THE

House of Assembly Debates

(UNOFFICIAL REPORT)

FIRST SESSION 2013 – 2018

HOUSE OF ASSEMBLY

Tuesday, June 25, 2013

Pursuant to the adjournment, the House of Assembly met at 10.30 a.m. on Tuesday, June 25, 2013.

PRESENT

His Honour MICHAEL A. CARRINGTON, B.A., LL.B. (Speaker)

Her Honour Mrs. M-J. MARA THOMPSON, B.A., M.Sc. (Ph. Ed.) (Deputy Speaker)

Mr. G. A. CLARKE, B.Sc., Dip. Ed., J.P.

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

Hon. D. St.E. KELLMAN (Minister of Housing, Lands and Rural Development)

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, J.P., B.A. (Hons.), M.A. (Ed.) (Minister of Education, Science, Technology and Innovation)

Dr. the Hon. D. C. ESTWICK, B.Sc., M.B., B.S. (Minister of Agriculture, Food, Fisheries, Water and Resource Management)

Mr. D. D. MARSHALL, Q.C., LL.B. (Hons.), L.E.C.

Hon. M. A. LASHLEY, LL.B. (Hons.) (Minister of Transport and Works)

Hon. R. L. SEALY, B.Sc., M.B.A. (Minister of Tourism)

Hon. F. J. STUART, B.A., LL.M. (Prime Minister, Minister of National Security, the Public Service and Urban Development)

Hon. J. D. E. BOYCE, M.Sc., C. Eng. (Minister of Health)

Hon. S. D. BLACKETT (Minister of Social Care, Constituency Empowerment and Community Development)

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 Drainage and the Environment)

Hon. A. D. BRATHWAITE, LL.B. (Hons.) (Attorney-General and Minister of Home Affairs)

Hon. S. A. LASHLEY, B.Sc., LL.B. (Hons.), L.E.C. (Minister of Culture, Sports and Youth)

Hon. D. O'N. INNISS, Dip., B.Sc., M.B.A. (Minister of Industry, International Business, Commerce and Small Business Development)

Hon. C. P. SINCKLER, B.A., M.Sc. (Minister of Finance and Economic Affairs)

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

Mr. K. D. SYMMONDS, B.A., LL.B.

Lt. Col. J. D. BOSTIC, M.V.O., B.A. (Hons.)

Mr. E. G. HINKSON, LL.B. (Hons.), L.E.C., LL.M.

Dr. M. M. AGARD, J.P., B.Sc. (Hons.), D.D.S.

Mr. D. G. SUTHERLAND, B.Sc., M.Sc., M.B.A. (Dist.)

Miss S. J. O. BRADSHAW, LL.B. (Hons.)

Prayers were taken by Reverend Canon Ivan Harewood.

Mr. SPEAKER: Good morning Honourable Member, this House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of the Meeting held on Tuesday, May 15, 2013.

Hon. J. D. E. BOYCE: Mr. Speaker, I beg to move that the Minutes for the Honourable the House of Assembly for its meeting of Tuesday, May 15, 2012 and Tuesday, May 22, 2012, be taken as read.

Hon. A. D. BRATHWAITE: I beg to second that, Sir.

Mr. SPEAKER: Unless there are any corrections or observations, then let those Minutes stand confirmed.

FIRST READINGS OF BILLS

Hon. C. P. SINCKLER: Mr. Speaker, I beg to move the first reading of:

1. The Value Added Tax (Amendment) Bill, 2012

Hon. A. D. BRATHWAITE: I beg to second that, Sir.

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

Hon. A. D. BRATHWAITE: Mr. Speaker, I beg to move the first reading of:

1. The Interpretation (Amendment) Bill, 2012.

Hon. J. D. E. BOYCE: I beg to second that, Sir.

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

SUSPENSION OF STANDING ORDERS

Hon. J. D. E. BOYCE: 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. A. D. BRATHWAITE: I beg to second that, Sir.

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

GOVERNMENT BUSINESS

ORDER NO. 4 – FAMILY LAW (AMENDMENT) BILL, 2013

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

Hon. A. D. BRATHWAITE: Thank you, Mr. Speaker. Mr. Speaker, Section 92 of the Family Law Act, Cap. 214, says:

> "The Attorney-General may establish a council to be known as the Family Law Council. The functions of the Council are to advise and make recommendations to the Attorney-General either of its motion or upon request by the Attorney-General in respect of the operation of this Act and other legislation relating to family law, the provision of Legal Aid in proceedings relating family and any other matters relating to family law."

Mr. Speaker, since 1999, the Family Law Council has been calling for changes in relation to certain matters affecting the family in this jurisdiction and in particular, the Council was concerned about the effect of death on family law proceedings, guidelines in consideration of maintenance orders, garnishment of salaries of public officers, the enforcement of maintenance orders, counselling, injunctions, and in contempt of failing to obey orders.

Sir, these recommendations were, in fact, incorporated into a Family Law (Amendment) Bill in 2002.

The 2002 Amendment was laid in this Parliament but it was not enacted due primarily, I believe to a particular controversial clause in that Bill at the time, which was then called, I believe in the local media and elsewhere, the so-called "stepfather" provision which dealt with the rights of children under that Bill at the time to be maintained by their non-biological fathers. Successive family law counsels continue to make recommendations with respect to amendments to the Act. Indeed, I believe that in 2006 a further Bill was drafted and the said Bill was not brought to this Honourable Chamber. Sir, even now if it were not for my stubbornness I daresay we probably would not be here this morning discussing this Bill, because there is presently a consultant looking at all aspects of family law in this country. I know the Family Law Council is looking at certain other proposed amendments to the Act as presently drafted. Sir, the concern of the Cabinet was that in the meantime there are several Barbadians who are in call of immediate relief and such relief would be given, once this Honourable House agrees to the proposals being brought before us this morning.

Sir, given the longevity of some of the matters we will be discussing during the course of this morning, I suspect that I can depend on my friends on the other side of the Chamber to give this Bill their wholehearted support, although in some quarters there are some aspects that may be contentious, in the main, those of us who have practised at the Bar and those of us as politicians I am sure received petitions from wide and varied constituents asking for our intervention in certain parts of the Act as presently drafted.

Sir, I can say to you that I have, and I am sure as a Member of Parliament that you have had constituents who have come to you. I remember in particular a lady who was in a union other than a marriage for twenty years and moved out of the home that she shared with her partner for a couple of months, moved back in and then found that she was unable to pursue her rights under the Act because time pursuant to the Act had started to run afresh after her

reentrance into their home. So her twenty years of working with her partner, her twenty years of building a business and building a life with her partner went to naught.

I remember that night and it is etched in my memory because it was then I was firm in commitment that we have to do something about these amendments immediately. As a politician, from time to time persons come to you with various matters, but it moves me to see a big man or a woman, who could be my mother or father, in tears because of matters. As I said I remember that particular lady that night in terms of the hardship that had been brought on her because she did not enforce her rights under the Act, having moved out of the home that she shared with her partner for twenty years, and to find that her twenty years of working with her partner went to naught after having moved out of the home that they shared.

Mr. Speaker, that is one of the things we are going to address in this Bill, once enacted. We are going to address the whole issue of how do we recognise that in unions other than in marriage that from time to time persons may have a "falling out" and then they reconcile: The injustice that presently obtains where time begins to run anew once the persons begin cohabiting again. We are going to address that in this Bill now drafted.

Sir, last year you are aware we brought before this House an Act that enables mothers to approach the magistrate court under specified circumstances for monies where they have gone to the court and found that for three consecutive months, I believe the Act requires that no monies were made available to them because the father of the child - let us be fair, or the mother of the child depending, it is usually the father of the child - has not left any monies at the magistrate court. At the time when we did that enactment we recognised that the we were only addressing single mothers. That was the mischief we want to address.

I can tell, Sir, as Attorney General I have received correspondence from many individuals who have asked what about wives or ex-wives who go to court for maintenance and who have to go back to court on several occasions for maintenance, only to find that their ex-husbands are not abiding by the Maintenance Order handed down by the High Court. They have been saying to us that, in fact, they also have an issue. While they recognised that we have addressed the issue of single women, that you have ex-wives or you have married women who are also having challenges in terms of receiving maintenance from their husbands or ex-husbands and wanted us to do something about that.

Mr. Speaker, just last week I received a letter from a lady who was lamenting the fact that she has been going to court for seven years on maintenance issues and that her ex-husband still resides in the previous matrimonial home. He has gone on with his life with a new partner and in the meantime she has had to move on providing for the kids as best as she could. She had to find new housing arrangements, et cetera. So we recognised that, in fact, there is an issue in terms of wives, in terms of the collection of maintenance. Again, it is something that we on this side, and I am fairly confident on the other side, recognise that we need to address.

Mr. Speaker, because of these real hardships, we thought that whilst we recognise that the proposals this morning will not cover all of the issues that have been brought to us by members of the public and by practitioners, we could not wait for a new Act because there are real present problems that we want to address.

Sir, permit me if I say a few things about family generally. Although the Family Law Act and although these proposals actually are dealing with the breakdown of family, I think I would want to recognise the fact that on this side we still recognise the sanctity of marriage and indeed of marriage in the traditional sense. I have to be careful because the last time I mentioned marriage in the traditional sense, that is of a man and a woman, I saw certain sections of the media suggesting that I started my election campaign early, et cetera, because it seems that you cannot have personal convictions and be bold enough to say that these are your convictions, without certain sections of the media alleging motives other than the fact that you believe what you do believe.

Over the last couple of weeks, I was privileged to have been invited to two weddings. I have to say that the joy you see when a young man and a young woman, in those cases, commit themselves to a marriage that there are few occasions that bring us as much joy. Yes, you would hear from some commentators about the high rate of divorce. I remember seeing in one our local newspapers a suggestion that we have a divorce rate of 47 per cent of 47 per cent of marriages above ten years.

You hear certain commentators suggesting that in fact given the large numbers of households that are headed by women, in fact, that this thing about marriage is a bit over rated, et cetera, but what you do not hear are the large numbers of success marriages.

The Honourable Member for St. James Central, I remember hearing about the longevity of the relationship between his mother and his father until his mother unfortunately went to a higher calling. You hear about 50 years and 60 years, those of us who go to church on Sundays, quite often hear of anniversaries of many years but we tend to focus only on the negative, as opposed to recognising that in fact there are many good stories of marriages and the impact that they have had on our way of

life as a country. Indeed, Sir, my research indicates that Barbados has one of the highest rates of marriages and I am happy to hear that and long may it continue.

Yes, we recognise that the proposals in this Bill are to do with the breakdown of the matrimonial relationship but a breakdown of relationships. I thought however that I wanted to send a signal that we as a Government continue to be committed to the family relationships as we know it. Indeed, you very well know, Sir, that we have established a Ministry responsible for Family and that we have placed at the Ministry's disposal, several opportunities to build on family relationships. We want to ensure that families are given the best chance possible to survive in this day and age, when we recognise that our traditional families are under attack from various quarters.

In many ways, Sir, I am one who believe that we must go back to our traditional ways of recognising, for example, that it takes a village to raise a child. I am going back to our traditional ways to save us from what seems to be happening in our country. Well, what seems to be happening across the world in terms of the attack on our traditional family values. Notwithstanding the above, however, Sir, these proposals in this Bill recognise that there will be a breakdown of relationships and recognise that quite often when these relationships break down they can, in fact lead to bitter confrontations between what used to be before, loving men and women.

In that regard, one of the things I am aware that has been engaging the attention of the Chief Justice of Barbados is whether or not we should be moving in the direction of having a separate Family Court. I am aware that they have looked at a model in Trinidad and Tobago where you have a separate court for family; where the ambiance if not confrontational; where even the colour of the court is different; where you might have provision for minor children to be able to have a play area, so that you can have more of not an adversarial situation in family relationships but one where parties can sit down and try to do what is best for themselves individually, but moreover what is best for the minors of the relationship.

Sir, if I may go back to the so-called "stepfather provision", which is not in this Bill. Sir, it was taken out of the 2006 Bill and it is certainly not in this Bill before us but just to signal that I have asked the Family Law Council to let us engage the public of Barbados widely on future proposed amendments to the Family Law Act so that we can build consensus because at the end of the day, what we do want in terms of our Legislation, is an Act where the rights of all parties are paramount. In particular, we want to focus on the rights of the children of any relationship and we want to ensure that their rights are seen as paramount. It is unfortunate that quite often when there is a breakdown in a relationship that in fact it seems to be also a breakdown in the relationship between the father and the children or sometimes the mother and the children. We do not believe that in fact that the children should be severely disadvantaged, when there is a breakdown.

