
THE

House of Assembly Debates

(UNOFFICIAL REPORT)

PARLIAMENT 2008 – 2013

HOUSE OF ASSEMBLY

Tuesday, May 4, 2010

Pursuant to the adjournment, the House of Assembly met at 10.15 a.m. on Tuesday, May 04, 2010.

PRESENT

His Honour M. A. CARRINGTON, B.A., LL.B. (Speaker)
Mr. G. W. PAYNE, Q.C.
Mr. R. C. EASTMOND, J.P., B.A. (Hons.), Dip. Ed., LL.B. (Hons.) (Lond.), LL.M (Leic.)
Mr. G. A. CLARKE, J.P., B.Sc., Dip. Ed.
Mr. H. F. LASHLEY
Hon. Miss M. A. MOTTLEY, Q.C., LL.B., (Leader of the Opposition)
Miss C. Y. FORDE, J.P., L.C.P.
Hon. R. D. JONES, JP, B.A. (Hons.), M.A. (Ed.), (Minister of Education and Human Resource Development)
Dr. the Hon. D.C. ESTWICK, B.Sc., M.B.B.S., (Minister of Economic Affairs, Empowerment, Innovation, Trade, Industry and Commerce)
Mr. D. D. MARSHALL, Q.C., LL.B. (Hons.), L.E.C.
Hon. M. A. LASHLEY, LL.B. (Hons.), (Minister of Housing and Lands)
Hon. R. L. SEALY, B.Sc., M.B.A., (Minister of Tourism)
Hon. F. J. STUART, B.A., LL.M., (Deputy Prime Minister) (Attorney-General and Minister of Home Affairs)
Hon. J. D. E. BOYCE, B.C.H., MRAC, (Minister of Transport and Works)
Hon. E. G. HUTSON, F.C.C.A., C.A., (Minister of International Business and International Transport)
Hon. S. D. BLACKETT, (Minister of Community Development and Culture)
Mr. J. D. PAUL, B.Sc. (Chairman of Committees)

Dr. the Hon. D. S. LOWE, Ed.D., M.Ed., B.A., Dip. Theology, (Minister of Environment, Water Resources and Drainage)

Mr. A. D. BRATHWAITE, LL.B. (Hons.)
Hon. P. M. T. TODD, B.Sc., (Minister of State, Ministry of Economic Affairs)

Hon. C. P. SINCKLER, B.A., M.Sc., (Minister of Social Care, Constituency Empowerment, Urban and Rural Development) (Leader of the House)

Dr. the Hon. E. R. BYER-SUCKOO, M.B.B.S., (Minister of Labour)

Prayers were led by Cannon Father Ivan Harewood.

Mr. SPEAKER: The House of Assembly is now in session.

MINUTES

Mr. SPEAKER: Honourable Members, the Minutes for the last Meeting were circulated just a couple minutes ago therefore I propose to defer them until this afternoon, to give Honourable Members a chance to go through them, if they so desire.

PAPERS

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

Hon. F.J. STUART: Mr. Speaker, I am commanded to lay the following:

1. Duties, Taxes and Other Payments, (Exemption) (Port St. Charles Limited) Order, 2010.
2. Duties, Taxes and Other Payments (Exemption) (Port Ferdinand SRL) Order 2010.
3. Annual Report of the National Petroleum Corporation for the Financial Year 2007-2008.

Mr. SPEAKER: The Honourable Member for St. George South.

Dr. Hon. E.R. BYER-SUCKOO: Mr. Speaker, I am commanded to lay the following:

1. Instruments for Convention 188 Concerning Works in Fishing and Recommendation 199 Concerning Work in Fishing adopted by the International Labour Organisation at its 96th Session held in Geneva from May 30 to June 15, 2007.

ORAL REPLIES TO QUESTIONS

Mr. SPEAKER: The Honourable Member for Christ Church South.

Hon. J.D.E. BOYCE: Mr. Speaker, the circulated document indicates that the oral reply to Parliamentary question No. 10 asked by the Honourable Member for St. George North is not in my possession at this time. I want to beg that we defer the response.

SUSPENSION OF STANDING ORDERS

Hon. C.P. SINCKLER: Mr. Speaker, I beg to move the suspension of Standing Orders 6, 16, 18, 20, 42(5), 43 and 44 for the remainder of today's Sitting.

Hon. F.J. STUART: I beg to second that, Sir.

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

Mr. SPEAKER: Government Business now the order of the day.

GOVERNMENT BUSINESS

ORDER NO. 1 – PENAL SYSTEM REFORM (AMENDMENT) BILL, 2010

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

Hon. F.J. STUART: Mr. Speaker, I rise to move the second reading of a Bill to amend the Penal System Reform Act of Barbados. Notice of this Bill was given on 29th January, 2010 and the Bill was read for a first time on the 2nd February, 2010.

The Penal System Reform Act, Mr. Speaker, was passed in this House in the year 1998 and, of course, came into force in the year 2000. The object of the Legislation was to equip the courts of this island with a more diversified menu of sentencing options, in dealing with persons convicted of criminal offences.

As is generally known, traditionally the sentencing options which we have used in our courts have either been a fine or the imposition of a custodial sentence that is, sending people to prison or where applicable, putting convicted offenders on probation and in other cases, of course, binding convicted persons to keep the peace and be of good behaviour for specified periods of time. The maximum penalty payable for the conviction of a capital offense, has been the imposition of the mandatory death penalty.

It was thought for some time that these options were too restricted and there was a need to diversify the options, so that the courts would be able to deal more efficiently and effectively, with persons convicted of criminal offences. This was particularly so because the focus of the criminal justice system had to establish some kind of balance between reflecting the rage of the society at the commission of certain types of offences and also the rehabilitation of persons convicted of criminal offences. So that once we moved from a retributive approach to criminal punishment to a more rehabilitative approach, it was necessary to diversify the options available to the courts in dealing with criminal offenders so in 1995, a committee was set up to look at this problem.

House A63, sequence 03, 10:20:17

Tuesday, May 04, 2010

Hon. F. J. STUART: That Committee was chaired by Appellate Judge, Mr. C. S. Husbands as he then was. As a result of the Report of that Committee, the Penal System Reform Act was commissioned and drafted and passed by this Honourable House.

A number of additional options were put at the disposal of the magistrates and judges. The whole concept of a Community Order was introduced into the penal system. The legislation defines a Community Order as meaning an Attendance Centre Order, a Combination Order, a Community Service Order, a Curfew Order and a Probation Order. Of course, ever since the passage and the coming into effect of the Act the courts have been able to use these options to deal with criminal offenders rather than just sending them off to prison or fining them or putting them on a bond or anything of the kind.

Mr. Speaker, under the Magistrates' Court Act, Magistrates in Barbados have the power to impose another kind of order, which is called a Compensation Order. Compensation Orders empowered Magistrates in appropriate cases to call upon the person convicted of a criminal offence to pay compensation to the victim of that offence if the court considers that the ends of justice would be served in those circumstances. Mr. Speaker, Magistrates have over the years made use of that option.

Mr. Speaker, even while Magistrates were making use of the exercise of that option and of the other options contained in the Penal System Reform Act of 1998, it was soon discovered that the powers available to the Magistrate were not similarly available to Judges of the High Court, Judges of the Court of Appeal and of course Judges of the Caribbean Court of Justice. Mr. Speaker, whereas Magistrates could impose a Compensation Order where a person was convicted before that Magistrate and whereas therefore victims of criminal offences could, in appropriate cases, expect to be compensated by the offender as long as the case was done before a Magistrate, when the case was done before a Judge of the High Court or the Court of Appeal or the Caribbean Court of Justice, victims did not enjoy a similar right or privilege and that therefore is the background to the amendment before the House today.

Mr. Speaker, the whole purpose of the amendment is to give Judges of the High Court, Judges of the Court of Appeal and Judges of the Caribbean Court of Justice the right in appropriate cases to make Compensation Orders for the benefit of victims of criminal offences. Mr. Speaker, this has been a vexed question for many years. The victims of crime have always complained that even though the offender may have been sent to Prison, that has not been of any direct benefit to the victim who suffered injury at the hands of the offender. Mr. Speaker, where the offender has been fined, the fine has obviously been paid to the court and has ended up in the Consolidated Fund and therefore the victim did not benefit directly from the imposition of the fine and in many cases the lives of victims have been changed fundamentally as a result of violence inflicted by criminal offenders.

Mr. Speaker, what the law is now therefore trying to do or has been trying to do ever since the right was given to Magistrates to impose Compensation Orders is to as it were plugged that hole so that the victims of crime can, in cases where it is possible and where the court deems that it is feasible, call upon the perpetrator of the crime, the person who caused the victim injury, to pay some form of compensation.

Mr. Speaker, the most cursory look at the profile of that violent criminal element about which we are speaking or about whom we are speaking would disclose that we are not dealing with the wealthier segments of the society. In many respects the perpetrators of the most horrible crimes of violence in Barbados are men of straw, and therefore one must tone expectations down in terms of the level of compensation that might be recoverable from persons against whom compensation orders are likely to be made. Obviously, the relevant agencies would have to do the appropriate research for the benefit of the court to determine the means available to the perpetrator of the offence to ensure that the court does not impose a Compensation Order, which the offender is incapable of

paying. Mr. Speaker, departments like the Welfare Department and the Probation Department, I am sure, would therefore be pressed into service to ensure that when a Compensation Order is made against an offender that the offender is capable of paying the sum the court has imposed.

Mr. Speaker, what we are saying in respect of Magistrates will apply to Judges of the High Court, Justices of Appeal and of course Judges at the Caribbean Court of Justice once this legislation is passed.

Mr. Speaker, the whole issue of belief in and comfort with the criminal justice system is organic to the peace and stability of any country for when everything else in the society fails people like to be able to think that if they go to the courts they can get the kind of redress that makes for their comfort and gives them a feeling that wrong does not pay.

House A63 Sequence 4

10.40 a.m.

Tuesday, May 04, 2010

Hon. F. J. STUART: Mr. Speaker, therefore, it is very important that successive governments pay very close attention to how the public feels about the justice system generally but the criminal justice system in particular. I therefore consider the amendment being done here today very important because I think that faith needs to be reinforced and maintained in this society, so that justice can still be got when one goes to the court. Mr. Speaker, the introduction of compensation orders by way of amending the Penal System Reform Act is, in my view, a progressive and sensible step. Sir, to give judges of the High Court, Justices of Appeal and Judges of the Caribbean Court of Justice the same powers to make compensation orders, as magistrates now enjoy, is a step in the right direction.

Mr. Speaker, of course, it has always been the right of persons who have suffered at the hands of criminals, persons who have been victims of crime, to pursue the offender through the civil courts, to sue the offender for damages. Sir, any attorney-at-law will tell you and as an attorney-at-law yourself, Your Honour well know that civil litigation can be very expensive. Therefore, it would do a victim of crime no good if he or she expends large sums of money in civil proceedings to recover damages from the perpetrator of a crime, only then to find that the court has awarded substantial damages but that the perpetrator is incapable of paying that sum. That would be throwing good money after bad and would only exacerbate the sense of injustice which the victim of crime feels. Therefore, the pursuit of the civil remedy is not always the best option and as I said earlier, the most casual look at the profile of those

who commit violent crime in Barbados - and I believe this replicates itself across the entire Caribbean - would reveal that most of these perpetrators are from the lowest rounds of the socioeconomic ladder and are men of straw, to use the language used by attorneys-at-law.

Mr. Speaker, so far as the making of compensation orders is concerned, the court, if it is dealing with a piece of legislation which the sentence has fixed, will now have the power, in addition to complying with the sentence imposed by the legislation, to make a compensation order for the benefit of the victim. If the sentence is not fixed by law, the court will now have the power to make a compensation order, in substitution of any other offence it might have been minded to impose.

Mr. Speaker, if the court imposes a fine and a compensation order and the victim can only pay one because of the means at his disposal, the legislation will make provision for the compensation order to enjoy priority over the fine to be imposed against the offender. Where offences are committed under the Theft Act, where the nature of the injury suffered by the victim of the crime results from an offence under the Theft Act, any damage caused to the property of the victim can now attract compensation from the offender as well. This does not extend to crimes that cause deaths because as is well-known the Accident Compensation Reform Act and other pieces of legislation deal with those situations in which death has been caused in the commission of offences, and the estate of the deceased persons can pursue their own remedies where death is caused in those circumstances.

Mr. Speaker, that is the context within which the Act is being amended today. Where persons have compensation orders made against them, they are entitled to appeal but until the appeals have been exhausted, the order does not have to be complied with, so the victim cannot receive the benefits of the order until the appellate process has been exhausted and the perpetrator is clear that the court has acted properly in imposing the compensation order on him or her.

Mr. Speaker, in its effort to ensure that victims of crime get their due, that the requirements of justice are satisfied, this amendment is before the court today. Sir, it does not mean that once this amendment is passed that all of the other things about which victims of crime complain will suddenly disappear. Sir, one of the biggest problems in the system at the moment and one of the problems that attract the criticisms of victims of crime, is the length of time it takes to get matters determined before the criminal courts as well. At the magisterial level, the complaints are not nearly as loud as those heard at the higher level because of the fact, where indictable offences are committed, the two-stage process makes for long and sometimes seemingly interminable delays. Sir, both lawyers and

laymen are familiar with the expression or dictum, justice delayed is justice denied.

I have already indicated to this Honourable Chamber that it is my view that the old way of doing things, in terms of having a two-stage process where matters triable on indictment, as distinct from matters which are triable by a magistrate alone, matter triable by judge and jury, should no longer be allowed to stay in the system as long as they do because of a procedure known as a preliminary inquiry.

10.50 a.m.

Tuesday, May 4, 2010

Hon. F. J. STUART: The position in our law, at the moment is that where indictable offences are committed, the magistrate has to hear evidence and determine that a prima facie case has been made out before the matter can be sent on to be heard by a judge and jury. Sir, what has been happening in the system is that preliminary enquiries have been taking an inordinate amount of time - I do not mean months, I mean years, in some cases - with the result that the redress that victims of crime await takes a very long time in coming. Sir, while these delays are taking place, critical witnesses can get tired of going to court and decide they are not going any more. Some witnesses die, witnesses emigrate to other parts of the world and the system, therefore, grinds almost to a screeching halt as a result of these causes of delay and all of this helps to sharpen the anger of the victim, who believes that he or she has been wronged but the system has not responded in a timely fashion.

