would take it up, but if the employer is not willing, then the person has to seek recourse in the court. I am saying, Mr. Speaker, that we provide or make some provisions so that those persons can be legal aided.

Asides.

Mr. M. A. LASHLEY: Mr. Speaker, that is a term used by attorneys.

Mr. M. A. LASHLEY: Quite recently, there have been some decisions from the Court of Appeal where we have had dissenting judgements. My learned friend, the Honourable Member for St. James North knows about this. Mr. Speaker, if you look at the cases of the Queen versus

Corey Ward and Mark Sergeant, from the Court of Appeal, you would see that there have been dissenting judgements, so I welcome this amendment.

Mr. Speaker, dissenting judgment adds to the growth of your local jurisprudence. Sir, nothing is better than reading a dissenting judgement because you have an alternative opinion, applying your legal knowledge to the facts of the particular case.

Mr. Speaker, we heard a lot of talk about the delays in the system. Mr. Speaker, I have been involved in some indictable matters as defence attorney and sometimes the accused is remanded at Harrison's point or at Glendairy awaiting trials sometimes for five, six and seven years. I was the attorney for a capital matter and the trial took about three years at the magistrate's level before it started.

Mr. Speaker, I am not casting any aspersion on that component of the system. However, I believe that if a man is represented by an attorney-at-law and there is a file prepared and defence counsel writes a letter to the Commissioner of Police asking for all the pretrial statements so that he could adequately prepare a defence, the defence counsel should not have to wait for sometimes three years to get the pretrial statements. Sir, that is an unacceptable position. Mr. Speaker, I will cite the words of the Attorney-General, justice delayed is justice denied. Mr. Speaker, not only that, sometimes witnesses go overseas, sometimes police officers go overseas, and sometimes you cannot locate witnesses.

Mr. Speaker, when it comes to the time when a matter is set down to be heard and witnesses cannot be located, the matter cannot get off the ground. That is a further injustice not only for the accused but also for the virtual complainant or the person for whom the State has brought the case. Sir, these are matters I encounter daily. In fact, Mr. Speaker, I was involved as attorney in two capital matters that took about three years to get off the ground.

Sir, before, we had assizes in January, April, July and October, but now we have continuous assizes. This would help in some instance to ease the backlog of cases before the court.

Mr. Speaker, mention was made about confessions, and I was glad that was made. Sir, from my experience as a lawyer, when there is a confessional statement that is objected to by lawyers... Sir, I am not casting aspersions on the system at all, but if you seek to find out how many attorneys have been successful in getting confessions knocked out of a case, you would not find ten. Sir, sometimes the confession statement is the only alleged evidence against an accused.

Sir, I have always said that we should look at the practice, which obtains in other jurisdictions, where there is a duty lawyer who is employed by the State, who goes to the station when a person is in custody to properly instruct that person and safeguard the rights of that person. Mr. Speaker, if a person does not waive his right to an attorney, there should be some provision in law where, in the interest of justice, the State provides a duty lawyer to properly advise and instruct that person so that when we come to a confession, in a system like this, that there would be no doubt or any cloud cast over the integrity of the confession or oral statements.

Mr. Speaker, complainants are intimidated when they are asked by the police to identify persons through an identification parade. Sir, I know that there was some talk by this administration that a screen be available to protect the complainant or the person who is bringing the charge so that the person would not be intimidated in identifying the suspect.

House 147 Sequence 14

12.20 p.m.

Tuesday, October 16, 2007

Mr. M. A. LASHLEY: Mr. Speaker, there was some talk on that side about that, in addition to videotaping the confessions. Sir, police officers were sent overseas to be trained. Mr. Speaker, I wonder whether we are moving at a slow pace, in relation to the administration of justice.

Mr. Speaker, I have also heard from that side talk about removing police prosecutors from the magistrate's court. Sir, I respect the training of police officers, some of them are excellent prosecutors. In fact, attorneys learn their trade from those police officers at the magistrate's court. Attorneys learn their cross-examination skills and the leading of evidence skills from those police officers.

Mr. Speaker, in terms of complex cases, I recently realised that the State prosecutors are taking up some of these matters. That is welcomed because some officers are not trained in dealing with certain types of evidence, and sometimes there might be some legal issues arising where someone trained in the law would be able to put forward that case.

Mr. Speaker, the fact is, we have enjoyed a system that has over time safeguarded the rights of our citizens. We have enjoyed a system that has respected the independence of the judiciary but again, if we are looking at promoting persons at the magisterial level, to the High Court Bench...

Asides.

Mr. M. A. LASHLEY: Mr. Speaker, I do recall about two instances where the Chief Magistrate was able to go through the system and sit as a High Court judge. Sir, the ambition of a magistrate going from the Magisterial Bench to the High Court Bench as a judge, might not be that real now. Of course, the practice before was that magistrates would come the Magistrate's Bench and be appointed as High Court judges; now I am seeing that the Attorney-General's Office has gone to the private Bar and are appointing judges from the private Bar.

Sir, I have no problem with that, I can say that both on the High Court Bench and the Court of Appeal Bench have been staffed with some good legal brains, which came from the private Bar.

Asides.

Mr. M. A. LASHLEY: Mr. Speaker, I want to address the issue of traffic offences. Sir, my friend mentioned there are some minor offences that should not clog up the court system. I totally agree with that but there are some traffic offences that we must treat to in a very serious manner. Mr. Speaker, if a person drives without a valid insurance, that offence would be treated as a summary offence, that is, at the magistrate's court level. If a person drives without a valid insurance and injures someone, then in terms of getting compensation, that victim would have to engage in a civil suit against that driver.

Mr. Speaker, what happens if that person, who is charged with the offence, is a man of straw?

Asides.

Mr. M. A. LASHLEY: As my friend says, the matter would just blow to the wind. Sir, that victim might suffer a lifetime injury but would not be able to get compensation. Sir, at the magistrate's court level, that accused person could plea guilty to driving without a valid insurance. Mr. Speaker, in the absence of a victims compensation scheme, I do not know if there is going to come a time when we would have to treat the matter of driving without a valid insurance as an indictable offence.

Sir, I am very conscious of the fact that by increasing the jurisdiction of magistrates, if that offence becomes indictable, then the magistrate's jurisdiction and workload would be increased, thus resulting in a number of backlogs. Therefore, by making that an indictable offence, we would have moved away from it simply being a traffic offence. Sir, I support the call for a victims compensation scheme.

Mr. President, another example is where someone viciously attacks another, where that person goes to court

and either pleas guilty or is found guilty. Sir, based on the nature or circumstances leading up to the offence, the judge, in his rightful discretion, might fine or imprison that offender but at the end of the day, the victim would be left to suffer. That victim might have dependants or debts to pay and therefore would not be in a position to honour those debts or would not be in a position to look after his dependants. In fact, he might be in a position where his dominant hand might be injured and thus he would be unable to work anymore.