In that regard then, Sir, with your permission, I would like to turn to some of the proposals in the Bill before us this morning. The objects and Reasons are set out in the Bill are on the recommendation of the Family Law Council, as I said, to make provisions of the following:

> (a) to widen the scope of the law in respect of the alteration of property interest on divorce or separation;
>
> (b) enable the courts when determining maintenance issues, to take into account relevant internationally accepted principles and relevant findings of published research;
>
> (c) authorise the courts to order the transfer or settlement of property for the maintenance of a child;
>
> (d) provide that claims other than claims relating to the maintenance in the proceedings effecting the property of parties to a marriage or a union other than a marriage do not abate if one of those parties dies while the proceedings are pending;
>
> (e) make clear that rules may be made for the enforcement of maintenance payments, whether or not the payments in question are in areas;
>
> (f) empower the courts to delay the grant of a divorce until property matters have been settled;
>
> (g) ensure that marriage counsellors assigned by the courts to give counselling under section 12 or section 14 have been officially approved;
>
> (h) redefine the period which the parties to a union other than a marriage are required to have continuously cohabited; and
>
> (i) to expand the enforcement jurisdiction of the courts to include power to order arrest and imprisonment in proper cases".

Sir, it is my intention during the Committee to spend some time on one or two of the more salient parts of the Bill. I will say in general however that we recognise that there are certain things that had to be addressed. For example, we want to ensure that marriage counsellors are properly trained. The Act as presently drafted does provide for marriage counsellors but it does not provide for standards, and we want to ensure that in fact all marriage

counsellors at least have a minimum standard, not because you head a church or because you profess to be a counsellor automatically qualifies you to be a marriage counsellor. We want to ensure we accept that there are certain minimum standards that should obtain for marriage counsellors.

I began by saying, Sir, that in fact I gave you the story of that lady who came to me in my constituency office one evening after 20 years of a union other than marriage, to find that her rights had dissipated because she had moved out of the home that she shared with her partner, only to move back in a couple of weeks later and then to find that in fact the calculation of the five years of the union began anew and we wanted to address that.

Sir, we can all speak of stories that we have heard. I am sure as someone who practises at the bar, you are familiar with cases where an individual dies before the completion of the divorce proceedings in particular, before the distribution of properties under the marriage and the hardship that has caused in several cases, where in fact that the divorce had been finalised but the division of the property was yet to be finalised.

In fact, one party died and then found that in fact that they were not covered by the Succession Act and certainly that their proceedings under the Family Law Act had been abated because of the death and the hardship that arose because of that. Mr. Speaker, that is an illustration of why I said that in fact there are immediate issues that we wanted to address and could not wait until we have all of the consultations necessary for us to have a new Family Law Bill before us.

Mr. Speaker, as I said, I will spend some time in Committee on the various sections of the Bill but I wanted to give this Honourable Chamber a general run-down of why we are here this morning. As I said, I do not anticipate that we should have much contention on the proposals given the fact that many of us here are practitioners and many of us here would have seen the challenges that as practitioners or the challenges that constituents, our friends and families, have had because of issues which we are now going to address in this present Bill.

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

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

Mr. SPEAKER: Yes, the Honourable Member for St. James Central.

Mr. K. D. SYMMONDS: I am obliged, Mr. Speaker. Mr. Speaker, as we begin, let me register most importantly of all the inclination that we on this side have of being as supportive as possible with this piece of legislation.

The reality, Mr. Speaker, as quite rightly has been said, from maybe 1998/1999, there have been indications from the level of the Family Law Council that the legislation needed to be amended. Sir, I certainly remember being called to the Bar in 1994 and at that time there were rumblings within the fraternity, especially those members who practise quite frequently at the family law side of the Bar, that there were issues which cried out for redress, so that in a sense this is generally a matter that is long in coming.

Having said that, however, Sir, the Opposition needs to make the general observation that we are a little bit disadvantaged today because I think all of us present would only have obtained the amendments as proposed yesterday afternoon. Sir, I would also have to say for the record that the learned Attorney-General had indicated by way of a verbal head's up that this was likely to come our way, and I am in fact holding in my hand the document given to me by the Attorney-General this morning.

Sir, I just want to make the point without belabouring it that it would be more useful especially in a non-contentious debate of this nature but one, and this perhaps is the most significant issue, which touches the bedrock of the Barbadian society and potentially touches every household in this country, that we need to be as fulsome as possible in terms of the substantive understanding of the amendments and an ability to spend enough time to give them due consideration.

Mr. Speaker, with respect to the other concern that I wanted to make at the very beginning, several issues are addressed in this piece of legislation and I perhaps would want to take a little bit more time than the Attorney-General to go through some of them seriatim. The issue that first jumps off the page at me is the question of child maintenance in Barbados. Sir, this is an important issue. Equally, Mr. Speaker, it is also a very complex issue. It is complex for a number of reasons because it touches in a social, scientific way on the cultural mores of Barbados. We live in a society where the historical pattern has been for men to see, as part of the definition of their masculinity, a plurality of children. The question of maintenance of the children however often attracts a different type of approach.

There is also the very complex issue of the moral ambiguity that touches on this question of child maintenance, and that is a matter that I would want to speak to at some length because again there is a feeling that the question of maintenance or the issue of maintenance is one that is a man's burden to carry, [full stop]. We all know that the reality, especially in today's Barbados, is that there

are several instances where the male is the party who is the custodial parent, the parent with whom the child is resident. In some instances, as I would try to elaborate on later, it stretches one's level of credulity to accept that maintenance can only or holistically be an issue for men to have to carry.

Sir, there is also the very realistic considerations of what is the scientific and accepted standard of what constitutes an appropriate level of child support. This, Sir, I think has a long time been a bugbear for those who have been reading the literature on this matter. I know, Mr. Speaker, that going back as far as, I think, perhaps 1987, there have been studies being done with respect to this matter of what constitutes an appropriate level of maintenance. As we practise it in Barbados, it often varies with the size of the father's wallet or the judicial temperament with respect to the particular individual or in the particular case that is being managed at the time.

Mr. SPEAKER: Honourable Member, I apologize for having to disturb you but I need to take a very short suspension. Just give me five minutes, please. The Honourable Member for Christ Church South.

SUSPENSION

Hon. J. D. E. BOYCE: Mr. Speaker, I beg to move that this Sitting be suspended for five minutes.

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

The question that the Sitting do now suspend for five minutes was put and resolved in the affirmative without division and Mr. SPEAKER suspended the Sitting accordingly.

RESUMPTION

Mr. SPEAKER: Good Morning, Honourable Members, this Sitting is now resumed. When the Suspension was taken we were on Order No. 4, with that we shall continue. The Honourable Member for St. James Central.

Mr. K. D. SYMMONDS: Mr. Speaker, I believe I was at the point of making the observation that for some time there have been a number of detailed studies which were available that looked in depth to the question of maintenance. Mr. Speaker, before I had returned to this Honourable Chamber, the Attorney-General quite properly raised the matter of a policy which I think may become law, which turned on the establishment of a fund for mothers whose child support payments were delayed. Mr. Speaker, the broad issue is that even as we had previously conceived of such a piece of legislation, what we have perpetually to guard against at this level is the continuation of a practice of discrimination in our society on the issue and on the question of maintenance.

Mr. Speaker, it is my own view, and I believe the philosophical position of the Barbados Labour Party, that maintenance needs to be seen in a holistic way; it has to be neutral in terms of gender, it has to be all-encompassing in the context of who pays. Sir, the reality of our society not only now but historically has been...

Mr. Speaker, perhaps I should pause a little bit to say this. When the Maintenance Act and the Family Law Act came to pass, some of the glaring or what can now be seen to be glaring mistakes in those pieces of legislation were that they did not properly account for the varied nature of the Barbadian household.

Mr. Speaker, the fact that there may be a household which, as I alluded to before, may be patriarchal in nature and headed by a single male, where the children are resident with him as the custodial parent. Indeed, Mr. Speaker, there may be households in which you are dealing with grandparents who are the custodians of the minor children. As recently as a few months ago, I was called upon to do an estate matter in which a very similar type of situation existed with a young woman who unfortunately met her death but the reality is that the children live with the grandparents and the support that they are required to provide must be contributed to by the father who resides elsewhere. Mr. Speaker, there are varying nature and arrangements so that the Maintenance Act and the Family Law Act must holistically speak as a unit to capture all of the different types of arrangements as best as is possible that are to be found in Barbados today.

Sir, what we have to be very careful about therefore with these amendments is that what we achieve is regulatory. I think this is the point to which the Attorney-General was speaking, and certainly prior to him when the Honourable Member for St. Michael South conceived of the policy for an establishment of a fund for mothers whose child support payments were delayed, I believe at the core of his thinking and his philosophical understanding of the problem as a practitioner for many year was that you needed to have regularity of payment, there needed to be a reliability of monetary and financial support to meet the everyday living cost of the children or child of the union or marriage and that should flow from the non-custodial parent to the custodial parent. Mr. Speaker, if we can get that right across the board then I think we are doing well.

Where my concern lies is the fact that both the Family Law Act and the Maintenance Act of Barbados when read together make it very clear that we have a number of inconsistencies in our legislative arrangements that needed to be corrected. Sir, I sensed that the Attorney-General is taking us slowly in the direction of correcting

these difficulties and I appreciate the point that he makes, that one piece of legislation will not be a cure-all for a broader problem but we have in this type of debate to look at some of the difficulties that we are facing.

Mr. Speaker, for example, the Maintenance Act does not make provision for a father who has day-to-day care of his child or children, for him to seek maintenance through the Magistrate's Court. If the father deems fit and feels that the circumstances that he is confronted with financially are such that he needs to get financial assistance in looking after the child or children that he has charge of and it is imperative that the mother should pay some contribution, that father has to make an application to the High Court of Barbados. As we all know, the process of going through the High Court is a more-costly one, first of all. It is more cumbersome in terms of its being more time consuming, et cetera, and the reality of legal fees being what they are today, especially with members of the Bar who are senior to me, that may actually act as a deterrent to the father.

Mr. Speaker, the issue is that we want to have an approach to this question of maintenance which is as holistic as possible in nature and which accommodates access and easy access by all persons who are charged as parents or guardians for the well-being of a child. As I said, in designing any policy on child maintenance, I am of the view that we should be seeking to encompass whether it should be parents, grandparents or any primary care-giver who has that responsibility.

Mr. Speaker, the other concern I have is that both pieces of legislation, the Family Law Act and the Maintenance Act support this philosophical position that I am trying to articulate; this is why I made the point that there have been glaring omissions in that the legislation did not go sufficiently far to empower all of those entities who may ultimately be asked to carry the responsibility of parent. Sir, in their definitional sections when they speak of what is maintenance, for example, in the Family Law Act, it says the parties to a marriage or union other than marriage are liable, according to their respective financial resources, to maintain the children of the marriage or the union who are unmarried and have not attained the age of 18 years. In the Maintenance Act, it says that each parent is liable according to his or her financial resources to maintain his or her child who is unmarried and has not attained the age of 18 years.

Mr. Speaker, therefore if you come from a background which indicates clearly an understanding that both parents have a responsibility, I think the approach in both pieces of legislation must be sufficiently holistic and consistent with each other so as to make it as easy as possible for either parent, irrespective of gender, to be able to access the courts to find a remedy. Mr. Speaker, if there was a mischief that needed to be cured, it would be that.

Mr. Speaker, I do not think that the other side acted maliciously when the approach was taken to establish a fund for mothers whose child support payments were delayed because obviously that is a crucial issue in Barbados but I think that as a Parliament we must now move expeditiously in order to make sure that we level the playing field and that we level the ease of access. Sir, that is something that we have to correct.

Mr. Speaker, Sir, the other thing that comes to mind, and I think this legislation speaks to it, is the issue of when one examines when maintenance is calculated and what research, whether empirical or theoretical, is conducted to determine the simple question: How much money is sufficient and satisfactory in order to raise a child in Barbados today, and to bring a standard of objectivity across the board into this matter of child support?

Mr. Speaker, Sir, as I have said to you, the issue therefore can become very complex. Mr. Speaker, Sir, child support in Barbados today in the Magistrate's Court varies, in my judgement and in my experience, largely with the capacity of the father to pay. Sir, in the High Court, it may also vary according to the judicial temperament with respect to any particular matter before the judge but I think there should be a cross-cutting approach which tells us that there is an objective standard of whatever that monetary figure is, $150 per week or whatever that figure might be. Sir, in the same way we can look at a basket of goods and say that this particular basket of goods contains sufficient proteins, et cetera, et cetera, that makes it satisfactory for a person to plan an existence around it, we need to be able to realistically and holistically say that this is an approximate standard of what it takes to raise a child in Barbados.

Mr. Speaker, the phrase, "properly raise a child", is often used by the sociologist and I think that addresses the child's right to basis things such as food, water, clothing, a place to sleep, healthcare, education, et cetera, but it is an issue that has been discussed since the mid-1900s and we have not made a lot of progress on it up until this point. I noted the Attorney-General made the interesting observation at the very beginning of his presentation that he speaks with the blessings of the Family Law Council and in these matters it is perhaps useful for us not to get so bogged down in the partisan political positions but to borrow more heavily from entities in Barbados like the Family Law Council, the National Advisory Council on family matters, the relevant Ministry of Family and Social Care and so on but, Sir, the reality is that what we really need is a period during which the country can benefit from some written and verbally issued positions from some of these objective parties who have had an opportunity to study and reflect on this question of what is the optimal level of assistance required for a child to be properly raised in Barbados, taking into consideration all of the basic and

ontological needs of shelter, food, clothing, education, et cetera.