Mr. Speaker, some years ago, a procedure called the Paper Committal Procedure was introduced into the system. What that procedure required was that as long as the statements upon which the prosecution was going to rely were available, as long as the file was ready, the accused person could decide that he did not want to go through the procedure of a preliminary enquiry but that he could have his matter sent right on to be tried, on indictment, before a judge and jury.

Mr. Speaker, the accused had to exercise an option and what experience has shown over the entire duration of the life of this Paper Committal Procedure is that accused persons have not made any use of it. They have preferred the two stage process which is really a way of buying time and ensuring that things get before a judge and jury - if that is where it is going to go any how - at a time far removed from the date of the commission of the offence. Of course, in the process, defence lawyers have not been losers in all of this. They have to be paid for work done at the magisterial level and then charged afresh for work done at the High Court level.

Mr. Speaker, I do not think that we can continue with that procedure for very much longer. In fact, the Office of the Attorney-General is busy working out the final details on the basis of which that procedure will come to an end. Of course, cases that are already in the system and have already started will have to be allowed to continue because one does not want to interfere with the rights of accused persons. Sir, at a date not too long from now, we will be coming back to Parliament to tidy-up this whole process and to say goodbye to preliminary enquiries.

Mr. Speaker, I feel no discomfort in saying any of this because, as it stands now, routinely, accused persons are entitled to have the lawyer of accused persons routinely requested, all of witness statements in the custody of the police upon which the prosecution is determined to rely, the defence lawyers not routinely request and get, so they are no longer taken by surprise by evidence led in court. They already know what the prosecution is going to say and what the prosecution witnesses are coming to say, so the accused person is not going to be put to any disadvantage in that regard. Sir, in the same way that the Director of Public Prosecutions, when the magistrate sends on her deposition, the copy of all the evidence given before here, the Director of Public Prosecutions has to make a determination as to whether the case one fit and suited to go on to be heard before a judge and jury. He can make the same determination based on the witnesses' statements got from the Commissioner of Police, so that there will be no injustice done to accused persons but the process would be speed up and the victims of crime will be able to save the anguish of having to wait, three years, four years, five years, six years, seven years sometimes in order to have closure brought to the offences committed against it. Sir, that is an issue that we need to get very clear that the Government is committed to saying goodbye to that whole procedure, the long in existence, the long practice of the preliminary enquiry.

Mr. Speaker, having said that and having said that most of perpetrators of violent crime in Barbados, on the most cursory examination of their profile, persons usually of straw, persons of not very considerable means and having indicated, therefore, that victims of crime cannot expect, in those circumstances, large hand shakes, large payouts from these perpetrators.

Mr. Speaker, I think the stage has to be reached and, of course, current economic circumstances do not allow it but I really think that the stage would have to be reached eventually where we establish somewhere a victim compensation fund to deal with some of these issues. Sir, when dealing with poverty and credit is to be given to the previous Government for this, we sent up the Catastrophe Fund. The Catastrophe Fund covers the property owned by persons who have suffered misfortune as a result of natural disasters or whatever. Sir, if property is being protected in

that way, as far as this Government is concerned, persons are far more important and we will be looking at ways and means to put in place a victim compensation fund. This does not mean that victims of crime will be put back in the same position they were in before the crime was committed. What it means is that to the extent that their lives are disrupted, and to the extent that the dislocation experienced in their lives put them in a position where it is difficult to get their lives restarted, that there should be some fund available to give them that kickoff that is necessary to get back on their feet. Sir, allied to that must be the fact that victims of crimes and the criminal justice system, as a whole, must have a closer relationship with those social agencies that deal with hardship, for example, in the area of housing and in the area of welfare, so that the system pursues the plight of the victim holistically.

H/A63/11:00 Sequence 6

Tuesday, May 4, 2010

Hon. F.J. STUART: I know of cases in Barbados today where horrible incidence of domestic violence have occurred, the perpetrator of these crimes have had custodial sentences imposed on them, so they are imprisoned, but the victims of the crimes are still nervous because they know that these persons have to leave prison and come out sometime, and there is no guarantee that these issues are closed. The Minister of Social Care, the Honourable Leader of Government Business in this Honourable Chamber, knows of instances of this kind as well. We have all been exposed to this kind of concern on the part of victims of crime. Sometimes occupying the house IN which the victim of that domestic violence is usually the female of the household, the same house which she shared with the perpetrator becomes an occasion for discomfort, because when that perpetrator leaves prison that is the house to which he is coming back. Therefore, the National Housing Corporation and the Urban Development Commission and Rural Development Commission are going to have to be pressed into service in this wholistic approach to the solving of the problems of victims of domestic violence.

Sir, what is happening in the prison as well, in the area of rehabilitation, has to be carefully examined. If we have a criminal justice system and if we have a penal system that just sends people to prison, and when they come out they are no different from when they went in, then something is wrong with the system. The commitment of the Government and the commitment of Barbados for some time has been to a policy of rehabilitation.

Sir, that policy of rehabilitation, I think, has been getting some fillip at the present Prison at Dodds. The matter has been under much discussion and the officials at Dodds in collaboration with the Ministry of Home Affairs have been putting mechanisms in place to ensure that an

effective programme of rehabilitation is put in place from which inmates can benefit.

I met with Members of the Barbados Christian Council sometime, not too long ago, and that whole area of preparing people for reintegration into the society, once they have been released from prison, engaged our attention. Unfortunately, we cannot allow ourselves to forget that Barbados is still a developing country, that is the language that people use, all countries are developing but Honourable Members know what I mean, in a small and poor country, where all of the resources we need to deal with these problems are not readily available. There are many competing claims on the resources available to the Government, and therefore we have to bite off only what we can comfortably chew from time to time.

Sir, a propriety society that allows persons leaving prison to have a kind of cooling off period, and a propriety period before they re-enter the society to be reintegrated, is absolutely necessary in Barbados. This is a matter which I discussed with the Chairman and Members of the Barbados Christian Council recently.

Sir, there are other persons in the society quite interested in the pursuit of this kind of initiative as well. I think that no more time can be lost in pursuing this policy, because it would help to lessen the fears of the victims of crime, that when persons leave prison they are coming out with no less strong sense of vengeance, than that which they had when they first went into prison.

Sir, there is a Prison After Care Committee, which is part of the legislative apparatus that governs the Prison, but the After Care Committee needs facilities as well, if that whole process of rehabilitation is to be properly managed and implemented.

Sir, all of these issues are engaging the attention of the Ministry of Home Affairs and the Government at this time. I know that when we came into office there was a proposal on the table, and the Honourable Member for St. Joseph will recall this, for the introduction of a parole system. The Prison Advisory Board, as presently constituted, has been consulting with other persons interested in this area, who can make an informed input in the discussion to determine the practicability of the introduction of a parole system, looking at the enabling factors and the disabling factors and trying to reach a conclusion that would not do any injustice to the victim of crime that will serve to assist in the whole process of rehabilitation and that will not cost the State too much by way of expenditure.

Sir, all of this is only going to be possible if we have a properly functioning justice system, a properly functioning court system. Certainly at the High Court level,

we now have modern facilities at Whitepark Road, in the new Judicial Centre. We have a large compliment of judges to do the work required. Of course we now have new rules of the court. We now have modern technology and it is my considered opinion that with all of these facilities now available, we should be able to speed up the pace at which justice is dispensed in Barbados.

I contrast what I see, now, with what existed when I was admitted to the Bar in 1984. There were four High Court Judges, of whom one is the Chief Justice, and there were only four High Courts. Those four High Court Judges performed the role also of Judges of the Divisional Court. The Divisional Court used to hear Appeals from the Magistrate Court, and then those same High Court Judges performed the role of the Court of Appeal for matters from the High Court. Obviously, the Judge appealed from would not be sitting on the panel. His other three brothers would determine the case.

Now, that system did not always meet with the approval of practitioners in the system. That Court of Appeal had attracted to itself the name, a 'Scratch Back Court of Appeal'. Scratch back because it used to be said the Judges hearing the appeal might know that their time might come when they will be the...

HA63 11.10 a.m. Sequence 7

Tuesday, May 04, 2010

House A63, Sequence 08, 11.10 a.m.

Hon. F.J. STUART: Sir, because the judges hearing the appeal may know that their time might come when they will be the judge appealed against, that the judge appealed against was made to feel more comfortable than he should. Now that was not necessarily the case but I am just making the point that it was called, 'a scratched back court of appeal', that is what we heard it being called when we entered the profession.

Since then, the Divisional Court was abolished and an Independent Court of Appeal now exists so the doubling up no longer has to take place. We have an Independent Court of Appeal and we have eight or nine High Court Judges.

The interesting thing about the old system I just discussed was that in those days, one heard very little, if anything at all about any backlog. The work was got rid of, matters were properly dispatched and litigants did not have to wait around for tortuously long periods of time to get their issues closed.

I want to think that with all of the new facilities available, we can now speed up the process. The use of

technology that judges today enjoy was not enjoyed 25 years ago by judges of the High Court. The physical accommodation that they now enjoy was not enjoyed by their predecessors 25 years ago. Yet, the work was dispatched commendably quickly and I want to think that with all of these benefits now, the huge backlogs of which we hear, will be a thing of the past in the not-too-distant future.

I was not, and nobody in Barbados could be, amused at seeing on the front page of one of our newspapers, some few months ago that an accused person was on remand at prison for six years - on remand - in other words, still waiting for his case to start.

As I said earlier, we are all familiar with the dictum, justice delayed is justice denied. We are also aware that every man is presumed innocent until proven guilty. If a man on remand is presumed innocent and has to sit in prison for six years, while he is being presumed innocent, you can imagine the sense of outrage and injustice he would feel, if when his case is eventually determined, it turns out that he was innocent after all. He would have spent six years in prison for having committed no offence.

Now, I have requested a full update on the status of all persons on remand and all cases outstanding, so that we can get a proper picture as to what is going on in the system, and if disposing of these long outstanding matters, as a project, has to be undertaken, I am prepared to have it undertaken.

I do not think that you can have a system functioning in a way, where people have to wait these painfully long periods to have their matters disposed of. When you think of the fact that even when the matters are disposed of they have the right to appeal, not only to the Court of Appeal here, but then to the Caribbean Court of Justice and since the year 2000, they can appeal to the Inter-American Court of Human Rights, you can see why these long periods of remand are not in the best interest of the criminal justice system.

I will be keeping an eagle eye out on this particular issue to make sure that where injustices threaten to continue in that area, they are kept down to a minimum, if not completely eliminated from the system all together.

I mentioned the Inter-American Court of Human Rights because one of the issues that we should be grappling with, in this Parliament in the not-too-distant future, has to do with that court, the Inter-American Court of Human Rights. In the year 2000, Barbados submitted itself to the jurisdiction of that court. There was no discussion in Barbados on the subject, quite frankly, it was basically done almost, not totally, by stealth because there was no discussion on it but the consequences of submitting

Barbados to the jurisdiction of that court, has been that the Inter-American Convention of Human Rights now assumes a larger profile than the Constitution of Barbados.

Two recent decisions coming out of the court against Barbados were the decisions of Boyce and Joseph, where Barbados was ordered to abolish the mandatory death penalty and the case of Tyrone DaCosta Cadogan in which that order was basically repeated.

It is true that we have not carried out the death penalty in Barbados since 1984. The last occasion on which death penalty was carried out in Barbados was 1984 but to be quite frank, Mr. Speaker, it rankled when I read the decision and read judges of the Inter-American Court saying in the judgement of Boyce and Joseph, that it is all right for the Judicial Committee of the Privy Council to focus its attention on the Constitution of Barbados on the constitutionality of the imposition of the mandatory death penalty.

Recall, Mr. Speaker, that the Boyce and Joseph case went to the Judicial Committee of the Privy Council and the mandatory death penalty was declared to be valid law in Barbados because our saving clause, section 26 of the Constitution immunised statutes pre-existing 1966 from challenge on human right grounds, so our mandatory death penalty was saved by the Judicial Committee of the Privy Council. It was held to be constitutional but the Inter-American Court, faced with the same set of facts, basically said that we are not here to discuss the Barbados Constitution, that is a matter for you all. We are here to discuss the Inter-American Convention. We are not interested in constitutionality but we are interested in conventionality. And, having regard to the fact that the imposition of the mandatory death penalty is in violation of the Inter-American Convention of Human Rights, we are ordering you two things:

1. To repeal section 26 of your Constitution
2. To amend the relevant section of the Offences Against the Person Act that imposes the mandatory death penalty.

This is where we are in Barbados today. I have been having discussions with people in the Ministry and also people in the Ministry of Foreign Affairs.

House A63, sequence 08, 11:20:17

Tuesday, May 04, 2010

Hon. F. J. STUART: A committee has been set up to look at this issue because we have to take a decision on what becomes of the mandatory death penalty in Barbados. As I said, Barbados is the only English-speaking Caribbean country today that has submitted itself to the jurisdiction of

the InterAmerican Court of Human Rights. Trinidad had done it and when they realised that the Trinidad Constitution counted for nothing but the InterAmerican Convention did, they said goodbye to the court and reverted to their Constitution.

Mr. Speaker, when that issue had been raised with those who have been discussing the issue, the argument has been advanced that Trinidad is not a tourist economy, that Trinidad has other resources that Barbados does not have and that Barbados has to be very careful how people in the international arena view it for purposes of the tourist industry and international business and that kind of thing, that increasingly your approach to human rights issues is used as an index of your suitability and worthiness for various types of assistance from international financial institutions and the support of other international organisations and that kind of thing. Mr. Speaker, that is an issue that we cannot put on the back burner indefinitely. We have to decide what becomes of the mandatory death penalty in Barbados because Barbados faces two orders from the InterAmerican Court to whose jurisdiction we submitted ourselves in the year 2000, those Orders required that we repeal Section 26 of the Constitution and amend the relevant Section of the Offences Against the Person Act.

Mr. Speaker, abolishing the mandatory death penalty is not synonymous with abolishing the death penalty altogether. What the principle basically says is that in the same way that Judges in every other kind of case have a discretion as to whether to impose the harshest sentence having regard to the circumstances surrounding the case or to impose a much lenient sentence having regard to the circumstances of the case that the death penalty should be no exception, that issues of the surrounding circumstances, the character of the perpetrator and all the other issues that the court takes into account when it is dealing with other offences should apply equally to the imposition of the death penalty. Mr. Speaker, the argument is that you are not being asked to abolish the death penalty, you are just being asked to abolish the mandatory aspect of it. Mr. Speaker, that is an issue that the country would have to confront.