Mr. Speaker, in such circumstances, there is no provision in the system for compensation. All that person could then do would be to file a writ against that accused person. Sir, to file that writ is only to get a paper judgement.

12.30 p.m.

Tuesday, October 16, 2007

(EDITED)

Mr. M.A. LASHLEY: Sir, the person could ask that the judgement be paid in instalments. Sir, sometimes the person might not be working for enough money to satisfy the instalment but that person is left in the wilderness. Sir, this is why I mentioned earlier that we must be balanced. If a person is suspected of a capital offence, only in cases where there is a minor that an adult or attorney-at-law must be present at the police station but if it is an adult and the person is charged with a serious capital offence, he can go to the police station and speak to the police officer and, Sir, he has the right of silence. Mr. Speaker, in other jurisdictions, he can call on what we call a duty lawyer to come to the station and properly advise him.

Sir, in the other breath, here we now have a victim put out to sea by an injury; he cannot work for the remainder of his life; he cannot do anything but there is nothing on our books; nothing in the law or nothing provided for him by the State. Of course, if we establish a victims compensation scheme, there must be regulations; there must be means test involved and there would have to be some independent board set up involving some of the social agencies; involving the Bar Association and all the interested parties in regulating that scheme. Mr. Speaker, there is another aspect that I want to raise about the Magistrate's Court. Sir, when we examine the Magistrate's Court....

Asides.

Mr. SPEAKER: Honourable Member, you have five more minutes.

Mr. M.A. LASHLEY: Mr. Speaker, if the Honourable Member for St. James Central can support me in calling for a victims compensation scheme, I would wish that he would get up and agree with me, instead of sitting silent. I call for a victims compensation scheme and, as an attorney-at-law, a person whom I have practised with, I know he will get up and support me in the call for a victims compensation scheme.

Mr. Speaker, there is a lot of debate about the centralisation of the Magistrate's Court. The former Attorney-General was a popular attorney-at-law in all the Magistrate's Court... It is an inconvenience sometimes, knowing that you have a matter at District A in Bridgetown and then you have to journey to district F on the same day; then you have to journey to District C, and you have to call the magistrate to let him know that you are involved in a matter at District A and that you have to then go to District F. The magistrate would either adjourn the matter or sometimes the matter would go on but, Sir, if we centralise them and I am involved in a matter in a District F jurisdiction, obviously, I can journey next door to deal with a matter involved in the District C jurisdiction.

Mr. Speaker, I know that the purpose of having the magistrate's courts in districts is to have someone there in control of the particular area or jurisdiction but a person's diary might be packed from District A to District F in one day, and, Sir, it is not the fault of the magistrate but it adds in some instances to delays and creates a backlog and further delays justice for the litigants or the accused person. Sir, I believe that, someday, we should look at the centralisation of the Magistrate's Court.

Mr. Speaker, I also want to speak quickly on security at the Magistrate's court. Sir, I find that security is lacking at the Magistrate's Court and even sometimes at the Supreme Court. Sir, quite recently there were some brawls in the courtyard. I have mentioned to some of the authorities that we must, in these times, provide additional security at the courts. We have tried but we need to beef up security for the protection of all those persons, who have business at the court. Sir, we are also speaking of night court so there has to be additional security and beefing up of the security around the law courts.

Mr. Speaker, finally, I am proposing a victims compensation scheme and that we provide legal aid for matters under employment law, in terms of wrongful dismissal. Sir, there is the issue of driving without insurance, the fact that if a person is injured, the accused the person because the man is a man of straw and the person is left to suffer.

Mr. Speaker, those matters, I hope the learned Attorney-General will take into account. Sir, that is my contribution.

H147/12:40

Sequence 16

Tuesday, October 16, 2007

RECOMMITAL

Mr. Speaker, with the House's permission we would now revert to Government Papers.

PAPERS

Hon. Miss M.A. MOTTLEY: Mr. Speaker, I am commanded to lay the The Defence Pensions Regulations, 2007. On August 10, 2007, the Regulations have been laid in this House. Subsequently it was discovered that there was a typographical error in the Second Schedule to the Regulations. The number of weeks paid per year of service for the period 15 but less than 20 years service, should read 3.75 weeks, instead of 3.5 weeks, as previously stated. The Second Schedule has now been corrected. I am, therefore, now laying The Defence Pension, Regulation, 2007, with that error being corrected. This replaces the Regulations laid on August 10, 2007.

SUSPENSION

Hon. Miss M.A. MOTTLEY: I beg to move that this House be suspended until 1.45 p.m.

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

The question the House be now suspended until 1.45 p.m. was put and resolved in the affirmative without division and Mr. SPEAKER suspended the House accordingly.

H147

Sequence 17 12.41 p.m.

Tuesday, October 16, 2007

House 147, Sequence 18, 1.47 p.m.

RESUMPTION

Mr. SPEAKER: This Sitting is resumed.

ORDER NO. 8 (resumed)

The Honourable Member for St. James Central.

Hon. K.D. SYMMONDS: Mr. Speaker, much has been said of great value in this debate, and I rise to associate myself with some of what I consider to be very

objective comment and observations made during the course of the pre luncheon interval.

Mr. Speaker, if I were to reflect on the question of the direction of the magistracy, I think there is a very important observation that was made by the Honourable Member for St. Lucy, with respect to the traditional view that has prevailed in Barbados that the magistracy has been the elevation to the judiciary.

I think that the laymen out there would tend to associate themselves with that view. It is not a view that is without merit because there is some precedent to the view. There is however, Sir, in my judgment a need for the House to recognise that it is not the only course desired by persons in the magistracy. Sir, let me put that differently. Promotion to the immediate judiciary is not the only course desired by persons in the magistracy when they think about promotion, nor, Sir, is it necessarily the only desirable course.

Sir, in my certain knowledge, there have been alternatives that I think speak to another dimension of the development of our judicial and legal services in Barbados. Sir, we need to bring persons who have honed significant legal skill into the realm of other aspects of legal services, and other aspects of the legal infrastructure of Barbados.

For example, Sir, when Magistrate Marva Clarke moved on, I believe, to be Deputy Solicitor General, she would have transferred with her, an abundance of experience into that very critical post; similarly, when Magistrate Heather Clarke would have been moved in an acting capacity to the Registrar of Corporate Affairs and Intellectual Property. House 147, Sequence 18, 13:50:14

Tuesday, October 16, 2007

Hon. K. D. SYMMONDS: Sir, you have two examples of recent vintage where you would have seen persons who would have served with some distinction in the magistracy being elevated, not directly into the judiciary, which is the point the Honourable Member for St. Lucy is resting his argument upon, but via a different course, which I think lends a broader base to the development in an overall sense of the scope and range of legal services in Barbados to which magistrates can contribute.