Mr. Speaker, therefore, the point is that if we are to make sense of having a way forward that is entirely objective, then I think we ought to be in a position to say that we are able to calculate and determine how much money is enough money to adequately and properly raise a child in Barbados and that that figure should not vary from case to case in such an extraordinary manner that one wonders what is the rationale behind the order that is being made.

Mr. Speaker, Sir, it is true that we also have to spend a little bit of time in this debate looking at the question of how far have we gotten since that piece of legislation with respect to the collection of child support for mothers whose payments were delayed came into being. I would have wanted to think that the Attorney-General, even in a non-contentious debate such as this, would have wanted to give the country the benefit of a little bit of updated information as to how effectively or ineffectively the new process was functioning because, Mr. Speaker, Sir, it was an intervention on the part of the Government which clearly was well-intentioned. It was an intervention which, in my judgement, may have been faulted only at the level of its perpetuating a discrimination between gender in Barbados and between the courts in which you seek maintenance but the reality is that to the extent that it sought to bring relief to single mothers, it was a useful thing.

Mr. Speaker, an update is therefore useful in the context of helping us to understand two things: (1) can we quantify how many people are benefitting under this new arrangement and (2) is the House in a position to get any assurances that the burning questing of our ability to recoup funds from delinquent or so-called dead-beat dads is any better today than it was at the point of the new intervention being made because, Mr. Speaker, one of the concerns that have always existed in Barbados, not just in the Barbados Labour Party but I think that it is one of the concerns that have existed even in the Democratic Labour Party is that while it is a useful intervention and you give plaudits to the Honourable Prime Minister for bringing it to the table, there is a burning concern especially in what we like to call "these hard economic times" of how we recoup the money which is paid by the State from those persons who, strictly speaking, should be living up to their expectations as having paid the appropriate level of maintenance.

Mr. Speaker, that brings me to another issue which has long plague the courts in Barbados; that is the question of collection of arrears and the ineffective policing of this system by the Court Marshalls in the country. Sir, again, I do not think there is anybody who has had a constituency, or certainly there are none of us who have practised at the Bar, who have not come to an understanding that there is an inadequate approach taken by the Court Marshall's Office to this business of properly policing the system. Mr. Speaker, Sir, we have, quite frankly, to find a way of making sure that persons whose hopes and aspirations are pinned to the filing of a petition in the Magistrates Court are able to see the fruits of their efforts and that can only come about when once we get past the approach taken, and unfortunately so, by several persons in the Court Marshall system.

Mr. Speaker, Barbados is a small society and the nature of small societies is that we all know one another and we all have friends.

Mr. Speaker, Sir, far too often in the course of practice, it has been the experience not only of myself but several others of my colleagues that a matter is filed in court and a person who is sought after for maintenance, and indeed for other things, not just maintenance, sometimes the person is being sought after for some other civil remedy and they have made friends or found friends with a Marshall or people in the Marshall's Office. Mr. Speaker, you would go to the Court and come back out time after time for nearly a year and sometimes more, according to the man on the street, let us use the language of the man on the street, you go into the court and get turned around and turned around. The reality is, you are seeing no benefit because of the fact that the improper functioning of that very critical department called The Chief Marshall's Office, or the Marshall's Office, is not there. That is something we have to squarely face and a problem we have to wrestle to the ground.

Mr. Speaker, I think we have all had that experience at the Bar where you wonder if it is that the person has disappeared from Barbados. Then you are able to hear the litigant himself may say, "It cannot be true that you cannot find him. 'Wuh' I saw him the other day. Give me the piece of paper and I will go and serve it on him myself." These are the humbugs to the system that have been there for a long time, but frankly speaking we have to get past if we are going to make the system work. To the extent that those hindrances continue, it makes the system appear to be failing the people whom it is set up to support and whose interest it is set up to defend and that cannot be acceptable, Sir.

Sir, I believe that much has been said in this place before about the very antiquated way in which we process maintenance in Barbados. I was not here when the debate that the learned Honourable Attorney General referred to, but I believe that the sentiment of this House was put abroad that the concept of having in 2012, as it would have been then, certainly 2013 now, 'big' people, primarily women having to go and up in a line and wait hoping to get a little something in their hand, Sir, is grossly

unsatisfactory. I believe that I am correct in saying that among the recommendations which have been made by Family Law Council, but I am not sure it has been captured in this legislation, is the concept of bringing some level of automaticity to the process of recovering maintenance.

I believe the understanding or the thinking was, if a system was fully computerised it would allow for maintenance to be sent to complainants directly. So the Family Law legislation would therefore have to be amended so as to allow for an automatic process of recovering maintenance where there were payments that were due to be made and had not been made without the litigant having to apply afresh to the High Court.

Mr. Speaker, the recommendation to do that was, according to my research, put forward as far back as 1997. Again, this is one of the things that concern me as a younger legislator. The social research is being done. I think the report in question was the Roett and Joseph Report. That research is being done. The recommendations are interesting and I think, Sir, persuasive. Sir, what we have to do as a legislator is to try to find a better way of making sure that we get the implementation right, if it is we are going to buy into the recommendations, and if we are not going to buy into the recommendations, I think the society should benefit from full, candid and frank discussion on the merits and demerits of recommendations which are being made to ease fundamental issues such as the access of a parent to child support benefits which should be paid into the court.

Sir, for the life of me I do not understand what would be the difficulty in creating an automatic process for recovering maintenance payments without having a litigant having to apply to the court for enforcement of an order of payment. If we can have that level of automaticity being built into the system - and I accept there has to be some financing set aside for making the system fully computerise. I accept that you have to go along the steps we are taking today where the court must be able to keep a register of maintenance and so on, and there must be a penalty attached. This is why I support this legislation today because this legislation for the first time is taking us to a point where we will have a register and a penalty will be instituted for persons who will seek to circumvent the register of the court, and for their own narrow ends they may therefore wish not to comply with having the information about what their maintenance should be on the records of the courts so that it can be accessed at a moment's notice, or if they changed their address they may not want to have...In fact, Mr. Speaker, let us be very candid; there are parents out there who having had a Maintenance Order made against them will find it possible to go and change their address so that they cannot be tracked down as easily. This legislation seeks now to put a stop to that kind of approach.

Mr. Speaker, we have, I think, to go the full distance. If as far back as 1997 there is a recommendation which is saying, let us get all of this fully computerised so that we can work out a system of making sure that money is moved from one place to another automatically for the benefit of the parents, then, Sir, I think this is an approach we have to follow.

Mr. Speaker, recovery of money. I confess I am unsure as to the route that is being proposed by the learned Attorney General with respect to recovery of money. For example, the wages of non-custodial parents who should be paying maintenance, especially in circumstances where the State has intervened to pay it on their behalf. We know that there has long been a view that either a combination of the Crown's Proceedings Act or the Wages Protection Act, or the Crown's Proceedings Act by itself stood in the way of garnishing public servants' salaries. If the intention of the amendment to the Crown's Proceedings Act is to better facilitate this concept of garnishing, then I am entirely onboard with it, Sir.

I go back to the point I made earlier. These matters drill down too deeply into the bedrock of Barbadian society for us not all to have been properly seized of the intention of the Government, because going by the gist of what I have been able to speed read, I sense that the Government is on the right track and certainly the Opposition will want to support it as fulsomely as it is possible.

Sir, I do not know what the mindset of the learned Attorney General would be on the suggestion, but I wonder whether this might not be the type of debate which could perhaps be paused after a First Reading on the part of the Opposition, so that we may better benefit from a period of time that other Members could more fully contribute because I think, from what I am picking up on my side, at any rate, that there is a genuine interest in working with the Government on this matter. I think my side feels a little bit disadvantaged in the circumstances but we are prepared to work with the Government.

Mr. Speaker, the issue though of garnishing of wages of non-custodial parents who are employed within the public servant is in my view an idea whose time has come with respect to this question of maintenance. If I am belabouring the point of maintenance, it is because it linked now practically and theoretically to a pathway to poverty for too many children in Barbados. There are simply too many children in this country who are dispossessed of an opportunity to do better in life. They are disadvantaged from ages two and three simply because there is not enough money for them to compete on an equal footing with others in their class, in the play park, in the play pen, who are better advantaged than they are by virtue of the fact that there is a delinquent father or a delinquent mother who is simply not pulling their weight.

Asides.

I am not quarreling with the Fund; I am quarrelling with the lack of balance. Sir, I honestly believe, the gentleman that I know he is, and a scholar on these matters that I understand him to be, that the learned Prime Minister understood the point. I do not doubt that. I see politics where it is but I also feel that now we have passed that stage where there was an election to be fought and won, let us come and deal with the thing in a holistic way and make it right, make it as correct as possible.

Mr. Speaker, in as much as the Government has come alive to the point, there is another issue. I throw this out to them because as I said, I want to work with them. There is no harm in creating in this place, in this debate or in the aftermath of this debate, a Standing Committee which will deal with family law matters. The Family Law matters, Mr. Speaker, are many. They arrive every day. They impact every one of our constituencies, if not every one of our constituents. These are real issues and as the Attorney General made the point and I agree with him, we are dealing with an environment which is rapidly changing.

When we were children, the concept of a marriage between a man and a man was unheard of. The reality today that is the mainstay of a major part of the world and so, we have to find a way in which we can be as nimble as is possible, while preserving values and things of cultural importance in Barbados. Mr. Speaker, to have a committee dealing with matters of family law which not only touches the views of the Members in here but, Sir, can take evidence from people in the wider society and so on so that we can reshape our family law in the way in which the Attorney General is saying even now we are talking to consultants. We have to talk to more than consultants. We have to talk to the whole community.

I am not going to get in here and advocate for any specific type of marriage being better than any other but what I am going to say, Sir, is what I said before; that when you have children spawned of a union, including a union other than marriage then, Mr. Speaker, we have to make sure that all of those children, howsoever they come into the world, are given a level playing field or as close to a level playing field as is humanly possible.

Asides.

Mr. K. D. SYMMONDS: You can argue that. I am not stopping you from getting up to argue that. If you want to pooh-pooh the rights of children in Barbados, get up and argue that.

Mr. Speaker, the piece of Legislation as I said to you, or the amendments contemplated are not issues that the Opposition really wants to take substantial issue with. There is a consideration, Mr. Speaker, Section 16 of the Constitution is altered to any extent necessary to ensure the constitutionality of the Act. That approach, Sir, to amend the Constitution so as to ensure the constitutionality of this Act was what we had imported into the draft Bill in 2002. Sir, the current Bill excludes that consideration of ensuring consistency with the Constitution.

I am not entirely satisfied, Mr. Speaker, that it is a good thing to do amendments of this nature, which touch on matters affecting the property of parties, which as we know is a fundamental right under the Constitution of Barbados. I am not saying, Sir, that the Bill as conceptualised is automatically unconstitutional. I am saying, Sir, [ex abundante cautela] out of an abundance of caution, what was placed in the draft Bill in 2002 was a provision which tried to ensure that the efforts that we go through here or that we would have gone through then, had it come to light, would not be defeated subsequently by virtue of a claim of unconstitutionality. I am not entire sure, Sir, that it is a bad thing to do that. I feel, Mr. Speaker, that if you take the precaution then you may save yourself the trouble of having to come back and engage in lamentation at a later date; that is all.

Mr. Speaker, outside of those considerations, I am happy to support the legislation. I want to reiterate the two concerns that I did have. In the circumstances in which many Members on this side are willing to support and work with the Government on this Bill, but in the circumstances in which unfortunately and through no direct fault of the Government, many Members were not placed in possession of the Amendments in a timely way, some are only seeing them for the first time today then, Sir, we feel, collectively, a sense of some disadvantage.

If we were able to pause this debate, Mr. Speaker, to come back so that all Members could contribute more fully on a Bill that we want to support the Government on, we would be deeply obliged.

The second issue, Mr. Speaker; if the Government was willing to engage with the Opposition on a matter as fundamental as this into the future - and I speak to my friend, the learned Attorney General - I think he understands, Sir, that the issue of Family Law drills deeply into the sinews of the Barbadian society and that we, Sir, would wish to be able to engage consistently on a long term basis and if the Government was willing to look at establishing a Committee that enabled the Parliament of Barbados to do so in these challenging social times, then, Mr. Speaker, we would be very happy to collaborate with the Government in that regard.

I am obliged to you, Mr. Speaker.

Mr. SPEAKER: I am obliged. The Honourable Member for Christ Church West Central.

Hon. S. A. LASHLEY: Thank you very much, Mr. Speaker. I rise to join in this debate on what I consider to be very substantial amendments to the Family Law Act, and coming directly after the last speaker, the Honourable Member for St. James Central, I really do feel a need to perhaps speak directly to one or two of the issues that the Honourable Member has raised and to underscore, of course, and to support the tone that indeed these changes and amendments are critical and important to family life in Barbados.

I do note, though, Mr. Speaker, that these proposed changes to the Family Law Act have indeed occupied the attention of not only this House but also the courts in Barbados for a very long time. In fact, from as early as 1999, the Family Law Council has been calling for these changes to the Family Law Act. The call for these changes has been embraced continuously through to 2002 and through to 2006.