Mr. Speaker, as I said, when I read the decision, it rankled because I was a young teenager when I heard the Barbados Constitution being fought for and then to hear that it was not so important after all, that what was now important was an InterAmerican Convention was not exactly music to my ears.

It matters that I say, Mr. Speaker, that the United States of America has not submitted itself to the jurisdiction of the InterAmerican Court but Barbados has. Canada has not submitted itself to the jurisdiction of the InterAmerican Court but Barbados has. No other country in the English-speaking Caribbean is at present under the

jurisdiction of the InterAmerican Court of Human Rights but Barbados is.

Mr. Speaker, that is an issue which we are going to have to discuss and come to some firm conclusions on. We are going to have to decide what kind of relationship we should have with this court when those discussions have come to an end. All of the countries named are members of the InterAmerican Commission of Human Rights but the InterAmerican Commission of Human Rights does not have any powers of enforcement, they can only make recommendations or advice, and you could say well I have heard your advice, thank you very much but no thank you, which is what the United States of America does and other countries do.

Mr. Speaker, Barbados has submitted itself to the InterAmerican Court jurisdiction and now has these two orders against it telling it what should be in its Constitution and what its Parliament should do with its laws. The year 2000 is the year we submitted to its jurisdiction.

I know, Mr. Speaker, that the families of the victims of capital offences feel very strongly on issues of this kind. This issue therefore is as important as all the other issues to which this amendment to the Penal System Reform Act relates. The amendments therefore before this Honourable House will put the victims of crime in a much stronger position than has been the case previously. As I said, expectations are not to be raised to too high a level because the perpetrators of this type of offence are not the wealthiest people in the community. The ultimate solution to the problem would have to be the creation of some kind of a victim's support fund run by the State to help people to get their lives back together after they have been the victims of serious crimes.

Mr. Speaker, this takes us some distance and does something to abate the feelings of outrage and the sense of injustice felt by people who have to watch persons who committed mayhem against them just march off to Prison to enjoy what some of them perceived to be luxurious living and then at the end of their term to return to the society and in some cases you know not whether they will continue the act of vengeance upon which they were initially embarked.

Mr. Speaker, justice was once defined by the Roman Jurist Justinian as the constant and perpetual search to give every man his due. The criminal justice system which we have inherited and which we have practise ever since this island has been settled has left people over the years with a feeling that as victims they do not get their full due, that the State gets its due and that in some cases the perpetrator gets his or her due but that somehow the victim is the Cinderella in that entire relationship. Mr. Speaker, that is an area which we now have to deal with and that is what the

amendments we are discussing today are attempting to attack.

Mr. Speaker, I commend this amending Bill to the House and look forward to the day when we can come back with something even more substantial in terms of that victim support fund to which I have referred.

House A63 Sequence 9

11.30 a.m.

Tuesday, May 04, 2010

Hon. F. J. STUART: Sir, based not only on constituency experience but on my experience as a lawyer, I have known too many victims of crime. Sir, in recent times, I have known of too many victims of horrible domestic violence, whose lives have been thrown into utter confusion, who need a restart but who have not the means by which to make that restart effective. I do not think that the State can for much longer remain deaf to their litanies or to remain blind to their concerns. I think the stage has to be reached in the same way that where property has suffered a catastrophe, that we set up a catastrophe fund, which is not a bottomless pit of resources but which deals with special cases that satisfy certain requirements. This fund could work in the same way and do more justice to those who are victims of crimes.

Mr. Speaker, with that kind of background, it is my especial pleasure to beg that this Bill be read a second time.

Hon. CHRISTOPHER P. SINCKLER: I beg to second that, Sir, and reserve my right to speak.

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

Mr. DALE D. MARSHALL: Mr. Speaker, this particular piece of legislation seeking to amend the Penal System Reform Act finds support with the Opposition. I do not believe that there could have ever been any justification for the incongruents that existed between the legislative arrangements in a magistrate court, which would allow a magistrate to award compensation in circumstances where by definition the nature of the wrong done would likely have been less severe but while the Supreme Court having the benefit of a jury dealing with a matter that is almost certain to be of a more grievous nature did not have that particular right. Therefore, we welcome this piece of legislation.

Mr. Speaker, we believe though that there needs to be a built-in agenda for some further work. I take the opportunity to mention a few of the matters that I believe cause the Opposition some concern in terms of whether or

not this amending piece of legislation has effectively closed the gap. There is no doubt that individuals who have been wronged are entitled to compensation for those wrongs but there has been the perception that so long as a matter has attracted the criminal courts, that satisfaction must have followed as a result of a conviction. It has been that public perception. There is no basis for it in law but many individuals have been convinced that so long as an individual was tried in the High Court and sentenced, that was the end of it. There are, no doubt, some instances where the acts would have been so unpleasant that they may have wanted to put them behind them and not bothered to proceed further. Equally, it may be seen to be somewhat illogical to try to pursue a man where he has to spend the next 15 or 20 years at Her Majesty's Prison, either Glendairy or at Dodds.

I have had occasions to have advised clients in those days, when I did a little bit of criminal law, that it is not a sensible thing to throw good money after bad; you would get the satisfaction of a judgment but in circumstances where the individual against whom you go has little or no property, often the family members have to come together and pool resources to pay even the legal fees, that the likelihood of being able to get recovery would have been fairly slim. Some of those issues, no doubt, are still attendant with this particular scenario. The question must be asked in this instance, an individual who is sentenced to 14 or 15 years, who has no resources but against whom a compensation order is made, I think we have to concede that there would likely be a similar outcome.

Sir, that is not a defect of the legislation posed here, those are the circumstances in which a litigant may find himself; he may sue a man of straw for a normal civil wrong and may still not be able to recover. That is not a defect in the system but the point remains that it is important for individuals who have suffered wrong not just to have the satisfaction of seeing 'Joe Blow' carted off in a van up to Dodds but also to have a real opportunity of recovering some compensation, in circumstances where the cost to that person is either minimal or could be avoided.

Mr. Speaker, the difficulty though that I would suggest is still in existence here is the fact that when one reads the Supreme Court of Judicature Act, Cap. 117A and looks at the provisions relating to the jurisdiction of the court to order interest, my own assessment is that compensation orders do not attract an award of interest. Notwithstanding that an individual may be sent up to Dodds, he may also not be sent up to Dodds. I believe for the benefit of the Attorney-General, he may wish to consider the provision of Section 35 of the Supreme Court of Judicature Act, which gives the court jurisdiction to order interest in proceedings tried in the High Court for the recovery of debt or damages. That is the distinction here, the High Court can order interest where the proceedings are

for the recovery of debt or damages but in a criminal case it would be the Crown vs Joe Blow, where the case is not for the recovery of debt or damages but where the case would be purely a criminal matter.

Mr. Speaker, it occurs to Honourable Members on this side and to me that an individual who is to benefit from a compensation order, where an individual committing a wrong is under a legal obligation or compulsion to pay compensation, that a compensation order should also attract interest, simply because the individual who has to make the payment may not be able to make that payment right away. In fact, this Act I believe contemplates a situation where the level of compensation that could be ordered could actually make it unnecessary for an injured party to proceed with a civil action. The legislation does not say that in making a compensation order, a court would follow the normal personal injury assessment methods.

Sir, I believe it is not unreasonable to assume that an individual who suffers a particular wrong, for example, a broken hand in a fight, that it is not inconceivable that person would expect to be entitled to a similar award as if that broken hand had been sustained in a car accident. We often say that a broken hand is a broken hand and so regardless of the circumstances in which it arises, an individual could legitimately expect to receive an amount of a similar order. If that is the case then, in our submission, it stands to reason that the court should have the opportunity to order that interest be paid on the compensation order.

Mr. Speaker, there is another issue which I believe ought to be taken into account by this Honourable Chamber, if not now, at point in time in the future. Sir, in a court action where damages are awarded, you will be well-aware that there is an enforcement mechanism which is available to litigants. I do not think there is any dispute there at all.

11.40 a.m.

Tuesday, May 4, 2010

Mr. D. MARSHALL: When in a court action damages are awarded you would be well aware, Mr. Speaker, that there is an enforcement mechanism which is available to litigants. I do not think there is any dispute there at all. It seems to us though that this particular amendment does not contemplate an enforcement by the individual who was wronged, and without becoming too technical, Sir, the parties to a piece of civil litigation are able to apply under rules of the Supreme Court for various things, methods of recovery, levying on property and so on but the parties to a criminal matter would be the Crown against the individual who has been charged and convicted and, therefore, the injured person really has no locus standi

to approach the court and say to a court "Judge, this person is in contempt of court, I would like you to sell John Brown's car". Sir, it may seem like a simple point but without that opportunity to enforce a compensation order, an individual may actually be no better off and, Sir, that is the challenge.

Mr. Speaker, again, if you look at the legislation, yes, of course, a court is able to cite an individual for contempt of court whether in criminal or civil jurisdiction but without more, an individual who gets the benefit of a compensation order, ought to be able to follow similar mechanisms and try to recover the monies that are awarded to him.

Mr. Speaker, I feel though that it is importance to utter a caution. Sir, from time to time, it is known that individuals, who have been charged, feel that they can buy their way out of a prosecution. It is an unfortunate thing because there are some individuals who feeling that they can get no justice before the court, or some individuals who just plain and simple prefer to have the money than the headache will, from time to time, accept a payment and in return for that payment they opt not to give evidence. It is to my certain knowledge that the court has spoken quite firmly on its attitude towards those kinds of arrangements. Equally, Sir, the police have expressed grave annoyance that after conducting investigations and so on, and expending a lot of police resources that individuals could meet and settle a matter without regard to the fact that there is a right of the Crown to protect all of its citizens by virtue of a criminal proceeding. Mr. Speaker, this piece of legislation, I do not believe, is intended to convey the impression to individuals that, we in this Chamber are legitimising those arrangements. It has to be clear that the Compensation Order is not in lieu of a conviction but the Compensation Order is as a result and arises from the conviction. There is no issue on either side, I do not believe, on this point. I just want to make it clear, on behalf of this Chamber, that there are some people who may feel, without being fully informed that we are trying to legitimise an arrangement where you can now pay to avoid a prosecution and, clearly, that is not the intention here. In fact, I believe it is important for this Chamber to echo, not my words, but certainly the words of the enforcers of the law that the notion that individuals can buy their way out of criminal proceeding must be frowned on, not just by the authorities, but also by this particular Chamber.

Mr. Speaker, I agreed with the Honourable Attorney-General that the time has come where we have to take a view on justice. Certainly, when I was at law school, and Mr. Speaker, you and I were contemporaries in that regard, the whole idea was that justice had to do with retribution. The society was entitled to exact its pound of flesh from an individual. Sir, that is not entirely wrong, it has not been abandoned but, the truth is, we have taken a more modern

view of how a system should deal with individuals in terms of punishment, and so, we now have this notion of restorative justice. I believe that the system should allow an individual to exact his pound of flesh but, at the same time, we do have to have regard to the rights of the individual who has been wronged and who will get very little satisfaction, notwithstanding that the society blood lust might have been satisfied. Therefore, with this move towards a system of restorative justice, which has come hand in hand with a system where we have taken a different kind of approach to the nature of punishment - the Honourable Member who just spoke mentioned community orders and this legislation also looks at community orders, we know that we have gone past "Lick and Lock-up Done Wid", we have gone past those days and we now have to look at how the system, through meting out punishment, satisfying the interest of the parties concerned, especially the interest of the individual who has been robbed, while still achieving some positive benefits, as a result of the punishment.

Mr. Speaker, this legislation is quite timely and it allows us to reflect in a different way on how we treat criminal offenders and how the system must take care of the individual who has been wronged. The idea of a Criminal Injury Compensation Board, not referred to in those terms by the Honourable Member, is one that is not used, certainly, Sir, in England, it has been around for many years. It has met with some success and it has established in that society the idea that an individual, under the protection of the Crown, could perhaps be compensated whether or not you want to say that the umbrella provided by the Crown failed or was successful. Sir, that system puts the financial burden of compensation on the taxpayer. What is proposed here is that the burden of compensation should be put on the individual who committed the wrongful act. It is right that this should be the case.

Mr. Speaker, there is no doubt that a society has to have a safety net for all individuals. Sir, that safety net is provided in many ways but I believe that the fundamental obligation to compensate should be put squarely on the individual who committed the wrong. Sir, if the State is going to step in, my personal view is that the State should only step in when any opportunity for obtaining compensation from the individual is completely spent.

Mr. Speaker, we glibly say that only poor people commit crimes but that is not true. Sir, that is absolutely not true and, in those circumstances, we have to say that compensation orders are rightly the obligation and the burden of the individual doing the wrong. Sir, it is as simple as that.

Mr. Speaker, while there is scope for a system where Government could establish a fund akin to the Catastrophe Fund, I believe that it would be a significant burden on the

taxpayers. Sir, I do not rule it out. I do not say that we object to it. We would be very happy to see the proposals that the Government would be interested in putting on the table. Sir, we really would have to see what the proposals are but it is very attractive to throw on the table that Government will put in a fund \$1 million, \$2 million or \$10 million and make it available to individuals who have suffered injury.

H/A63/11:50 Sequence 11

Tuesday, May 4, 2010

Mr. D.D. MARSHALL: ...by this very attractive to throw on the table that Government will be put in a Fund, of \$1,2 or 10 million to be available to individuals who have suffered injury, but that has financial implications. It has societal implications. I believe we have to start from the notion that the individual who has committed the wrong should pay.

Sir, I know full well that in these times when resources are not as readily available to the country we would like, that there be some caution, therefore, in holding out the notion that the Government will set up a Fund to compensate people. We have to be very careful with that.

Sir, we support this particular amendment. The Honourable Attorney General has taken the opportunity to mention the death penalty, and I believe that it would be important for me to offer a few comments on that particular subject.