Sir, I have to confess that I am one of those who share the concerns about the Chief Magistrate and his office in the context of the way in which it is defined and the administrative role that he should perform.

Sir, I have for some time been of the view that that post, which I think is a S5 or S4 post, is a little bit unique in the sense that he carries the title of chief but at the same

time any ordinary magistrate who has served on the Bench for about four or five years would be eligible to be promoted to the same salary scale as the Chief Magistrate. Sir, it is really a matter of nomenclature largely, he is Chief Magistrate in name.

In terms of the functional duties, I think that is something that we need to look at because I know that in 2006, and I believe as well in 2005, there would have been at least four other magistrates who would have been at the same scale in terms of pay grade as the Chief Magistrate. Sir, that, I think, carries a certain level of implication.

We have often said in this House, in our own context as politicians, that it is a difficult thing to have a member of the Frontbench who is obviously a Minister being placed at the same pay scale, given his level of responsibility, to his Permanent Secretary for argument sake. Sir, I think this is something we have to look at in the context of the Chief Magistrate.

Sir, in terms of the functional reality and the policy implication, I am of the view that the way in which the system works in Barbados, a lot more devolves on the shoulders of the Chief Justice in terms of the administrative burden that he carries for even the magistracy than does devolve on the shoulders of the Chief Magistrate. It is a situation which, certainly when I was practising, I consider to be anomalous and it is something I think we would do well to look at.

Mr. Speaker, it is also true that the magistracy, and this is something that the learned Chief Justice of Barbados has commented upon in the past, is perhaps the only department in which there is no hierarchy or hierarchical structure with different grades.

Mr. Speaker, there is a school of thought, of which I want to associate myself, that as we are contemplating policy and as we contemplate the more effective administration of justice and more effective administration of the work of the magistracy... Sir, I say magistracy not only in the sense of the magistrates, but the administration of all that their courts contemplate, which is the clerical work, the way in which the police prosecutors, the marshals, the probation officers, and indeed the persons on the street whom we have to represent, because those people who are the litigants are fundamental to this process and their well-being and interest is something that we have to contemplate as well.

Sir, in the context of the way in which you could improve the administration of all of that, it might be necessary to look at the creation of a hierarchical structure in which there are different grades, as obtains in the Solicitor-General Chambers, in the Chambers of the Director of Public Prosecutions and indeed the Chief

Parliamentary Counsel, where you would have a senior or a deputy chief, and in addition to that an ability to devolve some responsibility on a deputy chief magistrate, for argument sake, or devolve a different species of responsibility on someone who carries the title of senior magistrate as opposed to a lower level of magistrate.

In addition to that, I think that there is a definite career benefit because it gives people, who are professionals within a system, an opportunity to enjoy a little bit of career mobility. Sir, overall that lends itself to the improved morale of the magistracy.

I make those observations, Sir, because a lot has been said in here about the magistracy. I am not so sure that Parliament would have been well done by if we just allow it to pass without trying to put it in the context of some sort of a policy understanding of what it is that we are talking about. Mr. Speaker, it is all too easy to reflect on the obvious fact that there have been some magistrates who have been promoted to the judiciary and there are others who have not, and conclude from that that there is a problem if a magistrate is not concluded to the judiciary.

Mr. Speaker, I want to make the point clear that in recent vintage there have been magistrates who have been given other career path promotions. Sir, that stands to the eternal benefit of the development of our overall legal services structure. I think that is the point that we need to recognise.

Mr. Speaker, with respect to the issue of the decentralisation of the magistrate's courts, the Honourable Member for St. Philip North raised this point, I do not think that at any stage those who implemented the system and who practise in the system of decentralised magistrate's courts, which we have in Barbados, ever intended it to be about simply having someone in control of a parish. That is a big stick approach to law and order that I am not so sure the community is well done by especially in these more enlightened days, so I disagree with him on that.

Sir, the benefit that I was able to identify is the benefit of having someone who is attached to a district, becomes familiar in a very personal and intimate way with the culture of what takes place within that district.

Let us not fool ourselves, Mr. Speaker, Sir, the culture of life in Christ Church and the culture of life in Hometown St. James would differ. There is a certain trend of behavioural practice on the streets which the magistrate becomes familiar with. There are certain persons or groups of persons who may from time to time run afoul of the law that the magistrate becomes familiar with. Mr. Speaker, it is in that intimate way, his close relationship to the particular setting to which he is attached, that he is in a better position, not only as a matter of law but as a matter

of understanding the relationship between the law and the society, to intervene and to try to create some sort of a balance to ensure a smooth structure of things.

Sir, those of us who have had the opportunity to practise in the magistrate's courts have recognised that many times, in the instances of disputes among families, it is not necessarily a matter that is to be solved by the visitation of the heavy hand of the law or a matter that is to be resolved by incarceration, but very often by taking two parties who are in conflict with each other outside and to set them down and talk them through and bring a Christian understanding as to how the matter that caused the conflict might best be resolved.

Mr. Speaker, in a nutshell, I would want to say that I believe that the decentralisation of the magistracy has served Barbados and Barbadians well, but there is another point.

I do not know that it does anyone any economic good, if, in the context of understanding the magistrate's court, which is a court where lesser offences are tried, a court where the ordinary... Sir, it springs from what in England used to be called the Court of Pie Powder. The ordinary barefoot man in the street going into the magistrate's court. The Pie Powder came from Poudre the french, attaching to your feet and the powder came because he would stir up the dust as he walked through the court. Sir, the reality is that it does not do him any good.

House 147 Sequence 19

2.00 p.m.

Tuesday, October 16, 2007

Hon. K. D. SYMMONDS: Mr. Speaker, if a fellow being charged or tried for a small offence, a petty theft, a little wounding or something like that...

Asides.

Hon. K. D. SYMMONDS: Well, many wounds are minor offences, that is why there is serious bodily harm and simple assault. Sir, the point is, you do not want for that individual to have to trek from Half Moon Fort, down to Bridgetown, in order to deal with a matter in which he is accused of stealing \$400 or something of a lesser nature. It has been long felt that it is best to have these courts dotted around the different jurisdictions of Barbados, which we now do, and which happens in most other jurisdictions of the Caribbean, if we are to be truthful about it. Sir, it is, therefore, to allow the ordinary man in the street to have easy access to the court in his jurisdiction, so that if he goes in the capacity as a man answering a charge, or if he goes in the capacity of a complainant to make a charge, it

becomes a matter which is far more easy for him to do and far less expensive an exercise.