While I agree with the Honourable Member who last spoke that these matters before the House are largely of a non-contentious nature and ought to be seen within that light, it is still important for me to make a few observations because the Honourable Member did, to some extent, moved away from the ideal of non-contention and entered into the fray of contentious matters, in a debate that ought not to be contentious. To a large extent, the Honourable Member drew his sights squarely on what I consider to be a very revolutionary initiative of this Government to put in place the issue of maintenance and placed it squarely before this House, when we brought to this House measures that would create a Fund in relation to child maintenance where the delinquent or offending parent did not make the payment into court. I feel that the issues raised by him in relation to that mechanism or his critique of that mechanism really is unjustifiable because that particular measure was taken by this Government as a direct attempt to address an issue of maintenance which to a large measure has not previously been addressed. That Fund was established essentially to deal with issues relating to the non-enforcement of Maintenance Orders at the Magistrate's Court level.

I think that in relation to the amendments before the House, that what we have sought to do is to bring before the House a number of critical changes, they are not all of the changes that one could make to the Family Law Act, but a number of critical changes which have been identified as being of priority from as early as 1999. My contention is that if that was the case since 1999, I am a bit concerned that the Opposition would perhaps feel as though they had been taken by surprise in relation to what have largely been proposed changes to the Family Law Act that have been mooted since 1999. They were mooted since 1999, not by persons who would not have studied in detail the provisions of the Family Law Act but by respective family law counsels.

My submission, Mr. Speaker, is that the Honourable Member, in seeking to establish a platform on which this House should be invited to participate in a non-contentious debate, in a sense, has moved beyond the line and outside the crease by introducing an element of contention which, in my view, was largely unnecessary in relation to matters that, really and truly, the Opposition should be privy to. These matters are not matters that in my view should detain the House for any inordinate length of time.

The issues in relation to maintenance, which the Honourable Member spent, I believe about 99.9 per cent of his speech dealing with, are issues which are being addressed in relation to this Bill before the House. They are issues that really to my mind have been impediments to the smooth operation of a child maintenance scheme at the High Court level.

Mr. Speaker, I would like to say and invite in this debate - because this is the time not only for making observations about aspects of the Family Law Act that have not worked - for the Opposition to put very seriously before the House alternative methods and systems which we could then look at, with a view to future legislative measures that would be brought before the House.

I feel, Mr. Speaker, that there is no divide on the issue as it relates to the question of maintenance and the enforcement of maintenance at the Magistrate's Court level, and that we do need to move towards a more efficacious system as to how maintenance is addressed at the Magistrate's Court level. That is not something that we have not agreed to, and I believe that it will be the subject of future amendments to the jurisdiction of the Magistrate's Court, where the whole scheme and system of maintenance can be addressed within a more holistic manner.

I am of the view, Mr. Speaker, that the jurisdiction of the magistrate as it relates to the maintenance and enforcement of Maintenance Orders need now to be more streamlined. We have for years been observing at the High Court level in particular, that there is this vexed issue of the collection and enforcement of maintenance. I feel that given the percentage or the percentage of our population who are largely impacted on in relation to child maintenance and the extent to which those matters are largely the purview in my view of the Magistrate's Court, that perhaps we may very well have to look very seriously at a system of perhaps a special enforcement office and a special collection office within the domain of the Magistrate's Court to deal with this issue of the collection of maintenance.

I know it has dogged the whole issue of the enforcement. Even the garnishing of wages of public officers have largely remained an issue. Attempts were made at the High Court level to move beyond the Crown's Proceedings Act and order garnishment of wages for delinquent parents. Mr. Speaker, I believe that that matter has not been fully ventilated to the point of being brought to its natural conclusion but it is an issue that we have to address.

Mr. Speaker, I have argued in another place in dealing with maintenance matters at the High Court level, that the law in relation to maintenance is perhaps in need of some clarity and therefore we have only seen an inclination to deal with men or delinquent men who are not making maintenance payments. Of course, the wording is quite clear that each parent of a child, to the extent of their financial ability, is required to be responsible for maintenance. I think what has to happen is that has now to be enforced more at the operational level so that it is clear that both the father and the mother are responsible to the extent of their means for the maintenance of children so that if, for example, a mother is working for a decent salary and the father is not working for similar amounts of money, that the mother in those circumstances would become more responsible for the maintenance of the children in circumstances where the child is not being properly maintained.

Mr. Speaker, while we were looking at the measure which we have put in place in relation a Fund that would make maintenance payments available to mothers in particular, where the child maintenance payments have not been made, one of the things that occupied our attention was the whole question of what amount of maintenance is adequate for the proper well-being of a child. While we know that certainly within the context of this Bill before the House, we are now incorporating into this Bill the consideration that the courts can now take into account international principles and international conventions on matters relating to maintenance, I believe that the whole question of how maintenance is computed, what is a realistic figure that one can say is reasonable for the maintenance of a child in the year 2013, is an issue, notwithstanding the availability of international research on this matter that would inform us in an objective manner as to the amount of maintenance which can properly be focused on, daily maintenance and weekly maintenance for a child that has to live in the year 2013 and beyond.

Mr. Speaker, I think that certainly would help us to move forward to deal with the issue of maintenance. In the High Court, as we know, we have largely been using the standard Form which attests to the means of the individual and so on, but to a large extent after maintenance orders are made we are still seeing the situation where persons have actually flouted these orders. Therefore, there is an attempt in this Bill to improve and to make the penalties a bit more stringent, to allow for compliance in some respects.

Mr. Speaker, this amendment before this Honourable House is not only about maintenance. Why I said that, it is somewhat of a pity that the Opposition would feel disadvantaged, this particular Bill deals with some very old matters that we are now having to bring before this House for correction. One of those matters with which the Bill deals addresses the whole question of counselling. We know that, certainly those of us who are attorneys-at-law, there is a mandatory requirement before you can file court documents in relation to the dissolution of a marriage. We are called on to attest that we have actually made the client aware of the availability of counselling as a first step towards literally saving the marriage, but we know that for years the system of counselling and fine-tuning that system of counselling has largely been ignored, so that we have had persons who have come on the Board who purport to have the skill of counselling and there has never been a system to verify their ability to counsel, neither has there been a formal system of registration of counsellors.

Mr. Speaker, in the wisdom of the Family Law Counsels, they have determined that this is an issue that has to be corrected. This Bill, for the first time, not only creates a Committee that will be advising the Attorney-General on these matters but also creates a formal system for the registration of counsellors. Mr. Speaker, what it does is that it sends a signal very clearly that whereas in the past, yes, persons can have the right to seek application for the dissolution of marriage, even in circumstances where there are minor children. Of course, the court has to take account of the well-being of those minor children as the first point of dealing with that divorce, but some persons who are involved in a marriage situation have not been using the counselling services as an attempt to save their marriage. Mr. Speaker, very often it is a knee-jerked reaction, based on the fact that the marriage is going through problems, to run straight to a lawyer and then to seek by application to dissolve a marriage that could probably have been saved by appropriate intervention and counselling.

Mr. Speaker, I am happy that this Bill creates a requirement for attorneys-at-law, prior to filing documents in relation to the application for dissolution of marriages, to include a certificate that the litigants have engaged the services of counsellors. I think that is a victory for family life development in Barbados. I think it will create a more level-headed arrangement in relation to the approach to dissolution of marriages.

I think the signal is, certainly this Government is pro-marriage and pro- the institution of marriage. It is pro-family and therefore we are very serious that we will take the necessary legal measures to protect the institution of family life in Barbados, to protect the institution of

marriage, and to support persons who, of course, will go through difficulties from time to time, but that through a very well-structured system of counselling, we will ensure that is available for persons who wish to access it and that the court has a way of testing whether persons have made themselves available to go through that system.

Mr. Speaker, one of the other measures this Bill has sought to address is a very vexing one which has to do with the whole question of property settlement matters, where either during the process of settling of property as a consequence of a dissolution of marriage, one of the parties to the application dies. Sir, that has been a vexing issue before the High Courts for many years. To a large extent, what has happened is that it has rendered, certainly to the survivors or beneficiaries of that particular union, some very significant hardships where an application is interrupted and cannot go forward because one of the parties has died when, in fact, there is property to be settled.

This Bill very proudly now gives the court clear jurisdiction and discretion to deal with matters of property settlement where a party to the application has died. Therefore, that is no longer an impediment for property to be settled in cases of dissolution of marriage.

Mr. Speaker, the other issue this Bill deals with, which I think is very relevant and certainly will ease hardship on persons who are applying for a dissolution of marriage, whether we are dealing with a union other than marriage, or a marriage as we know it within the context of the Family Law Act, is that it provides the court with some discretion in extending the period by which the parties may apply to have the jurisdiction of the court initiated in relation to an application for a dissolution of marriage.

Mr. Speaker, as we know, there is a period of one year where the parties have to attest that they have been living separate and apart for one year, and that triggers an appropriate application before the court for dissolution of marriage. There have been cases where that particular issue has been tested and that has created some problems for applicants before the courts. I believe that this Bill addresses that, giving the court the discretion to extend the period in relation to that.

Mr. Speaker, I want to dwell on that because I believe that certainly the bringing into being of the Family Law Act, I believe in 1982, was hailed as a revolutionary piece of legislation, in that for the first time it created a means by which, particularly when dealing with a dissolution of marriage, a legislative arrangement by which parties needed only to plead to one reason, cause or limb on which they could have a marriage dissolved, that was that the marriage has irretrievably broken down.

Sir, a movement away from prior times under the English law where you had to actually adduce evidence to give reasons and to come under one of the appropriate limbs whether it be desertion, insanity and so on, you had to be able to prove the basis under which you could have a marriage dissolved.

Sir, this Family Law Act which has been hailed across the world removed the whole question of having to do that and we have the 'no fault' system in Barbados for the dissolution of marriage. Sir, you do not have to prove any fault anymore, only merely that the marriage has irretrievably broken down and the court is only required to have an Affidavit sworn that the parties have lived separate and apart for at least one year and that sets the basis for the dissolution of marriage.

Mr. Speaker, we are aware that we will probably have to come back to this Family Law Act in the future to look at other areas that may need to be amended and other matters that may need to be corrected, but the issue that we have to address is that these key proposed amendments have been studied and they have been agreed to by the Family Law Council since the year 1999. We have had them reviewed in 2002 and in 1996, again, a Family Law Council came to the same conclusion that these particular areas in relation to the dissolution of marriage, in relation to maintenance and in relation to the enforcement of maintenance orders and so on before the court and that these matters should be addressed on and, therefore, that is the context in which these have been brought to the House.

Mr. Speaker, even in the area of counselling, which was never addressed before, it is an attempt to create a balance to the Family Law Act and to move us to some extent within the realm of what has been happening internationally.

Mr. Speaker, we also have to bear in mind that we have a number of conventions, including the Convention for the Rights of the Child, which Barbados has been a party to for many years and these conventions have, for years, placed certain requirements and have raised the bar in relation to how we conduct our business in Barbados as it relates to the protection of children.

Mr. Speaker, I think that the judges and the High Court by means of this legislation now have a better process and, certainly, have more clout upon which they can actually deal with some of the matters that come before them on a day-to-day basis. Sir, with those remarks I want to signal my agreement and my support for this. I want to compliment the Attorney-General and his officers and also to thank the respective Family Law Councils who would have stuck to the task and were largely very influential in helping us to come to these amendments.

Mr. Speaker, I endorse them and I think they will make for better effective management of our family laws and will redound to the benefit and the improvement of family life in Barbados.

Mr. Speaker, I am obliged to you.

SUSPENSION

Hon. J. D. E. BOYCE: Mr. Speaker, Sir, I beg to move that this House be suspended until 2.00 p.m.

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

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

RESUMPTION

ORDER NO. 4 (RESUMED)

Mr. SPEAKER: Good afternoon Honourable Members, this Sitting is resumed. When the suspension was taken we were under on Order No. 4 and with that we shall continue. The Honourable Member for St. James North.

Mr. E. G. HINKSON: Mr. Speaker, I rise to make a small contribution to this debate on what is effectively an amendment to the Family Law legislation of Barbados. I first wish to again reiterate my colleague the Honourable Member for St. James Central, that the Opposition in principle would support this Bill. It is similar to the Bill that would have been brought before this Parliament in 2001, I believe, but which would not have been passed. There are a lot of similarities between the two. The major and clear difference would have been that in the earlier Bill they would have been seeking to make provision for maintenance of children of either party to a union other than marriage who were habitually within the household to this new union of marriage, even though that child would not have been the child of one of the parties to the union. Of course, that particular proposed alteration to the Family Law Act brought about a lot of controversy and might have been one of the main reasons the earlier 2001 Bill was not passed into the Laws of Barbados, but that has been removed and is not subject to debate before this new Bill, but essentially a lot of the provisions remain the same. One of the expansions in this Bill before Parliament today is the issue of marriage counseling. This Bill seeks to widen the provision for marriage counseling from the scope that was envisaged in the 2001 Bill. We would have no divide on that issue.