Mr. Speaker, the Inter American Court is a part of the OAS arrangement. In fact, all the countries in the region, save and except Cuba, are members of the OAS, and the OAS has various organs, and the particular Court of Human Rights is one of those organs, but it is important to note that at a time when we accepted the jurisdiction of that court we entered a reservation on the death penalty. So the Honourable Attorney General, I would respectfully suggest, be a little more expansive in his comments. We entered a reservation on the death penalty and we said that we intended to keep the death penalty, but with the exception of that we attorned onto the jurisdiction of the court. What we did not anticipate at that time is the very court would rule that those reservations are not constitutions and are contrary to the treaty arrangements, and that is the difficulty.

I want to make it clear that when we attorned to the jurisdiction of the court, and accepted the particular treaty obligation, we made a reservation and said that it would be subject to us keeping the death treaty because this country believes that the death penalty is an important part of our system of justice. I repeat, under the Barbados Labour Party administration we entered a reservation but the court

subsequently ruled that reservation was inconsistent. Sir, we could not have anticipated that. The matter had been studied. We had legal opinions done and everybody said to enter the reservation. There would be no problem, but the court has not ruled otherwise.

The fact now remains, though, that the Honourable Attorney General would say that we are now trying to find out what to do about the death penalty. I well remember it being reported that an individual in the Other Place indicated to this country, she had sent correspondence to the court saying that we were going to abolish the mandatory death penalty. This was reported in this country. A Member from the Other Place said that she wrote to the court, saying that we intended to abolish the mandatory death penalty. So I am a little puzzled that we are now trying to figure out what to do with it. Sir, my understanding is, that undertaking has already been given to the court.

Sir, I feel that anytime whether the court is made an order or not, anytime we are going to be making a fundamental change to things that Barbadians hold dear, it is vital that the Government take Barbadians into their confidence and discuss the issue with them. We do have a choice.

The Honourable Attorney General did quite accurately point out that Trinidad withdrew from the Court, but he should also point out that Trinidad withdrew from the Court, only having had adverse decisions of the likes of Boyce and Joseph. So they were in the same situation we were in. Will it be paramountcy of our Constitution, or will it be paramountcy of our treaty arrangements? Are we now at a point where our Constitution is no longer the supreme law of the land, and in fact a jurisdiction that is recognised by some people and discarded by others is now to be the supreme law of the land, and Trinidad took that step, but we do have a choice. Sir, we do have a choice.

Sir, the point is, whatever decision is made I believe that Barbadians need to be consulted on it. It cannot just be a group of individuals who may be interested in the tourism sector, pontificating that if we withdrew from the court we would lose tourism business. Now let me make it clear. I am not saying that it is the Barbados Labour Party's position that we withdraw from the court.

Sir, when I was Honourable Attorney General this matter was raised. I asked for the views of the Ministries of Foreign Affairs and the other economic ministries, as to what they felt would be the impact if we withdrew from the court. I did not get the benefit of being in the Honourable Attorney General's Chambers when that advice had been rendered. In fact, I believe that the Honourable Member is still waiting on the advice to come, but I asked for that advice and Cabinet was in fact briefed on it.

Sir, it is not fair to say that we do not have a choice. We have a choice. We can either take the country through the view that the death penalty could be saved so long as it is no longer mandatory. The Honourable Attorney General has said what it is, but just to reiterate. Sir, it is being advanced by that court that we could keep the death penalty, but the presiding judge ought to have the right to look at the circumstances and determine whether a death penalty, the ultimate human sanction, is appropriate, or whether some smaller sanction is appropriate.

We argued that we had built into our system a whole range of sanctions and only the more severe cases were treated as capital cases, but the view of the court is, the view of the Inter American Court not the view of our High Court, that the judge hearing the matter ought to have the discretion, to determine whether the death penalty would be employed or not. The other option is to say, we do not accept this view of our Constitution and our legal arrangements and we are withdrawing from the court.

I believe the Honourable Attorney General would agree that so long as we are in it, we are bound by the decisions that are being made. I am uncomfortable about many aspects of the Boyce and Joseph decision. The Honourable Attorney General has not mentioned that the court has said that there is an element of compensation. There is an element of compensation that we will now have to consider as well for those particular individuals, but not coming under this particular penal reform.

Sir, what is happening today is, all across our treaty arrangements we are finding that we have to contort ourselves as a nation. The Leader of the Opposition and others on our side, and perhaps on the Government side, have spoken about the kinds of obligations that signing international treaties bring on us. We signed it after many years of hesitation to the ...

Asides.

Mr. D.D. MARSHALL: Sir, it was something to do with nuclear. It was only signed in 2007, but this particular Treaty has been around for many years and we only signed it recently. In fact, I believe that we gave the fiat for its signature but I do not know if it was actually signed before elections.

Sir, the point is, the only reactive material you will find in Barbados is probably at my dentist, your dentist and the X-Ray Department at the QEH, and the little laboratory at the University of the West Indies and at...

HA63 12.00 p.m. Sequence 12

Tuesday, May 04, 2010

House A63, Sequence 13, 12.00 p.m.

Mr. D.D. MARSHALL: The only radioactive material you will find in Barbados, Sir, is probably at my dentist and your dentist, the x-ray department at the QEH, the little laboratory at the UWI, at Harrison College and Community College. I do not know how much it is but we had to sign the Nuclear Proliferation Treaty and written into that, Sir, is a whole set of obligations that make no sense for a country like Barbados.

Why on earth would we have to set up a Department for Inspectors? To inspect what? Sir, we are constantly in a situation where we have to contort ourselves to meet the international obligations that we signed and that we would have signed, in good faith at the time when we signed them.

The Attorney General might recollect that it was their administration that brought us into the WTO, and we have now seen how that has mushroomed into another set of economic contortion. Sir, to bring it back home, this is another instance where we are now uncomfortable with the kinds of contortions that we have to twist our bodies into because we now have to ask ourselves, how do we come to Parliament and say to Parliament, the InterAmerican Court of Human Rights has said that we have to pay Messrs. Boyce and Joseph compensation, while they are individuals who are dead as a door nail and whose families would not have received any compensation for their deaths. We have to tell the country that is what is required of the judgment, another set of contortion.

Sir, I would urge that in this particular regard, the sentiments of Barbadians about the death penalty and the retention of the death penalty run deep and before the Government takes a position on the death penalty, and I welcome the Attorney General for clarifying what was written by the Honourable Senator and what was verbally expressed by the Honourable Senator on that occasion, but before the Government makes any move in that regard, Sir, I urge that the country has the opportunity to discuss the matter fully.

Sir, if the overwhelming number of Barbadians say, keep the mandatory death penalty, Sir, if we are going to follow what the Barbadian public wants, we are going to have to withdraw from the arrangements. I would suggest, Sir, that the dialogue on the mandatory death penalty not end here. I hope that every Barbadian has a tremendous interest in making an input into how we ultimately resolve this issue.

As I have said, Mr. Speaker, the Opposition supports this particular measure. Our comments or perhaps criticisms of the Bill are not intended to thwart what are, obviously, the noble purposes but it does concern us, Sir,

that an individual ought firstly to have an opportunity to get interest on the compensation, because it may not in fact come, for a large number of years. Sir, that is the fair thing to do, and it is consistent with other areas of the judicial practice. Secondly, Sir, that the individual ought to be able to trigger some mechanism to enforce a compensation order, because an individual who has the resources to pay, ought to be compelled to pay through a parallel process. It may be, Sir, that the Attorney General may want to consider an amendment, not necessarily today, but would simply give the person to whom the compensation is to be paid, the victim, the right to enforce the Compensation order under the rules of the Supreme Court as if the Compensation order were ordered in the way of damages.

I am not telling the Attorney General how to draft his Bill but I believe, Sir, that something of that kind would mean that we do not have to bother the DPP to help to pursue the individual. The DPP has other business of the people to protect but we could say that your compensation has been ordered, Sir, you now have the right to trigger the rules of the Supreme Court as if the Compensation order were an order for a civil debt.

I think the Attorney General understands the direction I am going. I believe, Sir, that would be an effective way of allowing an individual to recover its money. I guarantee you, Sir, if that is not done all that will happen is that people who are ordered compensation will find their way to the Registry every day, they will be calling the Judges every day, they will be calling the Attorney General every day and, perhaps, they should, and they will be calling the DPP every day, saying, a Compensation order was made. How come I cannot get my money?

I believe, Sir, there are opportunities for us to do a few more things to make this particular thing more effective and to really make the opportunity of getting compensation something that is within the grasp of the private citizen.

With those words, Sir, I again reiterate our support for the Bill and I thank you for your indulgence.

Asides.

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

Mr. R.C. EASTMOND: Mr. Speaker, in piloting this Amendment, the learned and distinguished noble Attorney General made some pointed observations. One of the observations he made, Sir, was the question of sentencing policy and he did actually refer to retribution and then the other side of sentencing and the policy that would inform a punishment.

The old-fashioned view, Sir, has always been that in criminal matters where a person commits an offence, the person does not only offend a particular individual, victim, or a segment or grouping, the person offends the State and offends the Crown. Way back in time, many jurists were of the view that ultimately, apart from divine sanctions that retribution clearly lay in the hands of the society, through the courts, to visit punishments on people to reflect the wrath of society on people.

Sir, in a realistic framework, when you get varying types of offences, varying types of crime, and varying consequences, then it is clear to me that in approaching the whole question of sentencing a person who has offended, a number of variables should be taken into account. One of the purposes of the Act that is being amended, was to enlarge the options available in the summary course, and to take these options beyond finding and confining.

Alas, though, Sir, notwithstanding the fact that penal reform did actually empower summary courts to visit a number of new sanctions on offenders, the High Court did not have the same privilege of being so empowered. Permit me, Sir, Mr. Speaker, to mention this whole thing about the status of the Superior Courts, High Court, Court of Appeal, Caribbean Court of Justice. Within jurisprudence, Sir, both in the metropolitan area and in Barbados, you would no doubt encounter statutes that enable the superior courts to take certain courses of action. Then you would also encounter, Mr. Speaker, the very interesting position posited by people like Alexis that the Superior Courts have an inherent jurisdiction to do justice in many different cases.

Sir, as much as scholars have spoken to the whole issue of the inherent jurisdiction of the High Court, the Court of Appeal and such like, unfortunately, few people knew where the inherent jurisdiction started and where it ended. Few people really knew where the courts inherent jurisdiction at High Court level, Court of Appeal level and Caribbean Court of Justice level, started and where it ended. Therefore, in a situation where the law must be certain, statute has had to be created by this, the highest non forensic court in the land to clarify the position.

House A63, sequence 13, 12:10:07

Tuesday, May 04, 2010

Mr. R. C. EASTMOND: Sir, a bold High Court, aware of the fact that Magistrates had been given a range of sentencing options, and in the absence of legislation like this would say if the Magistrates have that power, we will arrogate that power to ourselves based on the inherent jurisdiction of the court.

Mr. Speaker, those scholars who speak to the whole question of the inherent jurisdiction of the court and its nature always say that it could arrogate to itself power, almost a platitude of power, where no power was really spelt out either in a Constitution or a statute. Sir, I really wanted to make this point because one of the purposes of Acts of Parliament would be to make the law certain and make the law very clear.

The learned Attorney-General also mentioned the need to bring about improvements in our justice system. We on this side have no difficulty with the whole question of improvements to the justice system even though history has shown that such improvements have come incrementally. Mr. Speaker, this is one of the things about positive law as Kelson and Austin and these fellows would have spoken about. The thing about positive law is that it functions very well in situations of stability. Unlike natural law, which has an eternal divine nature to it and which is unchanging as spelt out in Psalms 19, positive law is very much manmade law. Positive law often fits into a particular contemporaneous historical framework and years after either is inapplicable or even absurd and therefore we always have to look at the real law that we administer and see if it is working and see what we can do to improve it.

Mr. Speaker, from a jurisprudential point of view, law would always be undergoing constant change, that partly explains why in the common law world there is such a thing as a Parliament. Even though in some areas of law like Tort, Contract and such like, there is ample scope for judge-made law in areas like negligence, breach of contract, frustration and contract and such like, ultimately the principal lawmaker must be Parliament and Parliament must be clear in which direction it is taking the law.

Mr. Speaker, for years, Barbadians have always been asking how can it be that a person penalised by a court will either go to jail or be fined in circumstances where the victim of that perpetrator's deed has not been properly examined and looked at, especially when such a victim has suffered grave harm. We on this side, as the former Attorney-General and the Honourable Member for St. Joseph has said, have no difficulty with a policy designed to compensate the victims of crime.

More than 20 years ago the English passed the Criminal Injuries Compensation Board which has attracted a measure of State funding. The learned Attorney-General did mention that even though today we are looking at the whole matter of making the convicted person paid the victim, that ultimately there could be a case where the State has to intervene. This is based on the fact that a lot of people who cause physical injury to people are not really able to adequately compensate. There are people's who injuries would attract for pain and suffering and loss of amenities in excess of \$100 000 and the typical poor man

in Barbados cannot meet such a payment. The typical poor man in Barbados, the product of unemployment, the product of a depressed neighbourhood, the product of poor parental guidance, the product of negative peer group pressure and the product of poverty will not be able to pay substantial amounts of money to compensate the victims of his wrongdoing.

Mr. Speaker, it might just be a question of time before this Honourable House may be asked to introduce a policy to enable Government to pay part of the compensation after some type of means test is done on the convict to ascertain the convict's capacity to pay and then to work out the extent to which the Welfare Department, the Probation Office or some other State agency may very well have to make a contribution.

Mr. Speaker, as regard improvements in the justice system, there are instances where there is need for further reform. Let us consider the Magistrates. I am told that the number of Magistrates today may be the same as the number of Magistrates 40 years ago. They are hardworking. Many of them are exceptionally enthusiastic about their job but alas many of them are faced with two problems, the first being the long hours writing in long hand. The preliminary inquiry was mentioned. In the preliminary inquiry, the poor Magistrate has to write in long hand and depending on the number of witnesses may be writing in long hand from 9:30 in the morning until 3:00 over a period of time. It is nothing bizarre or farfetched to ask that Magistrates too be given the facility for the recording of evidence taken before them without exposing them to the need to continue writing in long hand.

Mr. Speaker, what often happens is that sometimes in doing the handwritten record of the court, the Magistrate's mind may be taken off other things happening in the court. When one is taking notes one may be oblivious perhaps to a number of other things that one should be alert to in that court. At the same time, there is trained writing in long hand and then when you have to stop dealing with case A to adjourn that to deal with Case B and Case C and to continue to write in long hand, it can indeed be very stressful.