Mr. Speaker, I do not know that asking persons to trek down to Bridgetown, does Bridgetown, itself the business community, any good. I believe we only add to a congestion that can best be done without. It is an inefficiency that we can do without. Sir, quite frankly the problem in Bridgetown courts right now is that they are already overcrowded and that is perhaps one of the reasons we are making such excellent efforts at building out a brand new judicial complex in Bridgetown.

Mr. Speaker, I want to say that, in my view, the magistrate's court issue cannot be laid to rest, without my spending some time on the matter regarding night courts. The learned Attorney-General introduced this matter when he introduced the Bill. I want to say I am fully in support of it, again, born out of years of experience. Any one of us who has had to go through the torture of sitting at the Bar Table, while traffic offences are being dealt with, let us understand the tremendous waste of time, not only of the attorney but of the litigant before the court.

Mr. President, one of the things we have to understand is that we have built into a practice a most inefficient system in Barbados, whereby a chap would stand charged with an offence of driving. That person could easily, if we were more technologically advanced, be ticketed. That ticket would indicate where he has to go to pay the fine.

Sir, if the individual sees that he wants to challenge the charge with which he has been faced, he could come before the court. The standard in the magistrate's courts, in many instances, is that persons go to the court in the jurisdiction where the offence was committed. Therefore, that person may have to leave St. James and traversed up to Boarded Hall because of the fact that he was caught speeding in the jurisdiction of Boarded Hall.

Sir, the reality is that on the day that he goes there, it is a call day, so that he would sit and wait, only to be told when to come back to have his case heard. Sir, all this might take from 9.00 a.m. to 10:00 a.m., in order to know when his case would be heard, when he could have been doing other things,. Again, that person comes back the next appointed day for his case to be heard, only to be told there is an adjournment because, for example, the speed cop, who had clocked him, is somewhere doing something else.

Sir, a person could sit from 9.00 a.m. to 11:00 a.m., only to be told that his case has been adjourned for another month. Furthermore, accused persons do not travel alone but with their counsels, and so those counsels too are trapped in a system that is woefully inefficient. That, Sir, has led to a terrible miscarriage of justice in this country.

Mr. President, I believe it would be a good thing if, for minor offences, we could, therefore, effectively use the same judicial structures which are in existence by day but that we could use them during the night. Therefore, the same building that is there by day, let us put it to use at night, while it is empty.

Sir, the fact of the matter is that night court has worked in other jurisdictions, for example, Jamaica. It is effectively there for minor offences, to take some of the pressure off the courts, and in the traffic aspect of magistrate's courts' work, there is actually a walk-through exercise. It is a very minor thing. I gather there is some thought being given to it by the Attorney-General and I would want to encourage it. Sir, quite frankly, it would bring some degree of relief where relief is needed.

Mr. President, I feel more strongly on the question of the drug treatment court. I have said already and will say again, there is nothing that worried me more, when I practised at the criminal Bar, than to see a person, who is genuinely a drug addict, being treated only in the context of being a criminal offender and being subject to incarceration. Sir, incarceration, in itself, of what was then Her Majesty's Prison at Glendairy, meant simply that; you went into prison. You may have been a person with an addiction to a highly addictive drug like cocaine or marijuana but the reality is that you went into to prison, maybe for a period of four months and came back out. Sir, at the end of that four months, the issue of the person's addiction was not addressed, the cause of the addiction was not addressed and the addiction itself was not broken. Therefore, that individual would then be led, almost inevitably, back to the state of play from where he had commenced.

Mr. Speaker, recidivism in drug offences is very high and many other jurisdictions in the world have paused at a policy level, to look careful at whether these drug-related offences should only be dealt with strictly from the perspective of incarceration or also be addressed by a relationship between incarceration and treatment for addiction.

Mr. Speaker, how can that be done? I do not want to be misinterpreted to say that someone using drugs should not be imprisoned. In this particularly 'silly season' that would go forth from this place, but there is a social responsibility on us as legislators, in my view, that if we are really serious about cleaning up the streets of Barbados, if we are serious about purging Barbados from the situation of abuse and from the scourge of illicit drugs, then we have to begin to speak to the question of treatment for addiction.

Sir, in many jurisdictions, and I will use Bermuda as an example because of the fact that it was an illustrious Barbadian constituent of mine, who left this place as a

prosecutor and went to Bermuda. That person became a High Court judge and helped Bermuda to introduce a programme where they now treat for addiction in what is called a drug treatment court. It means that when the offender has two or more instances of turning up in court, in a setting in which he is being charged for the use of the drug, that individual is subjected to a medical examination. Sir, that individual is put through a process where he works with the people in the Probation Department, so as to make sure that he is, in fact, staying off the drug. Therefore, he is being examined at intervals.

Mr. Speaker, the reality is that part of what takes place is not just a magistrate sitting in the judicial context of the court's work but the magistrate sits with a medical professional as well, who is able to advise, to some extent, as to the extent of improvement. This level of improvement would be noted on this particular patient's record card. Sir, notice the language used - this particular patient - because, in fact, that individual is being treated for an addiction.

Mr. Speaker, we have to understand that whether or not the addiction is one of alcohol or narcotic drug, the fact of the matter is that a man or woman who labours under an addiction, could be shouted at, could be beaten or brutalised to the end of time, without their being conscious of it, but they are enslaved to the drug that has caused them to act the way in which they are doing. Therefore, until you can create a break in the chain between their use of the drug and what they do that causes them to violate the law, then you are not going anywhere fast.

Mr. Speaker, I think that in the context of the social implications of the idea of a drug treatment court, it is an idea whose time has come. As I said, I have spoken of it in this Honourable Chamber before and I gather it is a matter to which the Attorney-General's Office has begun to look.

2.10 p.m.

Tuesday, October 16, 2007

(EDITED)

Hon. K.D. SYMMONDS: I am also of the view that it is a matter, which the Judicial Council should be taking on board, if they are not already doing so. Sir, these things tend to take place largely in the Magistrate's Court, that is where you have the greatest and the most intimate interaction between the man on the street and the judicial officer. Sir, that is one of the beauties about having the Magistrate's Court decentralised because on many occasions, it is the magistrate who has been serving in that court for six months or so, begins to know the people who are linked to drugs in that district; begins to know the people who are abusers of drugs in that district. He is then in a position to identify them when they come through the

door and is in a position to steer them in a direction for treatment and not only a direction for imprisonment, which may not necessarily break the addictive cycle and put them back on the street to do the same thing over again.

Mr. Speaker, in that sense, I feel that the Chief Magistrate, no less, should be deeply involved in this process and I urge that the office of the Attorney-General leaves no stone unturned, in doing all the necessary social investment to come to a definitive position, hopefully, in the implementation of that type of court.