Mr. Speaker, as my learned friend, the Honourable Member for St. James Central said, the practical aspect of it, and I think the Honourable Member for Christ Church West Central as well, that in terms of practising as a lawyer we have to certify that persons have gone through some form of marriage counseling. The reality of that is, in a lot of cases that is not so. Or if that is so your clients have not really had the benefit of professional marriage counseling. This Bill seems to be making wider provision for such counseling; specifying particular marriage counseling organisations and bringing into legislative requirement the fact the marriage counseling organisation or the marriage counselor has to actually certify that the parties have sought marriage counseling assistance before their application for dissolution of marriage. That has to be something that a Parliamentarian would support.

We all know that marriage and family has often been described as the bedrock of society and that is no different in Barbados than in any other part of the world. The importance of the institution of marriage and dissolution of marriage is not only pertinent to the actual parties to the marriage but it has an effect on the wider society and the wider family roles.

Asides.

Mr. E. G. HINKSON: Mr. Speaker, the Honourable Member for Christ Church South knows about it but he is an experienced person when it comes to marriage so he should know.

Mr. Speaker, we have to seek to protect the institution as widely as possible. I think the figure of 47 per cent breakdown in marriage rate was quoted in Barbados. I do not know what the figure is. I know it is said to be close to 50 per cent and that may be consistent with the breakdown of marriages in terms percentages in a lot of the western world in which we live, but we still have to seek to give this institution a chance to survive.

Sir, there are, indeed, some people who after professional marriage counseling, I would wish to suggest, may very well opt to change their minds, I have no doubt. In some cases, it might just be prolonging the agony and the inevitable. You have to give it a chance and even if there is a possibility that some small percentage of marriages would be saved by the enactment of this provision for professional marriage counseling and certification that the parties have gone through that before seeking an application to court for the dissolution of the marriage, I think we have to commend that to the people whom we represent and to Barbados as a whole.

Sir, the Bill also, from what I can gather, seeks to widen the definition of union other than marriage. Again, that is taken from the 2001 Bill. We on this side of the

political divide would have no problem in support that. It takes into account the reality of everyday life where people would be in a common law union which as presently defined is five years of cohabitation continuously but you have not gone in a church to sanctify the union, or before a Magistrate. Sir, we know that sometimes between man and woman things might get a bit bad and one of the two may get vex and decide, "Let me go back in my mother's house or wherever for a few months and cool out my head." Sir, you do that but then love may be great and you take the children and all that into consideration and other factors, and you go back together.

So the provision whereby the Bill is now seeking to enact legislation whereby even though there is a break in the actual cohabitation for six months or less, it does not break the definition of the common law union other than marriage, I think again is commendable. Sir, at least the going back together has to happen within twelve months. The resumption of cohabitation must happen within twelve months of the actual application. The court is allowed a time period within its discretion if the circumstances allow, to extend that twelve-month period. Again, I believe that takes into account the practical aspect of every-day life and the reality of situations between human beings and relationships.

Sir, of course, I speak I must say as an attorney-at-years of twenty-eight years. I do not practise family law these days. Twelve years ago I decided that I was not going to continue practising in it anymore. But I also speak from an individual of a person married for twenty-two years now. So I also have some experience, of course, from a practical view point in terms of marriage relationship.

Mr. Speaker, I would wish to draw attention to the Government that by amending the definition of common law union other than marriage, we should have in Barbados a Standing Law Reform Commission which brings to light and brings to the Government or specifically the learned Attorney General and his Chambers, the need to reform Legislation on a continuous basis and so make recommendation where, because of changes in Legislation, previous Legislation is inconsistent with the present day Legislation or is in conflict with it or naturally needs reform.

I would really wish to suggest to the Government side and the learned Attorney General that there is a crying need - and I know that has been said many times before in and outside of this House - in my submission to have a Standing Law Reform Commission in Barbados which recommends the need to change Legislation and to maintain consistency and the contemporary nature of Legislation because of course with us becoming a sovereign country, we had a savings clause in the Constitution and all of that has implications in terms of what I am saying here today; the need for a Law Reform Commission.

Mr. Speaker, I think of note too, is the proposed new section 10.3 in the Bill, which seeks to provide that a decree absolute or a full divorce would not be allowed unless all issues relating to property have been resolved. Again, Mr. Speaker, that is a relic of the 2001 Bill which was brought by Barbados Labour Party to this Parliament. The practical aspect of that, Sir, one wonders about because in many cases property issues may not be able to be resolved in a short space of time; parties to a marriage break down, passions are very high, people do not want to compromise, you are only seeing it from their own side and in a lot of cases practically, it may not be easy to resolve all the property issues before a decree absolute is granted.

Mr. Speaker, Sir, I for one do not believe that if there is no salvation for a relationship, for a marriage in this case, that it makes sense prolonging that marriage until the property issues are resolved. It may be a case where one of the parties to the marriage wants to move on in life, marry again, wants to move out, relocate to another country or whatever else and they need for the divorce to be granted. That particular clause may be of some concern although, Sir, the court is given the discretion to still grant the decree absolute even if the issue is not resolved.

I know, Sir, that the courts do use that discretion which they have in the present day Family Law Act to still grant the decree absolute, even though the property issues are not resolved but once issues relating to maintenance of any child less than 18 or any child who is more than 18 but still undertaking tertiary education or who has a disability and therefore cannot financially support themselves that the court does use its discretion to grant the decree absolute, even though the property issues are not resolved.

I think that is the proper thing but obviously, here, Sir, we are relying on judicial discretion as opposed to Parliamentary edicts on that particular matter therefore we trust that the judges will use their practical sense to grant the decree absolute under some circumstances, where it is necessary that it should be granted, even though the property issues have not been resolved.

Mr. Speaker, the provision for personal representatives to be allowed to continue in actions in proceedings relating to property of the parties on the dissolution of marriage where one of the parties dies, again is taken from the 2001 Bill and that is one we will have no problems with. It is only fair that that happens because property, of course, succeeds the person who owned it. It can be passed on. Rather, it is passed on, on the death of an individual so it is only fair that the personal representative of one of the parties to the marriage who would be before

the court and who has now died should be allowed to continue the action.

Mr. Speaker, my colleague, the Honourable Member for St. James Central, brought to note the issue of what we are recommending; section 16 in the previous Bill sought to amend the Constitution by saying to prevent uncertainty section 16 of Constitution is altered to any extent necessary to ensure the constitutionality of this Act, but that particular clause has been omitted from the Bill brought this Parliament today and I too, as my colleague from St. James Central would wish to suggest, is that the Government looks at bringing this in out of an abundance of caution.

The Constitution of course has to be amended by two-thirds majority and there will be no issues as to not getting that two-thirds majority under this Bill. We are seeking to alter possibly property relationships by allowing the court to grant property or bestow property for the benefit of the welfare of the child, which may be in opposition to normal property relationships and ownerships. Sir, you therefore do not want a smart lawyer down the road and in an age where there are more than 700 lawyers in Barbados now, you know you could find a lawyer to take up a constitutional action which may very well succeed, so out of an abundance of caution, you would wish to possibly and in my opinion, Sir, certainly make that provision where the amended Act specifically states that it is amending the Constitution and it is passed by two-thirds majority and there is no problem with that. I know that the learned Attorney General has to certify that the Act is constitutional and it is something I would wish to suggest to him that he should look at.

In terms of other issues which are not necessarily addressed by the Bill before Parliament today; of concern to many Barbadians is the issue of the custody of children on the dissolution of a marriage or a union other than marriage or even where there is no such union as defined by the law. What is of concern to a lot of people in Barbados is that they may be paying maintenance or may be ordered to pay maintenance for a child. Of course, you have to pay maintenance for a child, it is your moral and legal obligation once the child is found to be yours, but then there is no requisite provision in cases where the child is born outside of a marriage or a union other than a marriage, there is no right to custody or even visitation rights in some cases of the father or mother for that matter, because these things are gender neutral, to see the child.

The magistrates in Barbados have found a way to try to get around this and we have to commend those magistrates who do such because when I first started to practise law, the magistrates, generally-speaking, used to tell you outright: Well, look boy, we cannot address issues of visitation rights and custody because there is no provision for it in the law". However, within more recent times a lot of magistrates have used their judicial discretion to provide for visitation rights for parties who are paying maintenance for children that they got outside of a marriage relationship or a common law union. One wonders whether Parliament should intervene to make these visitation rights something that people are entitled to as of right or whether you should continue to leave it to magisterial discretion under circumstances which are not really enshrined by the law. It is something that I think Parliament needs to look at because all of this has tremendous repercussions on society, societal relationships and communities which we all represent and serve.

Mr. Speaker, the issue of concern and was raised by my fellow Member of Parliament for St. James Central today is that we on this side - even though the vast majority of the provisions are similar to the earlier Bill which our party brought 12 years ago in this Parliament - only got notice of this, in most cases, yesterday evening. I believe, I heard that some just got it this morning. Mr. Speaker, to get the highest level of debate you really need time to prepare issues, especially the new Members of Parliament. We know that all of the new Members of Parliament are on our side and one wonders, Mr. Speaker, whether we should have a better system, and I really believe we should, whereby you should not be given a Bill less than 24 hours before it is being presented to Parliament and asked to come and debate it. I think that you need at least 72 hours to properly debate a Bill, especially for new Members on our side.

I may be able to say a few words on it because I am an attorney-at-law like I said, even though I do not practise in this area now but we need to be fair to ourselves. The issue that my colleague, the Honourable Member for St. James Central, raised about suspending the debate and let us have a look at it so that others can make a more worthwhile contribution, in a couple weeks' time wherever, is something that we ask the Government to look at and to urge.

With these few words, Sir, I wish to again reiterate that on principle this side has no political divide with the Government on the issue of this Bill. It is essentially what we have brought, minus what I would wish to call the 'stepfather' or 'stepmother' clause but for more meaningful debate to be made, especially for the new Members of Parliament, we would want to probably ask the Government to have a look and to consider suspending the debate on this Bill at this stage and coming back when other Members of Parliament may have had a bit more time.

I am obliged to you, Mr. Speaker.

Mr. SPEAKER: Yes, the Honourable Member for St. Lucy.

Hon. D. St.E. KELLMAN: Mr. Speaker, I enter this debate at this time and it is rather interesting that as I enter the debate I want to start with the same point made by the Honourable Member for St. James North, that is, that the Honourable Member said that we need to postpone this debate but after listening to the Honourable Member for 30 minutes and after hearing the Honourable Member saying that he has practised family law for so many years and that he has now given it up, I thought that he would have used that experience to enlighten the Parliament on this Bill, especially on the point when he said that the controversial aspect of the previous Bill brought by his party was the Bill that gives the right for anybody to support a child.

I found that rather interesting because even though I objected to it in early 2000, I never saw the point that the Honourable Member made now. I did not realise that was the objective of that Bill to sneak through the back door to give anybody the right to support a child. I think the Honourable Member for St. James North needs to explain that point because from his interpretation, what the Honourable Member is saying is that there was no need for a man and a woman to be in a relationship, that it could be any combination - that is what I heard from the Honourable Member - and that it was brought in the early 2000. I could now understand why the Bill did not pass this House, because it is obvious that the Parliament of that time saw the new world order in place and objected.

Mr. E. G. HINKSON: On a point of order.

Mr. SPEAKER: Yes, Honourable Member.

Mr. E. G. HINKSON: The Honourable Member clearly did not listen to me carefully. What I said...

Mr. SPEAKER: What is the point of order, Honourable Member?

Mr. E. G. HINKSON: The Honourable Member is misleading the House. What I said was that the clause that was controversial sought to make a party to what is now a common law union responsible for the maintenance of a child which was not their biological child but which was the biological child of the other party to the common law union where that child was habitually living in the household. In other words, there is a relationship at the time. That is what that previous clause sought to do but it was not brought and the Honourable Member should have no problem with it. It is not before Parliament today for debate.

Mr. SPEAKER: Thank you for your explanation. Honourable Member, please continue.

Hon. D. St.E. KELLMAN: Mr. Speaker, I am very glad for that explanation because he has strengthened my point because he has said that it is not the biological child. Sir, the only way it could be a biological child is if it is between a man and a woman, so I do not...

Asides.

Hon. D. St.E. KELLMAN: Mr. Speaker, my Bible tells me that only a man a woman can increase and multiply. The Honourable Member got up to contradict me and then to strengthen my point based on his point that he had made previously. Sir, I want to congratulate the Honourable Member for strengthening my point by objecting to my point.

Mr. Speaker, there is no doubt in Barbados we have to recognise and support our children. Sir, I will make the point again; I find it rather difficult where any Government or law could tell a man or a woman who is not the biological parent of that child that he or she must support a child with whom they have no connection and that he or she does not have any say in the matter. Mr. Speaker, I believe that if a man or woman wants to support a child that is not theirs, then that decision must be discretionary. I do not believe that as 30 Parliamentarians we could tell someone who is not the biological parent, that they should enter into a relationship and that as 30 persons out of a population we could make that decision for them. Sir, after today I realised it is much wider than the 30 of us but that the Honourable Member for St. James North has shown me that it was all part of the new world order and that he has cleverly...

Asides.