Mr. Speaker, the second thing I believe that would concern the average Magistrate is upward career mobility. Upward career mobility has to be a concern of all magistracy because we have had instances of hardworking outstanding Magistrates who for some reason or another have fallen victim to the adage 'once a Magistrate, always a Magistrate' and thereafter a Justice of the Peace on retirement if such comes a Magistrate's way.

Mr. Speaker, we have to clarify a policy on the mobility of Magistrates upward. It is not true to say that some Magistrates have not gone as far as the senior bench

because some indeed have but some have got there not directly from the magistracy straight to the senior judiciary, they have had to go back into either the Attorney-General Chambers or the Solicitor-General Chambers, get a little promotion there and then by non-direct and more circuitous route assigned to the position of High Court Judge after seeing others, who have not been made to endure the sacrifices that some of these Magistrates have, come and pass them out and go forward. Let me clarify what I am saying, Sir. A Magistrate might be on the Bench let us say 10 years; the Magistrate is working hard; that Magistrate does not go back to the Solicitor-General's Office or the Attorney-General's Office at the level of Deputy Director of Public Prosecutions or Director of Public Prosecutions, that Magistrate continues to work and somebody from the private Bar could be chosen to go and become a High Court Judge ahead of a Magistrate who forewent earnings in private practice for a position in Government and who did not achieve the upward career movement that he or she deserves, and this is something that concerns me.

Another thing, Sir, is the perception that some people hold of Magistrates. We on this side see them as judicial officers but in certain parts of this country people feel that some Magistrates are just other civil servants. I remember the days some years ago when a university graduate in Barbados with a Second Class Honors Degree worked for more than Magistrates. A lot of Magistrates cannot boast that they are properly paid.

House A63 Sequence 14

12.20 p.m.

Tuesday, May 04, 2010

Mr. RAWLE C. EASTMOND: Mr. Speaker, this brings me to the position of the post of Chief Magistrate. We have here the very curious and notional position of an entity called the Chief Magistrate. Sir, the only reason I say so is that there is no real established post of Chief Magistrate, so the term Chief Magistrate is like some kind on honour, some earned insignia. The Chief Magistrate is paid at the same level as the other magistrates. Sir, practical experience has shown that the position of Chief Magistrate does not necessarily lend itself to upward promotion either. Sir, we have had instances where persons in that position have never got past being Acting Registrar and I guess sometimes too some senior magistrates were Deputy Registrars.

Mr. Speaker, I believe we have to look seriously at these developments in the country, the reason being that ultimately justice should prevail, not just in an esoteric way, not just through the administration of the law, not just in the interpretation and administration of the law in the courts but on a means of social justice based on equity. Sir,

it has been inequitable the way Barbadian society has treated our magistrates. Sir, I am here pleading for better conditions of service for our magistrates. Sir, many magistrates are convinced that unless something revolutionary happens, and I do not mean violent revolution, I mean unless some fundamental far-reaching change occurs, then many of them feel that even when they are permanently appointed, that they still remain in a mini judicial cul-de-sac. We have to open up the avenues to them so that they can go forward, so that they can advance in their careers, so that they could achieve the measure of fulfilment for which human beings on this earth have come to this earth. We are here primarily to be fulfilled. Sir, fulfillment takes many human forms and I am talking about professional fulfillment that will be accompanied by some sense of achievement and by some sense of permitting the person promoted, to be able to experience self-actualisation.

Mr. Speaker, the debate has taken an interesting turn in respect of our involvement with the Inter-American Court, our involvement with the Inter-American Commission. I think that both the governing side and this side would, in the last ten years, have had opportunities to have observed a number of international occurrences. We know for sure that in the days of USSR, they never used to implement or observe international treaties. Israel will recognise that there is such a thing as a treaty but Israel is not going to make that treaty part of Israeli's law, if it runs counter to Israeli's interest.

The United States of America, which is yet to sign the Law on the Sea Convention at Montego Bay, although ironically the court to which we refer is called the Inter-American Court, as has been said, has been unable to avoid making the rulings and decisions of that Inter-American Court part of their local law. We in Barbados, in our determination to meet international obligations, may have gone too far too fast. Sir, in a world where many a country is going to allow its decisions to be informed by self-interest, in a world where normally international law is not binding at all unless it is made into municipal law, little Barbados has often allowed international conventions and international rules to walk into our local law by our passing such laws into our municipal law, thereby giving it local law. Sir, in circumstances where international law clashes with municipal law, it has to give way to municipal law therefore when a country makes international law municipal law, that country becomes bound. Sir, we now have to look to see the extent to which we have done that, in circumstances where other countries have not been reciprocating. That is the issue.

Mr. Speaker, the issue is not so much that I am objecting necessarily to Barbados being involved in the international arena and taking on particular international obligations, my concern is that it cannot be fair to Barbados

to observe its international obligations, to go far by enacting international law into local law, and every other country on earth that is interacting with Barbados is operating in breach of their obligations.

Sir, we have a lopsided situation where this small country, this proud nation, has often committed itself to international obligations, in circumstances where other countries have not been doing the same thing. Sir, reciprocity should always be the governing norm of a society in international relations, especially when there are countries that are not necessarily at the same level of the playing field as we are. We want a stronger and better playing field, we want a more leveled playing field, so that wherever countries agree, whether as a bloc or in an integration situation, they should always not only agree to certain things in principle but that they should take the type of steps which are necessary to show that they are serious about their international obligations. It has happened that within CARICOM, Barbados has gone out front and has done more than its fair share, while its CARICOM neighbours have not been reciprocating. Sir, it is as simple as that.

Mr. Speaker, the typical Barbadian who feels that he or she or that his or her sovereign county is required to meet particular duties is not going to feel happy to know that his country is called on to make sacrifices that other countries are not called upon to make. Sir, in this whole realm of international law, whenever a country becomes part of a grouping, regional or otherwise, and commits itself, there is always some seeding, some session of the country's sovereignty. It cannot be involved in a regional bloc without yielding and conceding some of its sovereignty.

Sir, the learned Attorney-General, who has spoken already, has been correctly saying that our Constitution is our supreme law; so supreme that this Parliament, in terms of Section 49 of the said Constitution, has to function in accordance with the Constitution and that no non-indigenous entity, whatever its name and purpose, should make us subjugate our sovereignty, in a situation where such require us to act and to go in a certain direction, where we perform to suit and then the very persons who are encouraging us to come on board with them are not coming on board with us. This cannot be fair.

Mr. Speaker, in supporting this amendment, in looking at the slant that this debate has taken, as has been said, we on this side are not going to oppose it but this particular debate raises questions of constitutionality, it raises questions about further assessment of our penal reform system, it raises questions of our judicial system and such like.

12.30 p.m.

Tuesday, May 4, 2010

MR. R.C. EASTMOND: Mr. Speaker, one final thing. Sir, in the communities, many people are still unhappy at how the marshals perform or mis-perform. Sir, some of them are slow to act, some of them, despite the fact that you see eyes on their bodies and sometimes spectacles helping the eyes, are blind to the existence of particular people that they have to serve. Sir, some of them are able to have a drink with the very people they are supposed to serve in a shop, still not see them, and do not serve them. Sir, something has to be done because even though there are relatively new marshals coming on board and some bad ones have left the system, we have to do something to improve the quality service that marshals are performing.

Mr. Speaker, the final point I make is this. The magistrate Court has a very elaborate system of taking in and storing maintenance money for single mother. The Magistrate Court has an excellent system of taking and storing money to pay out to children whose fathers have had to pay money into the Magistrate's Court. The High Court does not have such a facility and many a High Court judge has had to use his initiative or her initiative to make the Order and make the money payable in the Magistrates Court to get around the situation where after a High Court Order for maintenance, the High Court itself has no mechanism that would take in that money and manage it to the same extent as the Magistrates Court.

Mr. Speaker, I have spoken a lot about the Magistrates Court. I trust that what I have said is taken in the spirit in which it is offered. I do not usually rise out of frivolity. I do not rise out of some desire to attract attention to myself. Sir, whenever I rise, just as a predecessor of yours used to say, "When I rule, I rule," Sir, when I rise, I rise, although certain members may very well be thinking there is some implied pun on my choice of the word "rise".

Asides.

MR. R.C. EASTMOND: Sir, if it were three weeks ago, I would have reminded them that Christ has risen at Easter time. Sir, I have risen, I have spoken what I had to say and I trust that the quality debate we see from the learned Attorney-General and his predecessor, the Honourable Member for St. Joseph, I trust that this debate would continue to follow that pattern and that by the time we get through with it, this Parliament would be the wiser and this country the better for it.

Mr. Speaker, thank you very much.

SUSPENSION

HON. C.P. SINCKLER: Mr. Speaker, Sir, I beg to move that this House be suspended until 2.50 p.m.

Hon. J. STUART: I beg to second that.

The question that the House be suspended until 2.50 p.m. was put and resolved in the affirmative without division and Mr. Speaker suspended the House accordingly.

H/A63/12:34 Sequence 16

Tuesday, May 4, 2010

RESUMPTION

Mr. SPEAKER: Honourable Members, this Sitting is resumed. Honourable Members, as indicated earlier, we will deal with the Minutes at this point.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, April 27, 2010.

Hon. C.P. SINCKLER: Mr. Speaker, the Minutes which have been circulated, be taken as read.

Hon. F.J. STUART: I beg to second that, Sir.

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

RECOMMITAL

PAPERS

Mr. SPEAKER: The Honourable Member for St. George South.

Hon. Dr. E.R. Byer-Suckoo Mr. Speaker, I am commanded to lay the following:

1.The Instruments on Convention 188 concerning works and fishing and Recommendation 199 concerning work and fishing adopted by the National Labour Organisation at its 96th Session held in Geneva from May 30th to June 15th, 2007, and Statement by the Minister.

PERSONAL EXPLANATION

Mr. SPEAKER: The Honourable Member for St. Michael South East.

Mr. H. LASHLEY: Mr. Speaker, I want to use this opportunity to first apologise for my two weeks absence from this Honourable Chamber. Indeed, this was mainly due to some unforeseen circumstances resulting in the death of my brother and also my illness to which I am not fully recovered. Sir, when I was home this morning I completed the reading of one of the finest novels I have ever read entitled *The Measure of a Man*, written by Sir Sydney Poitier. In it he has related his personal story from a very poor human being, washing dishes in New York for a living.

SA63 14.00 p.m. Sequence 17

Tuesday, May 04, 2010

House A63, Sequence 18, 2.00 p.m.

Mr. H.F. LASHLEY: Sydney Portier has related his personal story from a very poor human being, washing dishes in New York for a living to one of this world's leading actors and also an Ambassador for his country to the United Nations.

Mr. Speaker, today I am about to make a decision that tells my personal story. Unlike Sir Sidney's story on his journey on becoming a world class actor. This journey is of a man who deeply believes in his convictions. I have taken a decision to continue the legacy of my cause to always stand with the downtrodden and those who must always have a voice in a sacred place like this Honourable Chamber. Sir, that voice can only be echoed from a position that validates the rights of those same people to be heard. Mr. Speaker, the book was extremely inspirational to me, as a man with a very similar upbringing.

Mr. Speaker, I would also want to use this opportunity to thank the wise people of St. Michael South East for giving me this opportunity to represent them in his Honourable Chamber. Sir, my mission in this Honourable House is to always seek to help the poor, the disenfranchised, the youth, the elderly, the disabled and, in particular, single mothers of large households.

Mr. Speaker, my mission also in this House has never been about me or self-aggrandisement, despite the contrary thinking of others. Sir, through it all, I have always been comforted by the words from the Most High when he said:

"Verily, verily I say unto you, when men shall revile you and say all manners of evil against you falsely, rejoice and be exceedingly glad, for great is thy reward in heaven."

Asides.

Mr. H.F. LASHLEY: Mr. Speaker, in the year 2008, the Honourable Prime Minister, during his Budgetary presentation, presented to this Honourable Chamber what I call a social revolutionary Budget, for instance, Sir, free bus fares and free camps for school children, the H.E.L.P. or Help Programme, housing every last person and certainly, Sir, a programme that is very dear to me, the Constituency Councils.

Sir, some persons in this Honourable Chamber have serious problems with my support for these poor people, social policies. Mr. Speaker, I have identified with the programmes of the Government and I will continue to do so.

Asides.

Mr. H.F. LASHLEY: Sir, I am identifying with a cause because if you cannot stand up for something, you will fall for anything. I am now, Mr. Speaker, with your permission, of course, leaving this position as an Independent Member of this Honourable Chamber to stand on the side of the Government and the people whom I represent.

Asides.

Mr. H.F. LASHLEY: Mr. Speaker, despite the physical sarcasm, I am now in your hands.

Mr. SPEAKER: I am obliged.

Mr. H.F. LASHLEY: Sir, without any further ado, I will not hesitate any longer. I will take my briefcase and I will go over to the other side.

Mr. Lashley crossed the Floor.

Asides.

Mr. SPEAKER: Honourable Member, when the resumption was taken, we were on Order No. 1 and with that, we shall now continue.

ORDER NO. 1

(Resumed)

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

Hon. M.A. LASHLEY: Mr. Speaker, I rise to enter this debate and I want to congratulate the Honourable Member for St. Michael South and the Deputy Prime Minister for bringing this revolutionary piece of Amendment to the Penal Reform Act.

I remember, Mr. Speaker, during my days in Opposition when I spoke to certain aspects of the criminal justice system, I made many calls for a compensation scheme, be it by the particular convicted person or by extension, in instances by the State, Sir, simply because of my experience in the court and having an extensive criminal practice at the time and witnessing victims. In fact, victims who were injured and who had suffered at the hands of some offenders tremendously and, of course, having the only recourse, basically, is to try to bring a civil action against the particular person.

The obstacle was that at the time, and as was said earlier by the Attorney General, that most of the offenders, Mr. Speaker, were men of straw. Of course, we know that victims have a negative view of the criminal justice system, simply too, because the sentence in most of the cases certainly do not reflect the harm that they have suffered.

For instance, Mr. Speaker, I do recall a matter before the Assizes, where a youngster was injured. He was actually struck in his head with a sledge hammer and now he cannot do anything for himself. The guy was convicted and found guilty. I tried to bring a civil action against the gentleman and he had no property, no money whatsoever. The guy now is about 23 years old. He is very strong. It was over a quarrel of \$10 and the judge at the time gave the offender a fine to be paid, and the victim got no compensation, nothing at all as a result of what happened. Sir, they are instances like that, which I made calls over and over for a compensation scheme, be it by the offender, or be it by the State.