Mr. Speaker, I want to speak to the issue of legal aid as well. I heard the Honourable Member for St. Philip North making his standard address on this matter. Sir, it is a matter with which I find no fault. We all believe that legal aid should be expanded to some extent. The extent to which you expand the service is going to be a matter for some debate because I think a line has to be drawn somewhere and, again, it is the peculiar season in which we speak, so I expect to hear silliness being spoken. Sir, that is not to say that the Honourable Member was silly but I would expect to hear that the State is supposed to finance every aspect of legal confrontation in this country but, Sir, that is impractical, impossible and unprecedented.

Mr. Speaker, as much as Barbados has been able to accomplish, punching outside of its weight class, as former Secretary General, Kofi Annan, said, we are not going to be able to finance every aspect of legal life and confrontation in this country because no country in the world does this. The reality is that we have to draw a sensible line somewhere. I want to say about legal aid that we have a lot about which we have to be proud and we must not come to this Chamber to put abroad only what we perceive as a shortcoming without speaking to the success. Mr. Speaker, I do not know of anywhere in this Caribbean where you can find a Queen's Counsel of 30 years standing on a legal aid list for an ordinary man to walk off the street, sit in front of him and say he has a matter to be done. Sir, right here in this House of Assembly, the Honourable Member for St. George South is an example of this because he is still on the legal aid list and he has been at the Bar for 40 years. Sir, the reality is that it is an unduplicated opportunity anywhere else in the Caribbean. Sir, we have a Queen's Counsel at the top of the profession, of stellar reputation, and the lowliest of litigants have access to him for 'next skin to nothing', as they say in Barbadian parlance. Mr. Speaker, the reality is that those are things about which we should feel proud in our legal system in Barbados.

Mr. Speaker, I said that they are other things that we have to be prepared to address. Let us be candid, Sir, the range of services, which we offer, many of us, I am also included, feel that some consideration could be given to expanding the services of the Legal Aid Department but,

Sir, I also say to you that the range of services, which are currently offered and which have been historically offered, have served us wonderfully well. Sir, I would want to advise caution with the willy-nilly extension, without great care and consideration because even in criminal law, it is not all kinds of criminal offences and there is a rationale behind why we have not offered certain sectors of assistance to the public.

Mr. Speaker, in criminal law, for example, you are not going to get it for certain types of offences involving firearms and you are not going to get it for rape. Sir, there is a need for us to recognise that a man is innocent until he is proven guilty but you do not necessarily want the State to be encumbered by having to offer legal services to the most perverted and adversed type of charges. I think that is the point where Barbados has drawn a line and Barbados has been well-served by it. Mr. Speaker, I recognise that you have given me the signal, there were other matters but I would extend the one minute sign you have given me so I will pause at this stage.

Sir, I thank you.

Mr. SPEAKER: The Honourable Member for St. Joseph will now wind up.

Hon. D.D. MARSHALL: Thank you very much, Mr. Speaker. Sir, notwithstanding that it was not a long debate, it was certainly one where many productive things have been said and I wish to assure Honourable Members on both sides of the Honourable House that as Attorney-General, I have taken note.

Mr. Speaker, there are a number of issues. I think we all agree that we should so establish the position of Chief Magistrate that it brings with it not just titular status but also status in terms of day-to-day responsibility for administration of the magistracy. Mr. Speaker, it is safe to say that this Government has made a significant investment in all aspect of the delivery of justice, the magistracy has not been left behind in any way and, as we go forward, I wish to assure Honourable Members that we are paying heed where we have fallen short in any respect.

Mr. Speaker, a suggestion has been made that we should consider a victims compensation scheme. Sir, this idea is one that I believe is worthy of some consideration but certainly, in order for us to even contemplate it, we would have to approach it from a Barbadian standpoint. Sir, in the United Kingdom, where there is a victims compensation scheme - I think it is called the Criminal Compensation Board - individuals are compensated on the basis of damages, which would be awarded to them as if it were a civil suit. Sir, the challenge is that an individual, who is assaulted will be entitled to receive from the Criminal Compensation Board, the same amount of money

as if he had occasioned those injuries perhaps in a road traffic accident. Mr. Speaker, there are instances where the Criminal Compensation Board in the UK has awarded hundreds of millions of pounds to claimants.

Mr. Speaker, the central issue that we would have to grapple with is how do we fund this particular activity. The fact of the matter is that a person who commits a crime, where there is a victim in the sense of an assault, battery or murder, under that law that individual still remains liable for the civil wrong. Notwithstanding that an individual might have thrown a rock and broken John Browne's car glass and be charged and convicted for malicious damage to property, John Brown is still able to pursue that individual in a civil course for damages in respect of the broken car glass. Similarly, if John Brown receives an injury at the hands of an assaulter, a slash with a knife at the hands of an assailant, notwithstanding the criminal proceedings, John Brown is still able to bring a civil action to recover damages.

Mr. Speaker, I am loathed to remind Honourable Members of this House exactly what happened in the O.J. Simpson's case because we do not need to look that far but that is exactly what happened in the O.J. Simpson's case; an individual was charged and acquitted of murder but the relatives of the decease were able to recover civil damages.

H147/14:20

Sequence 21

Tuesday, October 16, 2007

Hon. D.D. MARSHALL: ...where an individual was charged and an acquittal of murder, but the decease's relatives were able to receive civil damages. Sir, what may take us in that direction, is the initiative we are considering. Currently, in the Magistrate Court, the Magistrate is able to order a party before it can pay compensation, in a criminal case. Sir, where there is an assault committed, the Magistrate may, in addition to whatever fine is imposed, he may order that compensation be paid. That jurisdiction is not to be found in our High Court. Sir, our High Court Judges do not have that power to order an accused person to pay compensation. I have had discussions on this matter with the Chief Justice, and it is an approach that finds great attraction and merit in the eyes of the High Court Bench, and it is the direction that we are likely to go in, as opposed to a very expensive Victim Compensation Scheme.

Sir, the only challenge we have to recognise upfront is that, many of the individuals who are engaged in criminal activity and who would be ordered to pay compensation, are individuals who are not able to pay. They are hardly able to. Sir, if you told them that they have to compensate Inez or Patsy to the tune of \$20 000 or \$40

000 as compensation, when you are dealing with those individuals, you would have to realise that they simply do not have the resources. Sir, it is a good direction to head in, as I fear that the Victim Compensation Scheme would expose our treasury to such large compensations, as to make the system unworkable.