Hon. D. St.E. KELLMAN: Mr. Speaker, I have a lot of respect for the Honourable Member St. James North when it comes to the law. The Honourable Member has the greatest interpretation of law that I have ever seen in this world. The Honourable Member has demonstrated here today that what we did not see in that new piece of legislation that they tried to sneak before this Parliament, the Honourable Member has been able to explain that to me. I want to thank him for not seeing that point because I honestly thought that had only to do with the stepfather or stepmother, I did not realise it was any two combinations and that was the backdoor approach to what we are now facing on the call-in programmes and on television. I am very glad that the Honourable Member for St. James North has been able to explain the “Peter’s” amendment to me. I am very happy for the Honourable Member and will always have respect to him when it comes to the aspects of the law.

Mr. Speaker, we must find another way to make parents more responsible for their children. There is no doubt that as senior persons in Barbados, when we were growing up we had the senior people of Barbados looking

after our interest and as far as I know they have never pointed us in the wrong direction. We as senior people now must continue to ensure that we guide and protect. We must stop sending double standards to the people of Barbados. Sir, every time I turn my radio on, I am getting the impression that those people who continue to make the argument about the importance of the increase in population in Barbados do not have a say in this country anymore but those who feel that the population should not be increased are the ones who are now dominating Barbados.

Mr. Speaker, I am saying we have to be very careful when we come to this point because many times we come to this Honourable House and make the point that we want to protect the National Insurance Scheme because we are not producing as many children as we used to. Therefore, once we are not producing as many children as we once used to, it means that we would not have the workforce further down to protect that scheme. We also have to recognise that we have to look at the moral aspect of it and that we have to understand we cannot continue to send double standards to the society of Barbados. If we do, then what is being promoted in Barbados where you do not have to adhere will continue and we as a people would be worse off, not be better for what we speak of or pretend that we stand for.

Mr. Speaker, I want to say that we have to appreciate the world has changed but in the world changing, we still have to be very careful how far we want to carry those changes. We have to recognise that the personal views of persons are to be respected. Yes, I support that 100 per cent but when personal views conflict with the law, then that is a different matter. I believe when that conflict is there, it should be kept where it is and not advocated as though it is above the law. Mr. Speaker, when we set about to make the examples for the younger ones, we have to be very careful that we are not destroying a society that we would have spent many years in trying to protect, by allowing a too-few to advocate, dictate and pretend, when we have a bigger issue to look after.

Sir, I want to say today that I totally support this amendment. I want to recognise that in going forward we have accepted that the time for amendments that were asked for by other persons must be given a full debate. It must be something that was not only canvassed among the 30 of us but that it must be canvassed across Barbados. I want to congratulate the Honourable Member for St. James North for enlightening me on the 2000, 2001 or 2003 amendments. I thank you very much, Sir.

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

Hon. M. A. LASHLEY: Mr. Speaker, I rise to support these amendments to the Family Law Act. Sir, the Honourable Member for St. James North said that he has practised family law for some years but I think he no longer practises that aspect of the law. Of course, the Honourable Member St. James Central might have or is still practising that aspect of the law. I had a stint in family law, certainly in maintenance matters at the Magistrate's Court level and certainly Family Law matters in the High Court. Sir, I support these amendments because during those days while practising law at the Magistrate's Court level, as practitioners we recognised the shortcomings that existed under the legislation, particularly under the Family Law Act and the Maintenance Act. In fact, when the Honourable Member for St. James North was speaking in relation to matters pertaining to custody of children, particularly under the Magistrate's Court Act, there is no jurisdiction for the magistrate to deal with the custody of children, they deal basically with the provision of maintenance. Of course, any arrangement that is dealt with in relation to access will have to be done outside or between the practitioners in relation to whether the child would be seen on weekends, every other week and so on. Therefore, it is basically up to the practitioners and parents to deal with access or custody of that child or those children.

Mr. Speaker, I am particularly attracted to the amendment to this Act which speaks to the fact that it would empower the courts to delay the granting of a divorce until property matters have been settled. We know that under the existing Family Law Act, once that decree of absolute is granted and there is an outstanding matter of property settlement, you have to make an application to the court within one year. Of course, if you fail to make that application within one year, you have to apply for leave of extension to make the application and this brings another question; what would happen to a litigant. I do not think that within the Schedule of the Community Legal Services it provides an application for leave of extension.

I do not think that is within the Schedule so it leaves the family of a man of straw to wonder and if there is a settlement of the property that goes towards long-term maintenance, so it leaves the child in the hand of the State or at the mercy of the spouse.

Mr. Speaker, the other point I want to make is that in the present situation the only way you can enforce that Order is to apply to the High Court for committal proceedings. When I say committal, I mean committal to prison, but, Sir, that is not a solution. Sir, the solution would be for the two parties to meet, as the matter will be heard before a judge in Chambers, and decide the level of maintenance. You might have a spouse who, based on the statement of financial circumstances that he has filed, say that he cannot afford to pay increase the child support

payment, the arrears, or he cannot afford to pay the maintenance except the Order set by the court. Therefore, what is the solution? Mr. Speaker, the fact that this provision states that no Decree of Absolute should be granted until property matters have been settled, to me is revolutionary.

Mr. Speaker, I have had matters where clients would come to me and they would have filed and gotten the Decree Absolute because they cannot wait until the property matter has been settled, and the Honourable Member for St. James Central would know that property matters sometimes take two years, three year and four years in the High Court to be settled. Sir, they take a very long time to be settled because first, you have to go and get a valuation. The court sometimes orders independent valuation and that is a cost to both parties. Sir, sometimes you come up against some lawyers that have some simple matters under the Family Law Act that can be settled outside of court but, Sir, they go to court, they argue their point, they get an adjournment, the matter is set down again, it is adjourned again, and time goes on and hardship continues.

Mr. Speaker, I am saying to the Attorney-General that this provision, or the Object and Reasons of this amendment, I wholeheartedly support.

Mr. Speaker, I have listened to the Honourable Chief Justice and he has mentioned the fact that we should look at incorporating Alternative Dispute Resolution (ADR) and, again, something that we will look at in solving issues in relation to property matters, maintenance, custody matters and alternative dispute resolutions. Mr. Speaker, first, it is less time consuming, it is less costly and litigants are not in the court room atmosphere because, Sir, some ordinary people become intimidated by the court room. Mr. Speaker, I am saying that Alternative Dispute Resolution is obviously the way to go to settle these matters.

Mr. Speaker, I am going to be very short because I have listened to the legal luminary, the Honourable Member for St. James North - I am not saying that I have accepted everything he has said - I have also listened to the Honourable Member for St. James Central on the issue of maintenance. I would not say he was pooh-poohing the maintenance fund established by this Government but, of course, he had some concerns and I was wondering when he was going to get up in these Chambers and say to these Chambers that he wholeheartedly and fully supports the establishment of this maintenance fund for single mothers. Instead, he danced all around the issue trying to find all technicalities, but the reality is that this fund was established to support single mothers. The Honourable Member for St. James Central knows full-well that when we journey to the Magistrate's Courts in St. Matthias and in Holetown and we go there, particularly around the back-to-school time, you see single mothers up there actually pleading with the clerks to find out whether there is some money on the Order for them. Sir, that is the reason this fund was established; to make sure that there are some moneys there for those single mothers, particularly around summer time when parents are really in need of money to send children to school.

Mr. Speaker, Sir, the reason that Maintenance Fund was set up... Again, these delays are not only at the High Court level, they are also at the level of the Magistrate's Courts and sometimes matters take longer at the Magistrate's Courts. Yes, there is the view that matters at the Magistrate's Courts should go through a lot faster than matters at the High Courts, and there are maintenance matters under the Maintenance Act that takes time. Sir, I certainly believe that we can avoid those delays.

Mr. Speaker, some of the delays are caused, as was mentioned earlier, by the fact that we have a problem with service of court documents to have these matters proceeded with. We have said that there should be some mechanism in place, or some structure in place that where we cannot find those persons who we cannot serve the court documents on, that not only should we rely on the Marshalls but we should also rely on some other persons be they bailiffs or some other court officials that could assist the Marshalls in finding these persons so that we could have these matters solved in a timely matter.

Mr. Speaker, I have said that I would be short but I just want to touch again on another hardship; the fact that the Family Law Act in its present form has no provision to protect the spouse from violence or from harassment in relation to any court order. Yes, you can get an injunction but it goes further by including powers of arrest; similar to the Domestic Violence Act. Sir, that is a way of showing that the Government is there for the protection of families and to protect that sacred institution of marriage. Sir, I have not gotten there as yet but hopefully someday I will get there.

Sir, I have mentioned shortcomings to this Act. I know the Honourable Member for St. James Central has mentioned the fact that the Maintenance Fund completely sets out to deal basically with matters at the Magistrates Court. Yes, we know that there are mothers and matters at the High Court where there are outstanding orders and arrears of maintenance and we will deal with that.

The Honourable Attorney General has mentioned that this Fund, and obviously the Prime Minister, mentioned that in the fullness of time this Fund will also encapsulate matters at the High Court in relation to arrears of maintenance.

Asides.

Hon. M. A. LASHLEY: Mr. Speaker, I am saying I support fully the amendments to this Act. I support fully the fact that we have made an amendment similar to the Australian Act; similar to the fact that matters once started in the High Court in relation to the death of either party, that the matter is not abated but that the matter will continue. That is one of the hardships that existed under the legislation and we come here today to bring a solution by amending the legislation to ease some of the hardships and to ease some of the problems that existed under the Family Law Act.

Mr. Speaker, I thank you for indulging me in this short contribution and I wholeheartedly and fully support the amendments to this Act.

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

Miss C. Y. FORDE: Mr. Speaker, I am heartened to have learnt that there have been some amendments to the Family Law Act. I know that for many years there were efforts put in place to bring about some amendments, those in 2002, 2006 and again earlier in the year or late last year and even now. I think it is really very important that any developing society should be able to examine its laws, rules and regulations and, of course, improve where necessary, not only for the local purposes but indeed to meet certain international standards. So with those comments I will support the amendments to the Family Law Act.

Mr. Speaker, the Honourable Minister of Home Affairs and Attorney General would have made mention this morning of the continued work of the consultant in ensuring that amendments do come into play as the years go by - and there are so many changes coming on stream in the society - and I would hope that will continue to be developed so that we can be on the cutting edge when it comes to aspects of our legislation which we consider to be critical and impacting on the lives of so many thousands of persons.

Sir, I am not legally trained and sometimes I am happy I am not, because I would have been happier to even make a stronger contribution to this Bill and the amendments but I have only received my Papers this morning, but with God's help I will make the best effort in the light that I am living in the real world too and I see every day some of the challenges which many Members face as a result of what happens in our courts and in other aspects of our society. Sir, I would rather refer to the real life situation and as a layperson speak from that experience point of view.

Sir, I recognise that any family union in any society is critical to the advancement of that society and when families are broken it creates tremendous challenges in that society and of course some backward steps. In Barbados we are seeing a number of changes and that is the reason the amendments are being made consistently to ensure that we conform and that we make people's lives a little easier.

Sir, I would refer to an old saying that my foreparents and indeed persons of my generation know very well when it comes to parents and others having to speak particularly to male but we do have a lot of delinquent females in our society as well. I would wish for us to be able to do more parenting, more exposure to those individuals who are parents and who do not meet the required standard to be able to parent their children and to fulfill their role as adults in a more nurturing environment. Therefore, the saying is, for most mothers in particular in the past and even now, "If you were not there your name could not be called for that child." "If you had not gone there nobody would have called your name". Therefore, I wish to speak to instance of the courting experience where young people and sometimes older ones too; in the courting experience it is so heavenly, everything is working out well and everything is 'lovey dovey', then when that relationship breaks everything seems to be as perilous as you can ever imagine.

Sir, during the courtship perhaps there were no children and if there were children of a different relationship things were looking good until the fractures began. So these vulnerable children in particular... Sir, not only young children, I know of adults who, because of fractured family relationships, have become very bruised at the outcome of what used to be a loving, tender, comfortable household or family. Sir, I know of the perilous situation that this whole entire process creates, thus creating a lot of vulnerable souls in our society and indeed other societies across the world.

Sir, when I sit and I watch the Maury Show, Dr. Phil and other persons in the international arena, some of the stories remind us of right back here at home. So it means that all societies will face those kinds of challenges but we have to come up with creative ways and impactful parts of legislation that will help to curtail some of what we witness every time.

I know that the repercussions are deep especially when we are talking about young children whose lives are impressionable. So the violence and the fighting the home affects them in the classroom and in their social lives. There is emotional stress; the cursing and confusion, the blaming of little children because their mother or father has disagreed, the child is caught right down the middle and therefore unable to cope under the circumstances. There are even people in the neighbourhood who create a lot of challenges for those children by insulting them and making them feel less than whole.

Mr. Speaker, because of my classroom experience, children are afraid to go home when that bell rings at 3 O'clock because they do not what to expect, having left home the morning hearing parents grumbling, quarreling and fighting over more often than not, a lot of material gains. Therefore, I think it is very important that we have marriage counsellors and others in the society who will work with children to be able to help them to better overcome those challenges, a lot of which will end up in self-blame where the mother says: "If I did not have you my marriage would have lasted". Or the father says: "If you were not down the middle there we would have had a better relationship". The child then leaves feeling as though he or she responsible for all the conflicts.