As I said before, the United Kingdom has a Victim Compensation Scheme and what I know, based on the inherent jurisdiction of the court, that the judge would do an inquiry.

House A63, Sequence 18, 14:10:17

Tuesday, May 04, 2010

Hon. M. A. LASHLEY: As I said before, the United Kingdom has a Victim Compensation Scheme and what I know, based on the inherent jurisdiction of the court, is that the Judge would do an inquiry into whether the offender can make a Compensation Order to the victim. There would obviously have to be an inquiry as to the means of the offender. In my experience, I have known Judges to ask a particular offender, after he is found guilty, whether he is working or has property so that they can establish that the person can pay a fine because they want to give the particular person a non-custodial sentence so I expect in an instance like this that the Judge would do a similar inquiry as to whether this person can make the payment or make compensation to the particular victim.

Mr. Speaker, I support this amendment. As I said before, it is a revolutionary piece of legislation. I believe that we have to look overall at the criminal justice system. I always make the point that there is still some issues in the criminal justice system that we have to look at so that we can correct some of the problems by way of legislation or amendments to existing legislation.

Mr. Speaker, I am of the view, as said by the learned Attorney-General, that in relation to the options available to the Presiding Officer at the time, he has fines, he can sentence to imprisonment, he could do by way of bonds whatever...

Mr. Speaker, before the Penal Reform Act was passed, there was a Magistrate in Barbados, if I may call his name, Magistrate Carlisle Greaves, who explored a number of sentencing options although not having the jurisdiction and was sentencing offenders to community service. The report is that after these persons came back from doing community services, some of them never came back before him and that started the movement towards the Penal Reform Act as a catalyst. Mr. Speaker, I think we should praise Magistrate Carlisle Greaves for being so forward thinking and even revolutionary in the way how he looked at sentencing individuals who came before him.

Mr. Speaker, I want to go on to some of the other issues that I have in the criminal justice system. The Community Legal Services Act gives legal aid only to a number of scheduled offences under the Act but there are other matters that I believe we could extend the legal aid scheme to. In fact, there is a view that legal aid should be extended to all persons who want to bring matters before the court or who obviously have been accused or charged for a number of offences.

Mr. Speaker, I asked, why cannot we have legal aid for wrongful dismissals from the point of view that most of those who work even at the lower level sometimes do not have the savings to employ an attorney-at-law. Of course, if they come up against a company, the company has a list of attorneys that they retained or sometimes they have one attorney and sometimes it might be a prominent Queen's Council to defend their case or put their case in the court and so a lot of persons who might have good cases against employers but who cannot afford an attorney might then sit back and say that they are not going through with the litigation against the employer because they do not have the money to retain the services of an attorney-at-law. Mr. Speaker, in most cases they might have a good case but they would decide that it does not make any sense in pushing the case or going to get legal fees.

Mr. Speaker, I am saying that if the State intervenes and include matters of wrongful dismissals under the Community Legal Aid Scheme, then that would be a step

in the right direction in terms of balancing the rights of both individuals. Mr. Speaker, I am making that call basically for community legal aid to be extended to matters of employment law.

Further, Mr. Speaker, why cannot we extend community legal aid to accused persons or persons who are being questioned at a police station after they have been arrested or if they went to the police station voluntarily so as to protect or to show some fairness throughout the system? I have made this call before. In the United Kingdom and other jurisdictions they have something called a Duty Lawyer. That Duty Lawyer is basically there to protect persons and to advise and give them counsel when they are being questioned in a police station relative to a crime or whether they are suspected of a crime. Mr. Speaker, I believe that we can look at those two aspects, whether we extend it before the person is charged or indicted or at the process where that person is being questioned at the police station.

Mr. Speaker, relative to matters before the courts, I heard the Opposition spokesman, the Honourable Member for St. James North, speaking about the delays in the criminal justice system. They spoke to the maxim 'Justice delayed is justice denied'.

Mr. Speaker, I can speak from experience. At this very moment, there is a matter where a person was charged for murder, I believe since 2000, and that matter is still going on. In fact, the trial has not even started at the High Court.

Mr. Speaker, there must come a time when we look at time limits in terms of establishing when a preliminary inquiry should start and when it should finish, when an indictable trial should start and when it should finish and also in what time period a person should be sentenced. I have witnessed time and time again that a person is convicted in one assize and then that matter is adjourned over to another assize and it goes on and goes on. We have now moved away from the assizes to the continuous trial.

Mr. Speaker, someone is convicted in January and in May or July they are being sentenced. I do not know if it is because there is a shortage of Probation Officers or whether we need to even put a time limit and when that person should be sentenced.

Mr. Speaker, I have another issue. I believe that there must come a time when we should have specialist Judges.

House A63 Sequence 19

2.20 p.m.

Tuesday, May 04, 2010

Hon. M. A. LASHLEY: Mr. Speaker, I believe that a person who has had tremendous experience in criminal law should sit throughout the Continuous Assizes. Sir, I am not casting aspersions on our judiciary, I believe they have done an excellent job throughout the years but my view is that I have seen some mistakes or errors that have been made that I believe could have been avoided. Sir, these errors come up all the time. In fact, if I may draw one example. Sir, quite recently there was a matter before the Court of Appeal. I participated in the matter at the first instance. The person was charged under the Sexual Offences Act, relative to a minor but the person was indicted under Section 4 of the Act, which provides for consent. The indictment before the court was one of consent.

MR. SPEAKER: Honourable Member, has this matter been already concluded?

Hon. M. A. LASHLEY: Mr. Speaker, I have not mentioned the matter, I am just raising two issues. I have not mentioned the name of the trial.

MR. SPEAKER: No, but the details might be sufficient for persons to identify the matter.

Hon. M. A. LASHLEY: Mr. Speaker, the matter has been concluded.

MR. SPEAKER: Very well.

Hon. M. A. LASHLEY: Mr. Speaker, the facts revealed that although that person had sexual intercourse with a minor, that person was then charged under the section which implies consent. What happened at the particular time was that the presiding officer then withdrew consent from the jury. Therefore, on a technicality, the person walked right through the door. Mr. Speaker, it happened again, that is why I am respectfully asking that we look at specialist judges who would have had the long-term experience in criminal matters and by extension in criminal law.

Mr. Speaker, preliminary inquiries provide defense attorneys with a chance to test the case of the Crown at that particular level and to test the statements of witnesses at that level, so that you can now build your case at the magisterial level. The advantage of abolishing the preliminary inquiry is that you would have a speedier trial. You would also not have the backlogs at the magisterial level. Sir, there are some defense attorneys who would argue that by abolishing the preliminary inquiry, they are now left without having the chance to test witnesses at the magisterial level. Of course, some defense attorney-at-law would also say that they have been deprived of an income

at the magisterial level in doing a criminal trial. Sir, I think that if we are looking at improving the criminal justice system and once we know that abolishing the preliminary inquiry would then add to a speedier trial, that it would remove the backlog, then we have to support it because it would enhance the criminal justice system.

Mr. Speaker, much has been said about the magistrates and I want to support what was said by the Honourable Member for St. James North, in relation to magistrates. It is the magistrates who deal head-on with matters in the Continuous Assizes. Magistrates have to go through the trial, they have to take evidence from witnesses, they have to read back all the evidence that was given on the stand by the witnesses, they have to do other summary matters. Sir, magistrates have a load of work.

Mr. Speaker, it has been done before to the Chief Magistrate but I do not see why an ordinary magistrate cannot be elevated to the higher Bench. We have a number of outstanding magistrates, when you go to the Magistrate's Courts in Bridgetown, you can see the Chief Magistrate sitting, sometimes from 9.30 a.m. to 5.30 p.m. At some time, and I know that the learned Attorney-General will do it, we have to look at improving the terms and conditions of the work of magistrates, based on the quality of work they produce. Sir, sometimes magistrates produce timely decisions; sometimes you have on-the-spot decisions; you also have written decisions and so I believe that magistrates should be given their just due.

Mr. Speaker, I am also concerned about the number of unsolved murders and other unsolved crimes of years gone by. In fact, when one reads the Daily Nation, one reads about the number of unsolved murders and other crimes that have taken place in a small society like Barbados. We know the pain that this has caused to some families and therefore I believe that we should set up a special task force to look at these murder cases and other crimes that have been unsolved for years in Barbados. We have officers I know who are trained in the gathering of forensic evidence but we could probably look at some way of introducing a witness protection scheme because there are some persons who have witnessed some events, who do not want to come forward voluntarily; some of them might be afraid of what might happen to them; some are afraid of what might happen to their families.

2.30 p.m.

Tuesday, May 4, 2010

Hon. M.A. LASHLEY: Sir, some of them may be afraid of their own selves and of their families and, Sir, it is something worrying that we have a number of matters that are still outstanding and we need, basically, to establish some special task force and to establish some of the better

investigating officers in the police force to look at some of these matter. Again, Mr. Speaker, as I have said, this gives us a chance to examine and look at the criminal justice system. I just wanted to touch on certain aspects that I believe we can improve on.

Mr. Speaker, in relation to areas like the matter of domestic violence, the Domestic Violence Act was passed, and the intent was to have matters of domestic violence treated urgently because the victim would go to the Magistrates Court and either do an affidavit or fill out a form and that matter is supposed to be heard within a matter of days but, Sir, I have had instances where matters under the Domestic Violence Act were either dragged on, or you cannot find the individual. I am of the firm believe, Mr. Speaker, that we move these matters away from the Magistrates Court and place these matters before a judge sitting in Chamber so that we know these matters are being treated seriously. I am not saying that the magistrates would not treat them seriously but there is this view that when a person knows he has to go to go the High Court, there is some fear in that person. Sir, it drives some fear in that person and I would make the call that matters relating to the Domestic Violence Act be tried by a judge in the High Court, and even look further at the legislation.

Mr. Speaker, the Act speaks to a formal spouse or a person living in the household, or agent of the spouse but it does not speak to a person who would visit someone at their house day after day but not a member of the household, but who harasses, besets the home, damage their property. Sir, that person would have recourse to the criminal law, a matter of assault or common assault or whatever but, technically, Mr. Speaker, it is a matter of domestic violence, and a matter that could be treated urgently, if we look at amended legislation and include Acts like that. In fact, some people mentioned stalking and I know one magistrate had mentioned that we do not have any stalking legislation in Barbados but, in instances like that, if we make the necessary amendments to the legislation, we can then cover that whole set of scenarios, so that the law would be able protect some of those persons who would not be able to make an application under the present law.

Mr. Speaker, again, when we look at sentencing and after that person has served the period of sentencing. Yes, there is an Aftercare Committee but we have some young men, maybe 20 years or 21 years, after they have served their time in prison, they have no family or no one to turn to. They have no house to go to and they end back up again into the hands of bad company, hardened criminal or they go back to crime because they know that shelter is back at the prison. Sir, some of them are low-risk offenders, so we can look at some other institution that we can rehabilitate them before they get back into society so that they can be

given a proper chance to go back into the society and make a contribution.

Mr. Speaker, I believe that the Attorney-General touched on it this morning but I have known instances where some low-risk individuals have no family to turn and no one to turn to, so then what? They live on the streets, some cannot make it back into formal employment because there is still this stigma attached and employers will not employ someone who has had a criminal conviction or who has spent time in prison, he has no means of income, so then, Sir, how does this person survive?

Mr. Speaker, I am saying that person is a victim and that in looking seriously at improvements in the criminal justice system, we have to look too at after that person has served their time in prison and how we can assist them and get them back into society. Mr. Speaker, further, I have not only touched on how we can assist the victims but also on how we can treat to offenders and treat to persons, who are about to be charged or questioned because we have to look at the system as a whole.

Mr. Speaker, my other concern is that there are certain matters that attract national attention and some matters that we believe are serious in terms of offences. Sir, I have noticed over time that the Director of Public Prosecutions would send someone from his team down to prosecute on behalf of the State because of the complexity of the matter and because of the other issues involved in the particular matter.

H/A63/14:40 Sequence 21

Tuesday, May 4, 2010

Hon. M.A. LASHLEY: I certainly believe we should look and act consistently in matters that attract national attention that are complex in nature. We have seen it in extradition hearings and other matters, sometimes an offence that has been committed under a new piece of legislation should have a trained lawyer to prosecute, on behalf of the State.

I hope we continue in that way. I am not knocking the police officers who go to the Training School and completing the training course in prosecution, because they have done well and served this system well. I know that there are some calls for a National Prosecution Service involving lawyers from the Honourable Attorney General Chambers, to prosecute matters in the magistrate courts. I believe that we should look at how we make those reforms and how soon we can implement those reforms within the criminal justice system.

Mr. Speaker, I can go on and speak about matters even when we look at the Evidence Act in relation to

Section 70, in relation to video taping and recording of confessions. I believe we should reach a stage...I know that the Glebe Police Station was supposed to be equipped to deal with the recording of statements and interviews by persons held in custody by the police officers. I believe that if we are looking at fairness throughout the criminal justice system, we should move with haste to implement the recording and video taping of interviews of suspects, and persons being questioned by authority or any State authority while in custody.

Sir, again I would support this amendment as a revolutionary piece of an amendment. We now have sentencing options and it is now within the discretion of the trial judge to grant the compensation to a person who has been affected by a criminal act and has been severely injured by a criminal act.

Mr. Speaker, I thank you.

Mr. SPEAKER: Honourable Member for St. Philip West.

Mr. J.D. PAUL: Mr. Speaker, I rise, first of all, to give support to the amendment and to particular which I am expose, to the fact that it brings attention to a group of persons, which to the ordinary people in Barbados, in criminal acts where both persons perpetrate those acts, even when you look at the criminal justice system, you wonder whether the impact of certain criminal acts are actually taken into consideration. Very often we just see the two participants, which is the participant and the person who is offended.

I want to recall an incident that happened within the St. Michael West Central constituency about two years ago to a young man. It was a rather unfortunate incident, for the criminal system, when you look at it could not give relief and justice to the situation.