Sir, I appreciate the recommendations that came from the Honourable Member for St. Lucy. I appreciate the inputs that have been made by all Honourable Members of this Honourable House, and I wish to give them my assurance that where those recommendations do have merit, I will certainly canvass them and try to take them forward. I am especially attracted to the idea that on a matter on the renewal of a liquor licence, it can be dealt with on an administrative basis, as opposed to having to go through the entire judicial process once again.

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

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

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

On the motion of Hon. D.D. MARSHALL, seconded by Hon. R.R. FARLEY, the Honourable House resolved itself into Committee. Mr. R.D. MARSHALL in the Chair.

COMMITTEE

Mr. CHAIRMAN: This House is now in Committee.

Clauses 1 to 9 inclusive were called and passed.

On the motion of Hon. D.D. MARSHALL, seconded by Hon. R.R. FARLEY, Mr. CHAIRMAN reported the passing of one Bill in Committee without amendments and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motion of Hon. D.D. MARSHALL, seconded by Hon. R.R. FARLEY, the Bill was read a third time and passed and cited as the Supreme Court of Judicature (Amendment) Act, 2007.

ORDER NO. 9 – SECOND READING OF THE COURT PROCESS (AMENDMENT) BILL, 2007

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

Hon. D.D. MARSHALL: Mr. Speaker, in this related matter, we seek to amend the Court Process Act. The Court Process Act governs the operations of those individuals who also are unsung heroes, commonly called Court

Marshalls. Sir, the position of a Court Marshall in this jurisdiction is one of great authority, but from time to time they are challenges to that authority, and they are individuals who wish to corrupt the good office of Court Marshalls by among other things threatening them as they carry out their duty, and also seeking to impersonate them so as to achieve personal gain.

Sir, by virtue of the responsibilities of a Court Marshall, they have to...

H147

Sequence 22 14.30 p.m.

Tuesday, October 16, 2007

House 147, Sequence 23, 2.30 p.m.

Hon. D.D. MARSHALL: Mr. Speaker, by virtue of the responsibilities of a court Marshal, they have to enter places under the authority of the court. And so, when an individual can impersonate a Court Marshal and through that impersonation gain unlawful access, I believe you would appreciate that it is a thing that the society must heap scorn on, as an act that not only perverts the course of justice but serves to weaken the very structures that we have in place.

When a Court Marshal comes to one's door, they are entitled by virtue of that office to all of the respect and cooperation that the public can offer. Individuals who in any way, seek to weaken that authority or prevent them from the proper carrying out of their duties, ought to find themselves before the court.

Sir, these two amendments therefore seek to include as an offence, a person who threatens a court Marshal. It also seeks to include, as an offence a person who impersonates a Court Marshal in such a way as to affect their ability to function.

The proposed amendment says:

"Any person not being a court Marshal who puts on or assumes either in whole or part dress, name, designation or description of any Marshal or in any way pretends to be a Marshal for the purpose of gaining admission into any house or other place."

I believe, Sir, that captures quite accurately the tenor that we are seeking to capture as we make this amendment.

Asides.

Hon. D.D. MARSHALL: Mr. Speaker, we have done many things over the last 18 months to help to

strengthen the Court Marshals position. We have created additional posts of Marshal I and Marshal II. Recommendations have been made to the Chief Personnel Officer (CPO) for the filling of these vacant posts, and to allow for upward mobility of the existing staff.

We have settled, we believe, satisfactorily, the matters relating to the Court Marshals, who have now moved on a temporary basis to a new Court Process Office at Roebuck Street, pending the completion of the construction work of the judicial centre. They will be moving there when that Centre is completed.

We have also placed the Court Marshals on the public service travelling schedule, so as to facilitate their access to motor vehicles for their own transportation, through access to a Government loan.

Mr. Speaker, Court Marshals have to travel the length and breadth of this country and their job is one that does not start at 8.30 a.m. and end at 4.30 p.m. Frequently, they have to go out to find individuals who are trying to evade service of process at two o'clock and three o'clock in the morning, such is the dedication that is required of them, and putting them on a traveling schedule has been a wonderful thing and it was the right thing to do. These individuals cannot rely on public transport at those kinds of hours. They frequently work very long hours and they put themselves in harm's way every single day that they go out there and try to serve documents.

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

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

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

On the motion of Hon. D.D. MARSHALL, seconded by Hon. Hon. R.R. FARLEY, the House resolved itself into Committee on the Bill, Mr. R.D. MARSHALL in the Chair.

COMMITTEE

CHAIRMAN: This House is now in Committee.

Clauses 1, 2 and 3 inclusive were called and passed.

On the motion of Hon. D.D. MARSHALL, seconded by the 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. D.D. MARSHALL, seconded by the Hon. R.C. EASTMOND, the Bill was read

a third time and passed and cited as the Court Process (Amendment) Act, 2007.

ORDER NO. 10

RESOLUTION TO GRANT THE SUM OF \$7 068 785 FROM THE CONSOLIDATED FUND AND TO PLACE IT AT THE DISPOSAL OF THE GOVERNMENT TO SUPPLEMENT THE ESTIMATES 2007-2008

AS SHOWN IN THE SUPPLEMENTARY ESTIMATES NO. 1

2007-2008 WHICH FORM THE SCHEDULE TO THE

RESOLUTION AND THAT THE EXPLANATORY

NOTES TO HEAD 20 BE AMENDED AS

SET OUT IN THE SCHEDULE

TO THE RESOLUTION

On the motion of Mr. C.A. MASCOLL, seconded by Hon. R.R. FARLEY, the House resolved itself into Committee of Supply on the Resolution, Mr. R.D. MARSHALL in the Chair.

COMMITTEE OF SUPPLY

CHAIRMAN: This House is now in Committee of Supply.

ITEM 10 (a)

RESOLUTION TO GRANT THE SUM OF 7 068 685
FROM THE

CONSOLIDATED FUND AND TO PLACE IT AT THE
DISPOSAL

OF THE GOVERNMENT TO SUPPLEMENT THE
ESTIMATES

2007-2008 AS SHOWN IN THE SUPPLEMENTARY

ESTIMATES NO. 1 2007-2008 WHICH FORM

THE SCHEDULE TO THE RESOLUTION AND

THAT THE EXPLANATORY NOTES TO HEAD 20

BE AMENDED AS SET OUT IN THE

SCHEDULE TO THE RESOLUTION

House 147, Sequence 23, 14:40:14

Tuesday, October 16, 2007

HEAD 14 - MINISTRY OF FINANCE

\$67 526 666

Hon. C. A. MASCOLL: Mr. Chairman, as you know, from the start of this fiscal year, 2007-2008, we moved toward an accrual system of accounting, and at the time, we had projected that this item called accruals would have been of the magnitude of \$3 million for the given year. However, as it has turned out, this has proven to be an underestimation of the accrual system or the anticipation accruals for the fiscal year.