Sir, the legislation speaks to the matter of marriage counsellors and I would like to add my comments to that where I have seen and witnessed that everybody who would have undergone the training and the necessary professional qualifications do not really fit the profile when it comes to counselling. There are persons who will in the counselling process say: "I know how you feel". I do not think they really know how you feel as a person who is undergoing a number of challenges, or emotional stress.

Mr. Speaker, Sir, for someone to tell you that, you would know within yourself that it was not true, they cannot know how you feel because the shoe was not on their foot. Therefore, I believe that truly professional hat should be worn all the time where the business you discuss with your counsellor, whether it is the marriage counsellor, the guidance counsellor or whomever that counsellor in the church or in the community, that business should be kept confidential. I find that in our society too many things no longer confidential and it comes right back out, spills into the street and then that person is undergoing further turmoil in the experience.

Mr. Speaker, I also want to refer to the ridicule -and other Honourable Members would have mentioned it - that a number of our women folk experience in this whole exercise of maintenance and seeking to get maintenance for their children. It comes from some fathers, it comes from some parents, it comes from some women as well. I will repeat that, Mr. Speaker, the Honourable Member for Christ Church South seems to want me to do it. I do not know about his personal life, nor am I interested and I am not referring to any individual in here, Sir, and therefore I would wish to speak in a more general manner and that is what I am seeking to do, Sir. I do not want to be sidetracked at all, Mr. Speaker, but I am talking about the ridicule that a lot of our women folk experience from men from whom they have the children; from the men's family, sometimes from other females who are in the relationship with the male, and even sometimes some of the staff who have to serve them when they go to the court to collect the maintenance. It is really very embarrassing, and the Honourable Member for St. Philip North spoke about it just now in his contribution, where these women would stand up for many hours and rather than speaking to people in a more humane manner would tell them - some of these workers, not all, we have some excellent workers as well - "If the man did not bring the money, well, go along back home and come back tomorrow".

How do these women come back, Mr. Speaker, the next day when they would have borrowed the four dollars to get from wherever they were to the St. Mathias court or to the other courts to be able to gather the maintenance, then for these women to go back home, empty-handed? I think that there is need for the training and better training for those clerical officers and the others who would have to interface with those mothers and others who would have come to collect the funding to be able to make them feel a little more comfortable. Even if the money is not there, there is still a compassionate way in which to deal with them and to of course give them that measure of hope.

Mr. Speaker, a lot of mothers feel it more, especially those in these hard times, who are working for a minimum wage or who are in a short-week situation and particularly those who are not working at all because of losing their job or never being able to obtain employment before the situation. Therefore, while the Government's efforts are commendable in respect of the $50 per week for the maintenance when funds are not placed there by the fathers, I believe that that does not stop a hole in the sea, a drop of water in the sea, from the point of view that we are hearing a lot of bureaucratic bungling now, where people turn up for the funds but they hear they have to come with an Affidavit and they therefore cannot access the funds in the way that it was supposed to be dispersed. Therefore, the Honourable Attorney General, I believe, will make some kind of comment to that, if what I am saying is not the full truth but from what people have been coming and saying to me, and calling, they have been going but not getting the money because of some challenges that they have been experiencing, whenever they go to collect.

We know, Sir, that $50 will still 'stop a hole' from the point of view that the cost of living is so high. But how do you feed a child that is 10 years, 14 years, 16 years with a $50 bill? Yes, it is better than nothing but when it comes to maintenance of a child, Mr. Speaker, you know because you have raised children, it is extremely expensive at this time. The Honourable Member stole my thunder to talk about this summer time where most children are at home and even if they go to camps, they still have to come home in the evenings for a meal but when there is little or nothing there for them to eat then mothers feel it hard; grandparents feel it hard; fathers feel it hard if they are the fathers who have to look after the children, and we do have a lot of fathers who are extremely responsible and look after their children.

Asides.

Miss C. Y. FORDE: I do not want to talk about the summer camps at all. The Honourable Member for St. Philip North, do not even mention it because that is another kettle of fish.

I want to stick, Mr. Speaker, to what I am saying because to maintain the children, to give them clothing, to give them breakfast, to be able to give them a snack that is necessary, to be able to pay towards their text books and the clothing for school at the beginning of the September term, it really is very unfortunate when parents are not paying up the funds, as the case may be with either male or female. I am not taking a gender situation on that at all. Therefore, that is another challenge that creates a lot of problems.

I had the unfortunate experience, Sir, while in the classroom where there were some children who at the beginning of the school term, they are from the same mother in the same household but they returned to school in the new school term with all the necessary books, new school clothes and shoes and so on but the other child who may be younger or even older would come in, in whatever clothes it had the term before, and indeed no new text books. When I called them and queried, one parent said: "Well, his father sent the money. The other child's father is worthless and he did not give me any so I have spent it on the one who received it". But I have always advised them to still spread the net, to make that other child feel like a human being too because it is so embarrassing, not even to get one text book because daddy did not bring the maintenance. And so that is something we need to look at because it can really destroy the emotions of young children who do not understand the whole set of wrangling that goes on between fathers and mothers.

The other issue associated with that are some of our social agencies where some parents get absolutely nothing, even though they put forward their case and they are honest and upright with what they bring to the fore. I believe that every effort should be made for those persons, whether mother or father, who are ordered to pay in for child maintenance that they will try to fulfill their role as far and as best as possible.

Now, Honourable Members would have spoken about the engagement of attorneys-at-law but in these hard times, that is another challenge. Further, I must confess, Mr. Speaker - and I am not saying this to any of the Honourable Members in here - there are times when you give the lawyer a little tuppence to have the case started, then for six months to a year, nothing comes out of it, or you might have paid the money in full and still nothing happens, therefore that family is left 'out to sea'. Again, it is generally the poorest of the lot, who meet the challenges and are posed with a tremendous problem.

Sir, because of my ignorance in the area of this legal field, I do not know if the Legal Aid Department affords parents funds to be able to pursue it so that they are accommodated with a lawyer, that they can pursue their rights and be able to get that maintenance in a proper way, but I know that it continues to destroy families where I know of children who, because daddy could not put the money there, the mothers put the men in court, sometimes in circumstances where some of these men end up going to prison because of child maintenance.

There is no easy task for a child whose parents would have put the father in court when that child was five years old where at 12 and 15 years-old there is still no money paid for that child's maintenance, in circumstances where the Marshalls have to be running around with arrears totally more than $10 000 to be able to help to get that money to help to educate that child. I think it is wrong. It is unfortunate but I know that there are some honourable men who even though they are not working, through their family they are still able to put something in the hands of the mothers to be able to help to feed those children. It is also unfortunate that a lot of fathers are willing to walk away from properties to ensure that there is a shelter over their children's heads. There are some women who do it too whenever that union is separated, divorced or whatever form of separation there is, so it goes either way, where in the interest of the children, parents step away because they think that the children's welfare is paramount in the whole exercise. I think that is a very honourable aspect of what is going on.

I know at this time there are many fathers who would want to help to maintain their children but cannot do so because of the economic situation and therefore it says grandparents, parents, uncles and aunties, the extended family must come on board, if it is not only the hard cash but some food stuff, clothing and books, I am sure, Mr. Speaker, would help because that is really what has been happening in our communities for many, many generations, where families made sure that other siblings would have been well taken care of. Therefore, I think it is very critical at this time that happens to be able to save the situation.

Mr. Speaker, where I have my beef with some of the males is that they are adamant that they are not going to give anything at all. Some of them told me that they would rather go to prison. When I stop to counsel them and ask them to give the child or its mother something, the men say they are not giving them one cent, that they do not think that the child is theirs.

I am not going to go into the realm of DNA because that is a very topical issue now but I think it is so

unfortunate, and that is why I made the point just now that if you had not gone there, your name could never be called, and as long as there is no DNA and the court has done what it has to do, please make sure that you give some kind of recognition.

On the other hand, though, Mr. Speaker, there are some females who even though they are getting the maintenance from families, friends and others to help to keep the child maintained in a proper way, they take the money directly from the males and families but still put the men in court and therefore it creates even a bigger problem. For me as a mother, and I thank God I did not have to do that, I was brought up in a different era, maintenance or not, this child of mine would have to live but there are a lot of people who cannot do that because they are not working and they do not have the family support otherwise.

Mr. Speaker, there are some females who are out to get the man because he has another woman or because he has done something else and therefore they put the man in court even though they are receiving in their hands. When you get $100 a week and you still put that man in court [only] to get $50, I do not know where the common sense would be because the $100 a week and the maintenance and help from families will more than cancel out that $50 bill you would get that you would have to wait in the sun and be ridiculed by others in the community and so to receive.

Mr. Speaker, there are tremendous challenges that I believe that there is need for further education of parents in respect of that so that they could get a better understanding as to what to do and how to do it. At the end of the day, it is the children's life that is more significant than yours, the father's or anybody else's in the whole exercise of the separation and the confusion that is attendant with it.

Mr. Speaker, I respect those men highly who choose to still give. I respect those women who accept what is made available under the very trying circumstances. I encourage them not to let the children stay and starve. I encourage them to look after the children's needs because the psychological and the emotional impact that they could have on them is really not in keeping with what we would want to see happening where children will walk around and beg because they are ignored by families and friends. The Honourable Member for St. Philip South said it nicely in that adage that the African proverb gives, where it says it takes a whole village to raise one child, and unless we come together as communities and as villages and play our part in assisting then we would lose more of our children.

Mr. Speaker, I might have said earlier that I abhor those who may be adamant that they are not maintaining and they would rather go to prison, than to offer any funding to the children. I also abhor those women who do not give the men a chance to at least try hard. Mr. Speaker, while I might be referring a lot to the working-class mother or father for that matter, there are some middle-class families where this situation is even more turbulent. I know that there are a lot of middle-class males and females who are in the court and their children are caught right down the middle and the best person that could give you any idea as to what is happening are the teachers and the guidance counsellors. It is more a hidden secret at the middle-class level than it is in the village working-class environment and therefore those children, to me, are carrying more deep-seated impacts than in the other situation.

Mr. Speaker, I would want to encourage all spouses to ensure that whatever the disagreement is between themselves, to ensure that the children are given proper support systems to help them to be able to excel in school, in sports, in community work and even in the employment that they might be undertaking.

Mr. Speaker, I know that many of the persons in the middle-class environment would rather see the spouses suffer than to pay that alimony that is so pertinent to the continued existence of the family. I know that court matters are long and therefore that amendment that refers to matrimonial matters and giving an extended time to be able to have the matter resolved... I am referring to the aspects where persons may become deceased before the actual completion, that is extremely important. I see that there are some fines as well where the person has been given that court order and they deliberately refused to conform with the law.

The evidence of a lot of the matters to do with the middle-class and the upper middle-class can be seen across the length and breadth of Barbados where we see a number of properties; some abandoned, some up for sale and some becoming derelict, as a result of such matters where there are such fractured relationships between the spouses that it just destroys that social fabric from among us.

I believe that families are still the bedrock of any society and that families will continue to promote the moral values, the cultural norms and the spiritual, social and emotional aspects of living, and that broken families and the relationships speak to bedlam in any society.

Sir, I support the amendments of this Bill and I would like to encourage the Honourable Minister to pursue whatever aspects of amendments would be important in order that we can advance as a people who for many, many generations supported the family structures. It worked so well for us that families who went overseas, to England, the United States and Canada and so, thought that the family structure in Barbados was so good that they took some of it with them and others sent back their children to this country to be able to receive the education and the family

support systems that speak volumes for good, upright and wholesome development.

Mr. Speaker, I also want to support that whole matter or notion about alternative dispute resolution. We are people who sometimes do not like to speak. We shout at each other, we talk at each other and we criticise behind the scene but when there is an opportunity to speak up for a matter that is pertinent to our continued existence, many of us become silent. The marriage counsellors that fit the profile of confidentiality and high professional act, to my mind, would be able to assist in this respect in making a tremendous difference in what will happen in the future of this particular aspect of it.

Mr. Speaker, with those comments, I want again to speak boldly of my support for this aspect of life that is a critical social component of going forward as a safe and just society.

My final comment is to do with the Marriage Counselling Advisory Committee; that comprises quite a few members of the social agencies that have to interface with families: the Registrar of the Supreme Court or the nominee, the Chief Welfare Officer or her nominee, the Director of the Child Care Board or the nominee of the Director, the Chief Probation Officer or the nominee, a representative of the Paramedical Professions Council and such other persons as the Attorney-General may use his discretion to appoint as is expressed by insertion of the new 6.A in the Act into Cap. 214.

Mr. Speaker, with those comments, I support this Bill and look forward to the speedier turnover of the matters that would come before our courts so that at the end of the day the people of Barbados can live a more comfortable life and that we the Members of Parliament who have to do a lot of dialoguing and interfacing with them on matters that are so critical sometimes when we have absolutely no opportunity to really fulfil a guiding role, that at least the speedy turnover of matters in the court would help to resolve a number of those issues and that we can then do our part in helping to hand-hold those persons who are involved. At the end of the day persons, meaning families not just individuals because without families our society will collapse, and without conforming to the rule of law that would even make this situation worse. I give my support to this Bill.

I thank you, Sir.

Mr. SPEAKER: The Honourable Member for St. Michael West Central.