Sir, here we have a situation of a young man, in the prime of his life, sitting in his gallery holding his child. You had another group of young men, not too far away, liming under a tree. Suddenly two young men entered the area, there was a disturbance during the which the gentleman ran and some shots were fired, or something like that. He was in his gallery when he heard the shots and saw the people run past his house, he held his child in his hand and recognising that there was something amidst he tried to get inside, still holding the child in his hand. There upon the persons who were firing the shots saw him going inside, thought he was part of the skirmish. I do not know what happened, but basically he was shot. Sir, that young man was not able to use the lower part of his body. In other words he was paralysed from the waist down. Sir, that young man not only have that young baby to look after, he also has two other children, two boys.

Sir, very often when we look at these acts that are perpetrated upon persons, in terms of the victims, we sympathise with the victim but we also do not understand the impact that it has on the relatives, because very often there are people depending on that particular individual for support and for other things.

I want to say that one of the compelling reasons for me to support this particular amendment is, it is now being made clear that the Act is now recognising that there is a group of people, which hitherto has been ignored. At least from this point of view there are other persons who at least might be able to bring some comfort, as a result of the actions of others. Sir, to my mind it is where we should be going in the future.

In terms of the compensation, these are very simple things. You have situations where people have, and I am talking about small businesses in this country, pieces of equipment or a car that they depend on for their living. You have a situation where sometimes the very tool with which they make their living is actually taken away from them. For a moment in time their ability to at least feed themselves and families is compromised as a result of the action of others.

I think it is about time that the criminal justice systems finds a way... I want to say this because when we listen to things - we sometimes get the impression and a lot of people who have been victimised in the society get the impression that the criminals have more rights than the people who are offended. Sometimes you get the impression that we are moving in that direction.

Sir, again, I would want to compliment the Honourable Attorney General. At least he followed the jurisdiction, I think, in England where basically aspects of the Act were borrowed. I want to compliment him for the foresight in bringing that piece of legislation. I think the Government has to be complimented for moving in that particular direction. We would be able to, at least, give some measure of comfort to ordinary people who have been victims of crime, at least the court is moving in the direction of ensuring that some measure of fair relief can be brought, in order to mitigate against what has happened to them under the circumstances.

Sir, I also want to say this. One of the things I noticed in relation to the Act...

HA63 14.50 p.m. Sequence 22

Tuesday, May 04, 2010

House A63, Sequence 23, 2.50 p.m.

Mr. J.D. PAUL: Sir, I also want to say that one of the things I noticed in relation to the proposed Bill, is the question of Appeals, where it is noted, for instance I think it is 16.D (1) that the person against whom the Compensation order is brought has the right of appeal.

Sir, generally one of the things that we have noted in our law courts is the fact that very often, in terms of the process of time, we have the law courts taking a lot of time in order to make a decision. There is a saying that while the grass is growing, the horse is starving and very often, a lot of those persons who have been impacted on by these kinds of crimes, they need at least some form of relief to be brought to this situation in a very expeditious way.

In that regard, I want really to encourage the courts themselves in terms of executing these things to do them in a timely manner. In that way, those persons who are negatively impacted on, will be able to have some relief being brought to them, without having to wait years before the particular matter that is under consideration can actually be resolved by the court.

With those few words, Sir, I want to say that again I support the initiative that has been brought forward by the Attorney General. I would also like to see that further initiatives, which seek to compensate properly, the victims of crime in this country are brought before this Chamber for us to at least implement, to protect those ordinary citizens who work on a daily basis and try to ensure that they do what they can to try to feed themselves and their family.

With that, Sir, I thank you very much.

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

Hon. F.J. STUART: Thank you very much, Mr. Speaker,

Mr. Speaker, I rise to wind up the debate on this Bill and I would like to begin by thanking all Honourable Members who have contributed to the debate. I am indebted to them for suggestions made and issues raised, relevant to the contents of the Bill.

The Honourable Member for St. Joseph raised the very pertinent issue of whether interest will be payable on compensation awarded to victims of crime. It is true that is not expressly stated in the Legislation. Under the Magistrate Court Act, which replaced the Magistrate Jurisdiction and Procedure Act, the right of a magistrate to award interest is now a fact of our law. Of course, the High Court has always had the right to award interest.

Now, whether there should be specific provision made in respect of these compensation orders, is a matter which I assure the Honourable Member I will investigate and if we need to tidy up that aspect of the Legislation, that we will be prepared to do. Sir, my sense is that the whole purpose of the Legislation would be to tie as close as possible to conviction of the accused, the obligation to pay within the shortest possible time, the compensation awarded to the victim.

I do not underestimate the creativity of the presiding officer to hold as a kind of Sword of Damocles over the head of the convicted person, the prospect of having to suffer a more serious penalty of imprisonment or whatever, if the Compensation order is not satisfied. I will investigate the matter further and take whatever corrective action needs to be taken, if my researches disclose that this is necessary.

The whole issue of an enforcement mechanism was also raised by the Honourable Member. Clause 16A (6) of the Bill says that the amount of any Compensation to be paid under a Compensation order shall be specified in the conviction or in the order, and shall be enforceable as an amount adjudged to be paid on the conviction or under the order.

I suspect that again, the policy behind the Legislation is that payment should be made as quickly as possible and that the payment of the Compensation order will be supervised by the presiding officer himself. I do not believe that it will be left to the victim to pursue the compensation and that this will all be part of the package contained in the decision made by the court.

The issue of the InterAmerican Court of Human Rights and Barbados' position in respect of the decisions made in the Boyce and Joseph case and more recently, in the Cadogan case, and the issue of where Barbados stands on the issue of the mandatory death penalty was also raised by the Honourable Member for St. Joseph. Barbados is still a member of the court and it would have been a very untidy thing for Barbados, having been ordered by the Court to do certain things, to tell the court we are just not doing them but we are going to remain subject to your jurisdiction.

As is required when these decisions are handed down, communication has to be made to the court as to the State's intentions and, of course, as long as Barbados continues to be a Member of the Court, we would not want to find ourselves in the position and should not want to find ourselves in the position, where we continue to be a member of the court and at the same time flout the court's orders. That would be sending the wrong signal to the society, as a whole, because we insist that citizens comply with court orders. Sir, if a State is insisting that its own citizens comply with court orders, then the State itself has

to set an example that is appropriate, and as long as we are members of that Court this remains our position.

What I have said this morning and what I repeat, is that we have to decide whether we are going to continue to be members of the court and therefore whether we are going to feel bound to discharge our obligations in respect of those judgments. Sir, that is a decision which has to be made.

Mr. Speaker, I know that the position on the other side is that Barbadians should be consulted on these issues. We have never had any problems with consultation. We wish that the consultation had taken place in 2000 when the country was being carried into the court in the first place because, perhaps we would not be in the court now. Sir, that was done by stealth under the cover of night and we have now found ourselves in this position.

Asides.

Hon. F.J. STUART: The record does not so show.

House A63, Sequence 23, 15:00:13

Tuesday, May 04, 2010

Hon. Miss M. A. MOTTLEY: On a point of order. I am not sure if he is the acting Prime Minister but the Deputy Prime Minister, and I do not mean any disrespect, perhaps is misleading the House in referring to an action being done by a State entering a court by stealth under the cover of night. There were newspapers reports that we entered the court and therefore to suggest that the former Chief Justice who was the Attorney-General of Barbados at the time sought to enter the InterAmerican Court by stealth under the cover of night is an unfortunate comment, I believe, that seeks to mislead this House.

Mr. SPEAKER: I can find no fault though with the statement in terms of a point of order, although the Honourable Member, on second thought, might want to withdraw it. Yes, Honourable Member.

Hon. F. J. STUART: Mr. Speaker, the truth is that when I combed the record, it was not my understanding of the records that it was the then Attorney-General who took Barbados into the court, it was not. The record shows that the former Foreign Minister signed the agreement in Canada and made the announcement in Canada. The then former Attorney-General, as the Honourable Member for St. Joseph made clear in his speech, entered a reservation on the death penalty, which reservation the court properly considered and determined that its drafting was not sufficiently tight to make the reservation effective and therefore that the reservation counted for nothing in terms

of what it was intended to achieve. That is what the record shows and that is what the decision says.

Mr. Speaker, I am saying that there was no consultation with the people of Barbados by the then Government on the issue of whether Barbados should submit itself to the jurisdiction of the InterAmerican Court of Human Rights. I am also saying that to call for the consultation now on the consequences rather than call for the consultation when we were going into the court is really to put the cart before the horse.

Asides.

Hon. F. J. STUART: I am talking into the living rooms and so on of Barbadians today. I have said before that we have to take a decision on our relationship with this court. As long as we continue in the court, we have to comply with the court's orders, that is the position. Mr. Speaker, to call for consultation now that the horse has bolted and the stable door really cannot be effectively close for any meaningful purpose is really to make too light of this issue.

The Honourable Member for St. James North raised some issues in relation to this Bill. The Honourable Member supported the Bill of course as the Opposition is supporting it but he raised the issue of the magistracy and made the very pertinent point that it is unfortunate that in the year 2010 we still discuss the magistracy as though it were not part of the judiciary. We talk about the judiciary and the magistracy as though they are two separate entities altogether when in fact Magistrates are part of the judiciary.

The Honourable Member raised the issue of the careers of Magistrates. I am happy to report to the House that I have been discussing with the magistracy a career path for the magistracy. In fact, the Governance Committee of Cabinet, of which I am Chairman, has already agreed in principle to the establishment of a separate career path for the Magistrates. I now have on my desk specific recommendations from the Magistrates on that issue, which are to go back to the Governance Committee for fine-tuning and then for onward transmission to the Cabinet for final decision.

Mr. Speaker, we believe that the Magistrates are very hardworking legal officers. I said in the Other Place when I was there that the route from the Magistracy to the High Court Bench is too long and tortuous a route in my view. We have Magistrates in Barbados who have spent two decades in adjudication adjudicating civil and criminal cases daily, who write very sensible and well-thought-out legal opinions for the Court of Appeal when Appeals are lodged against them and do so quite successfully. Mr. Speaker, marvelous to relate, they do not qualify to sit on

the High Court Bench unless they pursue some tortuous route of going in and out of Chambers and that kind of thing.

Mr. Speaker, the new Public Service Act has made positions in the Public Service competitive and issues of priority of call and seniority and so on in the legal profession are not likely to count for very much in this new ethos. I really look forward to the judicial experience of Magistrates being more effectively utilised at a much higher level. This is something in which some has specialised for nearly two decades and it is only proper that when vacancies arise on the High Court Bench that there should not be excluded from consideration. The mechanisms to make all of that effective have to be properly worked out but certainly it is not an issue of which we are prepared to let go when in fact we think that an injustice is being done to people who sit on the Magistrates' Court Bench.

Mr. Speaker, of course, this whole issue of career path of Magistrates includes a rationalisation of the position of Chief Magistrate. The Honourable Member for St. James North is quite correct when he said that it is only an honorific title, it has no substance to it. There is really no distinction between the Chief Magistrate and a Magistrate who has had five years experience on the Bench, they basically work for the same amount of money. All that distinguishes the Chief Magistrate from the other Magistrates is a title and we think that has to be corrected if the system is to work effectively and to work fairly.

The Honourable Member St. Philip North, the Minister of Housing and Lands, raised a number of issues. The Honourable Member expressed his concern, a concern which I raised this morning and which I fully support him in, about this whole issue of delays in getting criminal matters to trial. The Honourable Member raised the issue of a matter where the offence was committed as long ago as the year 2000 and according to his information has not yet got effectively before the court to be disposed of.

Mr. Speaker, that cannot be satisfactory in circumstances where, as I said, we operate a system based on the presumption of innocence. If a man is presumed innocent until he is proven guilty and ten years after he has committed an offence he is still being presumed innocent and the system has not said whether he is guilty or not, it would be a travesty of justice if ten years later he is discovered to have been innocent all along. He would have lived the life of a criminal when in fact he should have been enjoying the luxuries of a free man. Mr. Speaker, that really cannot speak too well for a properly functioning justice system.

House A63 Sequence 24

3.10 p.m.

Tuesday, May 04, 2010

Hon. F. J. STUART: Mr. Speaker, the Honourable Member has also raised the issue of specialist judges, especially in relation to the criminal law. I know that this is an issue that I have heard, not only from the Honourable Member, that will require some thinking through in terms of what the implications would be. There are some judges who have had long experience in the practice of the criminal law. That was not always so, of course, because it is only rather recently that we have been bringing judges from the private Bar onto the Bench. Historically, most of our judges have come through the public service. Therefore, there is no evidence to suggest that because you have not practised as a criminal lawyer, that you do not know anything about it. I think we have to think that through but I do understand what the Honourable Member is saying, that those judges who have had a long experience in the practice of the criminal law might properly be more regularly exposed to the Bench.

Mr. Speaker, the Honourable Member raised the question of the old Community Legal Aid system and called for the extension and expansion of its scope. That is an issue on which the Honourable Member has been consistent and that piece of legislation is going to be reviewed, with a view to seeing how best to make it more effective and more relevant to the requirements of our time.

The Honourable Member also raised the issue of a national prosecution service. I have recommendations on my desk for that, since under Section 79 of the Constitution the Director of Public Prosecutions has the power to initiate criminal proceedings or to take over criminal proceedings that have been initiated by someone else or to discontinue criminal proceedings if in his judgment they should be discontinued. Sir, it stands to reason that prosecutions should all come within the jurisdiction of the Director of Public Prosecutions. Sir, to have police officers in the courts doing prosecutions which can be taken over or discontinued by the Director of Public Prosecutions, if he thinks necessary is, in my view, something at which we have to look. Of course, what that has to require is a larger establishment of lawyers who will work the system if we decided to go that route. Sir, I do have recommendations for a national prosecution service on my desk and we are examining the possibility and practicability of introducing such a system.

Mr. Speaker, the Honourable Member for St. Michael West Central once again highlighted the importance of having legislation of this kind, by pointing to a case of very serious injury for which there was no compensation for the victim, a victim who would have had his children to raise, who was shot and paralyzed through

no fault of his own. That is why I say that even though we have this legislation, that at some stage we are still going to need a fund to make some kind of contribution to getting people's lives back together, after they have suffered serious injury at the hands of the criminal elements in this society.

Mr. Speaker, in any event, I take this opportunity to make public my concerns at the reckless use of unlicensed firearms in this country. Sir, there are too many guns in the hands of the wrong people in this society. There are too many unlicensed firearms. We know that it is an incident of the nefarious drug trade and that managing the problem is one of the biggest challenges facing Ministers of National Security across the Caribbean. Sir, practically every meeting I have attended across the region has raised this issue of the movement of small arms and light weapons as an incident of that nefarious drug trade.