Mr. Chairman, if I may be permitted, I will explain what would have happened in previous years. In previous years when an expenditure was paid for it would have been accounted for, but under the accrual system now, when the transaction has been engaged in, it has to be allocated at the time the transaction has been engaged in. Therefore, to that extent, given that this is the first year of the accrual system, the Auditor-General is now in a much better position to be able to give expression to the forecast for accruals. As a consequence, we are therefore seeking a supplementary to the tune of \$4 626 614 to supplement the original \$3 million estimate for accruals for this fiscal year. Mr. Chairman, that is under programme 112.

Mr. Speaker, under programme 128, Micro-Enterprise Development, we have a situation where this fund has to be recapitalised. In light of the decisions that

were taken in the period of 2003 and post-2003, FundAccess reduced the level of interest to clients to six per cent on the reducing balance and also increased the average loans to a maximum of \$100 000. Sir, this would have caused some depletion of the funds of FundAccess to the extent that it needs to be recapitalised as we speak. As a consequence of that, Mr. Speaker, we are here today asking for a supplementary provision of the tune of \$2 126 052 to supplement the Micro-Enterprise Development Fund.

Mr. Speaker, as I said, this fund is used to give loans to professionals and to small and medium size enterprises in Barbados. Sir, because of the extent of the demand for funds from FundAccess, we thought that we needed, at this stage, to recapitalise the fund to the tune of \$2.1 million.

In light of that, Mr. Chairman, I beg to move that Head 14 stand part.

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

The question that Head 14 Stand part was put and resolved in the affirmative without division.

HEAD 20

MINISTRY OF COMMERCE, CONSUMER AFFAIRS
AND
BUSINESS DEVELOPMENT

\$316 019

Hon. C. A. MASCOLL: Mr. Chairman, we are seeking a supplementary provision as Barbados' contribution to the Community Competition Commission (CCC) within CARICOM. This would be Barbados' contribution for the first year of operation of what is called the CCC, which is going to play a very significant role within the affairs of CARICOM in order to bring us closer to realising the infrastructure necessary for putting the platform in place for the CARICOM Single Market and Economy.

Mr. Chairman, without any further ado, I beg to move that Head 20 stand part.

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

The question that Head 20 stand part was put and resolved in the affirmative without division.

AMENDMENT TO EXPLANATORY NOTE

Hon. C. A. MASCOLL: I beg to move that the amendment to the Explanatory Note to Head 20 stand part.

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

The question that the amendment to the Explanatory Notes stand part was put and resolved in the affirmative without division.

On the motion of Hon. C. A. MASCOLL, seconded by Hon. R. R. FARLEY, Mr. CHAIRMAN reported to His Honour, the SPEAKER the passing of one Money Resolution in Committee of Supply and Mr. SPEAKER resumed the Chair and reported accordingly.

On the Separate motions of Hon. C. A. MASCOLL, seconded by Hon. R. R. FARLEY, the Resolution was read a first and second time and agreed to.

ADJOURNMENT

Hon. Miss M. A. MOTTLEY: Mr. Speaker, this brings us to the end of Government's Business for today's Sitting, I therefore beg to move that this House do now adjourn until Tuesday, October 23, 2007 at 10.00 a.m. in the morning.

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

The question that the House do now adjourn until Tuesday, October 23, 2007 at 10.00 a.m. was put and resolved in the affirmative without division and Mr. SPEAKER adjourned the House accordingly.

House 147 Sequence 24

2.53 p.m.

CONTENTS	
MINUTES	
Hon. Miss M.A. MOTTLEY.....	1
Hon. R.R. Farley, 1.	
PAPERS	
Rt. Hon. O.S. ARTHUR.....	1
1. The Annual Reports and Audited Financial Statements of the Barbados Conference Services Limited, for the Financial years ended March 31, 2003 and March 31, 2004.	
Hon. N.A. Lynch, 2.	
FIRST READINGS OF BILLS	
Hon. Miss M.A. MOTTLEY.....	2
1. The Court Process (Amendment) Bill, 2007	
Hon. R.C. Eastmond, 2.	
STATEMENTS BY MINISTERS	
Hon. D.D. MARSHALL.....	2
ORDERS OF THE DAY	
SUSPENSION OF STANDING ORDERS	
Hon. Miss M.A. MOTTLEY.....	5
Hon. J. X. Walcott, 5.	
GOVERNMENT BUSINESS	
ORDER NO. 8 – SECOND READING OF THE SUPREME COURT OF JUDICATURE (AMENDMENT) BILL, 2007.....	
6	
Hon. D.D. Marshall, 6.	
(EDITED)	
Hon. D.D. MARSHALL.....	6
Hon. R.C. Eastmond, 10, 13; Mr. D. St.E. Kellman, 10, 11, 12.	
(EDITED)	
Hon. R.C. EASTMOND.....	13
Mr. R. St.C. Toppin, 14, 15, 16; Mr. D. St.E. Kellman, 14; Mr. M. A. Lashley, 17, 18, 19.	

(EDITED)	
Mr. M. A. LASHLEY.....	19
RECOMMITAL	
PAPERS	
Hon. Miss M.A. MOTTLEY.....	20
RESUMPTION	
ORDER NO. 8 (resumed)	
Hon. K. D. Symmonds, 20, 21, 22.	
(EDITED)	
Hon. K. D. SYMMONDS.....	24
Hon. D.D. Marshall, 25; Hon. R.R. Farley, 26.	
ORDER NO. 9 – SECOND READING OF THE COURT PROCESS (AMENDMENT) BILL, 2007.....	
26	
Hon. D.D. Marshall, 26; Hon. R.R. Farley, 27; Chairman, 27.	
ORDER NO. 10.....	27
Chairman.	

AS SHOWN IN THE SUPPLEMENTARY ESTIMATES
NO. 1

2007-2008 WHICH FORM THE SCHEDULE TO THE
RESOLUTION AND THAT THE EXPLANATORY
NOTES TO HEAD 20 BE AMENDED AS
SET OUT IN THE SCHEDULE
TO THE RESOLUTION

RESOLUTION TO GRANT THE SUM OF 7 068 685
FROM THE

CONSOLIDATED FUND AND TO PLACE IT AT THE
DISPOSAL

OF THE GOVERNMENT TO SUPPLEMENT THE
ESTIMATES

2007-2008 AS SHOWN IN THE SUPPLEMENTARY

ESTIMATES NO. 1 2007-2008 WHICH FORM

THE SCHEDULE TO THE RESOLUTION AND

THAT THE EXPLANATORY NOTES TO HEAD 20

BE AMENDED AS SET OUT IN THE

SCHEDULE TO THE RESOLUTION

HEAD 14 - MINISTRY OF FINANCE

Hon. C. A. MASCOLL.....28

Hon. R.R. Farley, 28.

HEAD 20

MINISTRY OF COMMERCE, CONSUMER AFFAIRS
AND
BUSINESS DEVELOPMENT

Hon. C. A. MASCOLL.....28

Hon. R.R. Farley, 28.

AMENDMENT TO EXPLANATORY NOTE

Hon. C. A. MASCOLL.....28

Hon. R.R. Farley, 28.

SUSPENSION.....20

ADJOURNMENT.....29

Hon. Miss M.A. Mottley, 29; Hon. R.R. Farley, 29.

SPEAKERS IN THIS ISSUE

ARTHUR, Rt. Hon. O.S.
CHAIRMAN,
EASTMOND, Hon. R.C.
FARLEY, Hon. R.R.
KELLMAN, Mr. D. St.E.
LASHLEY, Mr. M. A.
LYNCH, Hon. N.A.
MARSHALL, Hon. D.D.
MASCOLL, Hon. C. A.
MOTTLEY, Hon. Miss M.A.
SYMMONDS, Hon. K. D.
TOPPIN, Mr. R. St.C.
WALCOTT, Hon. J. X.

DISCLAIMER. This transcript was prepared with the assistance of artificial intelligence tools and is provided for reference only. It has not been reviewed, verified or approved by the Hansard Department of the Parliament of Barbados and does not constitute an official parliamentary record. It may contain errors or omissions, including inaccuracies in wording or speaker identification. For authoritative quotations or confirmation of proceedings, consult the official Hansard record when available.

EDITORIAL NOTES — NOT PART OF THE REPORT

Prepared with the transcript; for checking against the recording and the Minutes.

EDITORIAL QUERIES

Points noted while preparing this report from the edited transcript. The text has not been altered except where stated.

Q1. Masthead. The session is not stated in the source, so no session line is printed.

Q2. Order No. 10, title. The sum is given as ‘\$7 068 785’ in the first form of the title and as ‘7 068 685’ where the title is repeated at the start of the Committee of Supply. The amount shown under Head 14 is ‘\$67 526 666’, larger than either total. Printed as in the source.

Q3. Order No. 10, heading. The first form of the Resolution title is broken across a paragraph and six heading lines (‘AS SHOWN IN THE SUPPLEMENTARY ESTIMATES NO. 1’ ... ‘TO THE RESOLUTION’), and the full title is then repeated in nine heading lines. Printed as in the source.

Q4. Heading before Papers, about 12.40 p.m.. The heading ‘RECOMMITAL’ stands over the Leader’s request to revert to Government Papers and the re-laying of the Defence Pensions Regulations, 2007; no Bill was recommitted. Printed as in the source.

Q5. Order No. 9, Hon. D. D. Marshall. One paragraph ends ‘Sir, by virtue of the responsibilities of a Court Marshall, they have to...’ and the next speech heading begins again ‘Mr. Speaker, by virtue of the responsibilities of a court Marshal’. Printed as in the source.

Q6. Order No. 8 and Order No. 9. The heading ‘(EDITED)’ appears four times within the debate, and the Committee Chairman is labelled both ‘Mr. CHAIRMAN’ and ‘CHAIRMAN’. Printed as in the source.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The House of Assembly met at 10.00 a.m. on Tuesday, 16th October, 2007, with Mr. Speaker in the Chair; prayers were taken by Rev. Canon Ivan Harewood. The Minutes of 9th October, 2007 were confirmed. The Prime Minister, Rt. Hon. O. S. Arthur, laid the Representation of the People (Registration of Electors) (Amendment) Regulations, 2007, and Hon. N. A. Lynch laid the Annual Reports and Audited Financial Statements of the Barbados Conference Services Limited for 2003 and

2004. The Court Process (Amendment) Bill, 2007 was read a first time.

In a Ministerial Statement, the Attorney General, Hon. D. D. Marshall, reported the official opening on 15th October, 2007 of Her Majesty’s Prison, Dodds. He recalled that Glendairy, built in 1855 for 250 prisoners, held 815 inmates by 2001; that Cabinet had agreed in 2003 to a 600-inmate maximum security prison at Dodds Plantation, St. Philip; and that the disturbance and fire of 29th March, 2005 had made Glendairy uninhabitable. VECO USA Inc. built and financed the prison under a public-private partnership; a preliminary estimate of US\$183 228 000 was revised to a contract of US\$144 301 325, with bridging finance of US\$65 million from FirstCaribbean International Bank, about US\$20 million spent on security features and, he said, no cost overruns.

After Standing Orders were suspended, Mr. Marshall moved the second reading of the Supreme Court of Judicature (Amendment) Bill, 2007. It would allow a judge of the Court of Appeal to deliver a dissenting judgment, Barbados having had only one, and by a new section 85(a) would let judges order attorneys to pay costs personally where their conduct wasted judicial time. Mr. D. St.E. Kellman spoke on the status of the magistracy and the cost of such orders; Hon. R. C. Eastmond recalled appeals to the Privy Council; Mr. R. St.C. Toppin supported faster justice and suggested ticketing for minor matters; and Mr. M. A. Lashley spoke on dissenting judgments, traffic offences and judgments paid in instalments, and called for a victims compensation scheme.

Before the luncheon suspension, Hon. Miss M. A. Mottley re-laid the Defence Pensions Regulations, 2007, explaining that the Second Schedule had wrongly stated 3.5 weeks instead of 3.75 weeks per year of service for 15 to 20 years’ service. The Sitting was suspended until 1.45 p.m. On resumption, Hon. K. D. Symmonds, Member for St. James Central, discussed the traditional view of the magistracy as the route to the judiciary and the role of the Judicial Council.

In reply, Mr. Marshall noted that magistrates could already order compensation in criminal cases while the High Court could not, warned that many offenders could not pay, and welcomed the suggestion that liquor licence renewals be handled administratively. The Bill passed through Committee, clauses 1 to 9, without amendment and was read a third time. He then moved the Court Process (Amendment) Bill, 2007, to protect Court Marshals from threats and impersonation, noting that posts of Marshal I and Marshal II had been created; clauses 1 to 3 were passed and the Bill was read a third time.

On Order No. 10, a Resolution for Supplementary Estimates No. 1, 2007-2008, Hon. C. A. Mascoll explained that accruals under the new accrual system, projected at \$3 million, had been underestimated, and that FundAccess needed to be recapitalised by \$2.1 million; Head 20

provided Barbados' first-year contribution to the CARICOM Community Competition Commission. Heads 14 and 20 and the amended Explanatory Note were agreed, and the House adjourned on Miss Mottley's motion until Tuesday, 23rd October, 2007 at 10.00 a.m.