Mr. Speaker, we cannot throw up our hands in despair, we have to confront the issue. We have also to communicate to our young men the importance of being able to settle their disputes on the basis on reasonable discussion and not on the basis of ready and reckless resort to the use of firearms. If we do not tackle this issue, none of us in this society would be safe because we do not have to be the cause of offence, we only have to be at the wrong place, at the wrong time, to become victims of this kind of abuse. Therefore, Government continues to be committed to dealing with this problem as best as our resources and circumstances would allow. We are also collaborating with our colleagues across the region to make sure that this problem is contained. We have very porous borders and we have not been able to control, as we would want to be able to control, the movement of drugs and firearms into the country. This is a problem we share with other countries across the Caribbean but we will do our best, in all the circumstances, to ensure that Barbados remains a safe and secure place in which to live.

Mr. Speaker, with those clarifications and additional comments, I beg to move that this Bill be read a second time.

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

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

ADJOURNMENT

Hon. CHRISTOPHER P. SINCKLER: Mr. Speaker, I beg to move that this Sitting be suspended until 3.30 p.m.

Hon. F. J. STUART: I beg to second that, Sir.

The question that the Sitting be suspended until 3.30 p.m. was put and resolved in the affirmative without division and MR. SPEAKER suspended the Sitting accordingly.

3.20 p.m.

Tuesday, May 4, 2010

RESUMPTION

MR. SPEAKER: Honourable Members, the Sitting of this House is resumed, we had just passed a motion that the House go into Committee and with that we shall now continue.

COMMITTEE

Mr. J. PAUL: This Honourable House is in Committee.

Clauses 1 - 5 were called and passed.

On the motion of Hon. F.J. STUART, seconded by Hon. J.D.E. BOYCE, Mr. Chairman reported to His Honour, the SPEAKER, the passing of one Bill in Committee without amendment and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of Hon. F.J. STUART, seconded by Hon. J.D.E. BOYCE, the Bill was read a third time, passed and cited as the Penal System Reform (Amendment) and Act, 2010.

QUESTION TIME

MR. SPEAKER: The Honourable Member Christ Church South.

HON. J.D.E. BOYCE: Mr. Speaker, earlier this Sitting, I gave notice that the answers to Question No. 10 were ready. I now provide these answers for the Chambers but the Honourable Member who asked the Question is absent, so I will lay the answers and when he returns he can just peruse them.

MR. SPEAKER: I am obliged, Honourable Member.

HON. J.D.E. BOYCE: Mr. Speaker, Sir, ...

MR. SPEAKER: Just one moment, Honourable Member. It think the Honourable Member essentially has to ask the question by reference to the number, and then you provide your answer. The Honourable Member for St. George North.

Mr. G. A. CLARKE: Mr. Speaker, Question No. 10.

Will the Minister say what is the legal limit of the overdraft of the Transport Board as of 18th November, 2009?

Will the Minister further state to what extent, if any, is the Transport Board in overdraft as of the 15 November, 2009.

Will the Minister also state whether the Transport Board has secured a loan from the Barbados National Bank to be guaranteed by the Government of Barbados? If so, will the Minister state the amount of the loan being secured; and how the Transport Board will use the proceeds of the loan?

MR. SPEAKER: The Honourable Member Christ Church South.

HON. J.D.E. BOYCE: Mr. Speaker, in answer to Question No. 1 by the Honourable Member for St. George North, the legal limit of the overdraft for the Transport Board was \$22 million at November 18, 2009.

In answer to Question No. 2, November 15, 2009, was a Sunday and, therefore, the balance would not have been available. However, as at November 16, 2009, the bank balance was stated at \$21, 913, 540.69 overdrawn.

In answer to Question No. 3, the amount of the loan that has been secured is \$35 million. These funds are required to provide working capital support to the end of the financial year March 31, 2010.

Mr. G. A. CLARKE: Will the Minister state if any of these funds will be used to purchase any new buses for the Transport Board?

MR. SPEAKER: The Honourable Member Christ Church South.

HON. J.D.E. BOYCE: Sir, as I said, the \$35 million identified was specifically to deal with working capital support up to the financial year ended March 31, 2010. The answer, therefore, is no.

Mr. G. A. CLARKE: Mr. Speaker, does spare parts include oil and gas for the buses or only hard parts for the buses.

MR. SPEAKER: Is this supplemental to the question?

Mr. G. A. CLARKE: No. It is the same Question.

MR. SPEAKER: Just one moment, Honourable Members. Just let me have a quick look at the question

again. The Honourable Member Christ Church South, please answer if you are in a position to do so.

H/A63/15:40 Sequence 26

Tuesday, May 4, 2010

Ccontinuation of Hon. J.D.E. BOYCE: Mr. Speaker, as I indicated, when you talk about working capital, it is fairly clear you will expect that if there was need to purchase oil or petrol, as they would it will be at the Transport Board, these would be included. I can be no more specific at this stage, Sir.

Mr. SPEAKER: Thank you Honourable Member.

Mr. G.A. CLARKE: Mr. Speaker, the Minister spoke about spare parts and working capital. Will any of this money pay for labour at this time, the working capital?

Mr. SPEAKER: Honourable Member for Christ Church South.

Hon. J.D.E. BOYCE: Mr. Speaker, I am not at this juncture in a position to specifically speak to what wages or labour may have been included in this amount. As I stated before, the \$35 million was identified. These funds were required to provide working capital support to the end of the financial year, March 31, 2010, and that would be determined by the Managers of the Transport Board based on their financial priorities.

Mr. SPEAKER: Honourable Member, is that it? Okay.

ADJOURNMENT

Hon. C.P. SINCKLER: Mr. Speaker, I beg to move that this House be adjourned until May 18, 2010, at 10.00 a.m.

Hon. F.J. STUART: I beg to second that.

The question that the House be adjourned until May 18, 2010, at 10.00 a.m. was put and resolved in the affirmative without division and Mr. Speaker, adjourned the House accordingly.

HA63 15.45 p.m. Sequence 27

CONTENTS

MINUTES

PAPERS

Hon. F.J. STUART.....	1
1. Duties, Taxes and Other Payments, (Exemption) (Port St. Charles Limited) Order, 2010.	
2. Duties, Taxes and Other Payments (Exemption) (Port Ferdinand SRL) Order 2010.	
3. Annual Report of the National Petroleum Corporation for the Financial Year 2007-2008.	
Dr. Hon. E.R. Byer-Suckoo, 2.	

ORAL REPLIES TO QUESTIONS

HON. J.D.E. BOYCE.....	2
------------------------	---

SUSPENSION OF STANDING ORDERS

Hon. C.P. SINCKLER.....	2
Hon. F.J. Stuart, 2.	

GOVERNMENT BUSINESS

ORDER NO. 1 – PENAL SYSTEM REFORM (AMENDMENT) BILL, 2010.....	2
Hon. F.J. Stuart, 2, 3, 4, 5, 6, 7, 9; Hon. C.P. Sinckler, 9; Mr. D.D. Marshall, 9, 10, 11, 12, 13; Mr. R.C. Eastmond, 13, 14, 15, 17.	

RESUMPTION

ORDER NO. 1 (resumed)

MINUTES

Hon. C.P. SINCKLER.....	17
Hon. F.J. Stuart, 17.	

RECOMMITAL

PAPERS

PERSONAL EXPLANATION

Mr. H.F. LASHLEY.....	18
ORDER NO. 1.....	18
Hon. M. A. Lashley, 18, 19, 20, 21, 22; Mr. J.D. Paul, 22, 23; Hon. F.J. Stuart, 23, 24, 25, 26; Hon. Miss M. A. Mottley, 24; Hon. R. D. Jones, 26.	
SUSPENSION.....	17
ADJOURNMENT.....	26
Hon. C.P. Sinckler, 26; Hon. F.J. Stuart, 26.	

RESUMPTION

ORDER NO. 1 (resumed)

QUESTION TIME

HON. J.D.E. BOYCE.....	27
Mr. G. A. Clarke, 27, 28.	
ADJOURNMENT.....	28
Hon. C.P. Sinckler, 28; Hon. F.J. Stuart, 28.	

SPEAKERS IN THIS ISSUE

BOYCE, HON. J.D.E. (Christ Church South)
BYER-SUCKOO, Dr. Hon. E.R. (St. George South)
CLARKE, Mr. G. A. (St. George North)
EASTMOND, MR. R.C. (St. James North)
JONES, Hon. R. D. (Christ Church East Central)
LASHLEY, Hon. M. A. (St. Philip North)
LASHLEY, Mr. H.F. (St. Michael South East)
MARSHALL, Mr. D.D. (St. Joseph)
MOTTLEY, Hon. Miss M. A. (St. Michael North East)
PAUL, Mr. J.D. (St. Michael West Central)
SINCKLER, Hon. C.P. (St. Michael North West)
STUART, Hon. F.J. (St. Michael South)
STUART, Hon. J.

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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. Papers, after the resumption. Under the heading ‘RECOMMITAL’ and then ‘PAPERS’, Dr. the Hon. E. R. Byer-Suckoo lays a second time the Instruments on Convention 188 and Recommendation 199 concerning work in fishing, now ‘and Statement by the Minister’, and the second listing names the ‘National Labour Organisation’ where the morning listing has ‘International Labour Organisation’. Both are printed as in the source; this is not treated as a duplicate take.

Q3. Order No. 1, second reading. The source records ‘The question was put and resolved in the affirmative without division’ immediately after the Attorney-General’s opening speech and Hon. C. P. Sinckler’s seconding, before the debate, and again after the Attorney-General’s reply. Printed as in the source.

Q4. Suspension, about 3.20 p.m.. The motion to suspend the Sitting until 3.30 p.m. is headed ‘ADJOURNMENT’ in the source, and on resumption the Speaker says the House had ‘just passed a motion that the House go into Committee’, which is not otherwise recorded. Printed as in the source.

Q5. Committee, Order No. 1. The Chairman’s words ‘This Honourable House is in Committee.’ carry the label ‘Mr. J. PAUL’, and the Bill is recorded as cited as the ‘Penal System Reform (Amendment) and Act, 2010’. Printed as in the source. Please confirm.

Q6. Question Time, Question No. 10. Hon. J. D. E. Boyce says the Member who asked Question No. 10 is absent, but Mr. G. A. Clarke then reads the question and asks supplementary questions. Printed as in the source.

Q7. Speaker labels. Several Members appear under varying labels, for example ‘Mr. DALE D. MARSHALL’, ‘Mr. D. MARSHALL’ and ‘Mr. D.D. MARSHALL’; ‘Mr. RAWLE C. EASTMOND’ and ‘MR. R.C. EASTMOND’; ‘Hon. CHRISTOPHER P. SINCKLER’; ‘Mr. H. LASHLEY’; and ‘Hon. J. STUART’ as a seconder. Printed as in the source.

Q8. Take-slip, about 2.00 p.m.. One take-slip reads ‘SA63 14.00 p.m. Sequence 17’. Printed as in the source.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The House of Assembly met on Tuesday, 4th May, 2010 at 10.15 a.m., with Mr. Speaker in the Chair; prayers were led by Canon Father Ivan Harewood. The Speaker deferred the Minutes until the afternoon because they had only just been circulated. The Attorney-General, Hon. F. J. Stuart, laid the Duties, Taxes and Other Payments (Exemption) Orders, 2010 for Port St. Charles Limited and Port Ferdinand SRL and the Annual Report of the National Petroleum Corporation for 2007-2008, and Dr. the Hon. E. R. Byer-Suckoo laid the instruments on International Labour Organisation Convention 188 and Recommendation 199 concerning work in fishing. Hon. J. D. E. Boyce asked that the reply to Question No. 10 be deferred.

Under Order No. 1, Mr. Stuart moved the second reading of the Penal System Reform (Amendment) Bill, 2010. He explained that the Penal System Reform Act of 1998 had widened sentencing options, and that the Bill would give Judges of the High Court, the Court of Appeal and the Caribbean Court of Justice the power magistrates already had to make Compensation Orders for victims of crime, with priority over any fine. He spoke of ending the preliminary inquiry, a person held six years on remand, rehabilitation at Dodds, and the hope of an eventual victim compensation fund. He also said a committee was considering the mandatory death penalty after the Inter-American Court of Human Rights’ decisions in Boyce and Joseph and in Tyrone DaCosta Cadogan, Barbados having accepted that Court’s jurisdiction in 2000.

Mr. D. D. Marshall gave the Opposition’s support, but said the Bill did not appear to let the victim enforce an order himself, cautioned against promising a Government fund in difficult times, and referred to the obligations under the nuclear treaty Barbados had signed. Mr. R. C. Eastmond spoke on sentencing policy, the undefined post of Chief Magistrate and the performance of marshals.

After the suspension the Minutes of Tuesday, 27th April, 2010 were confirmed and the fishing instruments were laid again with a statement by the Minister. On a personal explanation, Mr. H. F. Lashley, Member for St. Michael South East, apologised for two weeks’ absence after the death of his brother, cited the Government’s 2008 social programmes such as free bus fares and the Constituency Councils, and announced that he was leaving his position as an Independent Member to sit with the Government; he crossed the Floor.

The debate resumed with Hon. M. A. Lashley, who recalled a victim struck with a sledge hammer who could recover nothing from the offender and argued for experienced criminal judges at the Continuous Assizes; the Speaker checked that the case he described had concluded. Mr. J. D. Paul raised the right of appeal against a Compensation Order. In reply Mr. Stuart said Barbados must decide its relationship with the Inter-American Court and that it had entered the Court 'by stealth'; Hon. Miss M. A. Mottley rose on a point of order, and the Speaker found no point of order but suggested he might withdraw the

remark. The Bill was read a second time, Clauses 1 to 5 were passed in Committee, and the Bill was read a third time and passed.

At Question Time Mr. Boyce answered Question No. 10 from Mr. G. A. Clarke: the Transport Board's legal overdraft limit was \$22 million at 18th November, 2009, it was \$21 913 540.69 overdrawn on 16th November, and a loan of \$35 million had been secured for working capital to 31st March, 2010, none of it for new buses. The House was adjourned until 18th May, 2010 at 10.00 a.m.