Mr. J. D. PAUL: Mr. Speaker, I rise to speak on this Bill and in commenting on this proposed amendment, I wish to say that marriage in itself is an important institution in our society. I think to the extent that any piece of legislation recognises the importance of marriage, then I think we need to pay particular attention to it.

Sir, one of the things we noted about marriage is that there is no prescription as to what should be followed; marriage is a relationship between a man and a woman and when we look at the extent to which some marriage work, as opposed to not work, there is no method or rule book that one could apply to speak to it. Therefore, to the extent when we handled or go into the area of divorce, certainly there is no rule book that says what should be done in terms of a divorce. I think basically all we can do is to put down a certain set of guidelines but I believe that in these cases, as in relationship generally, there has to be some measure of flexibility in dealing with it because generally you would find that there are instances where even in marriage you might find some people who may not even know their mind, so too in divorce people may not know their mind. To the extent that we should allow for those flexibilities, it is very important that the Act in itself reflects the necessity to having those flexibilities.

Mr. Speaker, one thing I would like to comment on is the marriage counselling section of the proposed amendment. While I note that the section clearly identified who are its members, I note that in many respects it assumes that those persons who will be members of that committee, the Marriage Counselling Advising Committee, are competent to serve on the committee. Sir, you have persons such as the Registrar of the Supreme Court, the Chief Welfare Officer, the Director of the Child Care Board, the Chief Probation Officer, et cetera. What it does say is that:

> "Such other persons as the Attorney-General may in his discretion appoint."

Sir, in that regard I think that we have to recognise that in a sense... I go back to this African proverb referred to by the Honourable Member for St. Thomas, where the Honourable Member spoke to the fact that it takes a village to raise a child. I think that generally we can say that to the extent to which marriages are successful in our community is also dependent on the extent to which the communities themselves support the institution of marriage because very often the community plays a very important part in the success or failure of some marriages. In that regard, the fact is that we recognised there needs to be other persons there, the fact that we need to have others involved other than those persons who normally have a technical perspective in terms of dealing with people.

Mr. Speaker, the other point I wish to make as far as that is concerned is the fact that to the extent we recognise the importance of non-governmental organisations and other non-governmental organisations in our society that

play a very important role in upholding the very moral fabric of the society or its institution, I think the Act should recognised that. Therefore, to the extent where it recognises those things, the fact that there are these informal organisations that can play a role in terms of maintaining relationships. I want to say when we look at the whole question of it, it is the extent to which we can facilitate the resolution or the conflicts that people go through. Of course, one way or the other, it ensures that at the end of it we have the two persons involved and that their concerns are being addressed in an appropriate manner.

Sir, I think at section 7.3, the conditions of approval of voluntary organisation, I would want that there be some measure of flexibility as far as that is concerned. Mr. Speaker, very often in our society we have voluntary organisations that play a very important role in terms of even helping persons who might be going through difficulties of one type or other in their marriages, who actually play a counselling role in terms of helping to hold those marriages together. One of the things in looking at the stringency of it in terms of how the Act says who should be a registered marriage counsellor, it begs the question whether or not those institutions that play that role in terms of facilitating marriages, if there are any difficulties that person can go to them. At the same time, how does that place those particular organisations? For instance, you have those organisations that are there that do play a role. As a matter of fact, it is because of the existence of those very organisations why sometimes marriages themselves are actually held together. Mr. Speaker, in other words, how do we place that? What work should be given to those organisation as to what they need to do?

I make the point that these organisations play a very critical role. They may be church-based organisations but at the same time they play a very critical role. One of the other things that we need to do, especially from the point of view of section 7(1) which says:

> "Notwithstanding section 6:
>
> "Any voluntary organisations that desires to conduct marriage counselling;
>
> (b) organisations that desires to conduct marriage counselling; or
>
> (c) persons who are desirous to conduct marriage counselling."

Mr. Speaker, is it that these organisations would have to be registered? I think that maybe we need to clarify that to ensure that persons who are engaged in these activities are not somehow unwittingly running afoul of the law, because again you might have a situation where persons who might have a malicious intent or something like that.... Sir, we are living in a society which I find is very strange sometimes, from the point of view of trying to be helpful. You are trying to be helpful in many cases and very often you have a situation where that helpfulness is sometimes misinterpreted, and that is something we need to takes into consideration.

Mr. Speaker, the other point that comes to mind is that in terms of dissolution of marriages, very often we have seen marriages reach the point where the individual sometimes does not want to attend marriage counselling since you may have a situation where one of the parties or both of them can be extremely stubborn. I have seen situations where the marriage has gotten to the point where the wife or husband wants to see the other person to go see a marriage counsellor and that person remains obstinate and does not go. What happens then in that regard? Is it therefore that unless he or she sees the marriage counsellor that nothing can happen? These are hard questions that we need to answer. Maybe we need to look at the flexibility here and make sure that we are so opened that we do not have a situation where a person becomes bogged down. I guess the purpose of the law should be to encapsulate best practices in our society; the purpose of it should not be to make it that, okay, because a particular individual has a perspective of the way things should be done, to use the law to force that perspective on our people. Sir, that is one of the things we need to recognise.

Sir, very often we have a lot of lawyers in our society - and with all due respect to attorneys-at-law in this House, because I understand that they must make money - but sometimes the legislation is crafted from the perspective of an attorney-at-law, rather than from a sociological perspective. Sir, very often the problems that are experienced in marriage can only be handled by someone who has a sociological understanding.

In truth and in fact, we could allow those natural relationships that exists in our society between people solve the problem. Sir, very often, the difficulties that you would see happening between two persons can easily be solved over a bowl of soup, or in a rum shop.

Asides.

Mr. J. D. PAUL: The point is that it could be solved in these ways sometimes because sometimes it is a way of getting inspired thoughts. Sir, sometimes it is not the traditional people who will actually solve it for you and this is something we need to take into consideration.

Mr. Speaker, most legislation today does not even take into account the role of religious organisation and, Sir, that maybe unfortunate because what we have seen over the last 40 years or 50 years is the tendency of the State, I

understand to move away from being identified with the whole question of the spiritual process in terms of trying influence the behaviour of people's lives. Sir, that in itself might be unfortunate because there is a religious aspect when it comes to the whole institution of marriage and we must recognise that. Sir, inasmuch as some of us may want to think that we have atheistic ideas in some cases, and some persons in the society even say they are atheists but we can at least allow for the role that religious may play in marriage. Sir, may we need to look at this as something for the future because if we claim we are Christian society, a lot of the issues in marriage can be solved from a Christian perspective in terms of trying to deal with these matters.

Mr. Speaker, one of the unfortunate things in our society is the fact that divorces are happening, and one of the sad things of divorces is the impact on the offspring and the attitude of the people involved in the divorce process. Today, very often, when we look at the behaviour of children in our society, especially those who have gone through divorces, in many cases you can see that their attitudes are shaped by the process and the way in which it has happened. Sir, I note there is some attempt on the part of the Act to try to address it but, again, I caution and say that in many cases, the Act cannot influence that. Who we have to speak to are those persons who are married and also to those who are going through the divorce process, that it has to be done in a more responsible manner. I think that we need to move pass from the winner-takes-all attitude. Sir, when I say the winner takes "all", I do not just mean from the point of view of materialism but also consider the interests of the other persons in the family because where there are children, the man and the woman forget the impact that it will have on the children.

Mr. Speaker, I have seen situations where children carry a chip on their shoulder because of the way in which the father and the mother were separated, or how the process of separation went; in many cases it shapes the attitude of the girl in her attitude to men and of the boy in his attitude to women. Sir, all of these things we have to take into consideration.

Mr. Speaker, the Act recognises the importance of counselling but it depends on the openness of those persons who are involved to accept the counselling process at the same time. The Bill puts the responsibility on the two persons going through the divorce as to the way it is done. They also need to recognise that they have to consider the other parties involved, which is usually the children.

Mr. Speaker, how we espouse the fact that we love our children and how we do so much for our children but I have seen situations where the children are torn between the two parents and they are affected by how the mother views the father and vice versa. I think that is unfortunate that we are still in Barbados today, in a situation where even in terms of parents they cannot tell children that what is happening between us as two adults, is our business and that the children do not have to get involved. Sir, we have situations happening in some of our families where children are actually brought into it as two waring fractions and the children themselves are sometimes forced to take sides. I think generally that is an issue that we need to deal with in Barbados. We need to educate our people as to the need for them to be more responsible in the way in which they conduct their business with each other.

Mr. Speaker, when I talk about the winner-takes-all attitude, it is not from the point of view of who gets the house, who gets this, or who gets that, it is also from the point of view of who comes out the winner and the attitude of "I can get him to hate you". That is something that we have to be careful about that we do, that we do not transfer our emotions and perspectives on lives to our children. Sir, sometimes we not even give our children the opportunity to develop healthy relationships to become who they are.

Sir, these are the kind of things in the process of marriage counselling that we might not even get to address properly, but this is why I think that the role that other organisations play, such as the church, is very important.

Mr. Speaker, we do not understand that it is these other organisations in the society that help to shape attitudes because, Sir, attitudes cannot be legislated. Sir, the ways things should be done cannot be legislated. What we rely on basically, is the good commonsense of people, which sometimes is very absent anyhow. Sir, people need to do things in a responsible manner, recognising their responsibility to the parties involved. Sir, that is one of the things that we need to understand, that, generally, we need to have a fresh approach on the part of our people as to how to resolve situations and that you do not have to go the winner-takes-all route. We need to consider that you might win but at the same time we have to look at the damage that is being done to the offspring in this situation. Sir, we need to look at that in a real way. Sir, I think too that to the extent that the Act recognises the interests of the children in this whole situation is good.

Sir, I think we have to find ways of bringing that out a little more. I think it is important that this whole education process how we deal with the situation in terms of a divorce and to ensure that the impact on the children is not negative.... I think that is very important. My concern is, the two adults in the process have already formed a perspective of who they are. They have formed perspectives of what they want and do not want. The people who are most at risk in this whole situation are the children and very often in this whole process of divorce they are seemed to have been forgotten. What we would learn later on when they grow up, is the damage which was done to them where that damage has not actually been

addressed. Sir, that is an issue we need to take into consideration.

Sir, I want to speak to the question of maintenance. Very often going through the constituency of St. Michael West Central, it is a human thing where people sometimes fall upon economic difficulties from time to time. Generally, from what I understand, and listening to young men who sometimes fall into this particular regard, they come to you and tell you, "I have to pay maintenance or so." I think that generally we have been seeing a certain measure of flexibility. I think even in these times it is important that that is there.

I want to say that generally that the question of the Maintenance Fund we have introduced is very important because in a sense, especially during these times where persons might be experiencing economic hardship, at least it helps to cushion that. I think that is important.

I will not want to dismiss the fact that at least it encourages the persons who are responsible for paying maintenance to accept that there is a responsibility for them to do so. Again, I make the point; that very often we go into that relationship and produce an offspring. I think it is very important that we at least even to reinforce the institution of marriage.... Let us face it; people will not marry if at the same time they think there are all negatives as a result of marriage. That is very important. I think that to the extent this is providing for the products of that relationship to be adequately provided for is very important and we need to support it in terms of making sure that it goes through.

Sir, I want to say generally that, yes, we can see what the Act is trying to do. However, I also have to emphasise, I also want to make the point again going back to the question of the marriage counsellors, I think we have to have a broad interpretive view of it so that we recognise the fact that generally society in itself and organisations in society can help to actually support the institution of marriage. I think we need to take that into consideration.

Sir, with that I give my support to the Bill. Thank you.

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

Mr. T. A. PRESCOD: Mr. Speaker, I would just like to join this debate to speak, probably with as much authority as most of the others with a legal background, but probably my layman's perspective on this one. While I know that we are doing something which I consider to be positive and progressive, I really feel that we could have added one or two other dimensions into the Bill before us, but overall it is a slow process which has derived from the challenges we had very early as a people. It goes back to the challenges of the various types of unions that our families experienced as part of our antecedents. It also relates to even the necessity for us to find a way of finding maintenance for our own families. You will see in the early 20th century, men in good faith migrated from these lands because of the hardship of that colonial period. They could not feed their wives, their girlfriends (which probably were many of them), to use the Barbadian vernacular, girlfriends rather than spouses, because I just want to feel the period of the time.

Sir, the reality is, this is a sociological point that has to be factored in. Many families were not working and in many cases women were not working and men had a field day, because men were able to move from house to house to look after many families that were not biological families. I am not going to indict neither the men nor the women of the time but it is against that background that we saw stigmas being attached to certain families at a later date. So we talked about the bastardisation of certain persons who happened not to be born within wedlock. That social challenge was addressed in the last century as well.

We have seen a number of pieces of legislation imposed on the dynamics of this society. When I think about the discussions, I thought about the Succession Act being in isolation and what happens to people who fall under the Maintenance Act. I thought about what type of people who usually fall under the Maintenance Act, mainly the majority of us who would fall under the Maintenance Act, and I thought about those who also fall within the framework of the Family Law Act itself for unions which are considered to be "Christianised" unions at the specific time. Those in my view are the two major ones now that we are addressing in a union other than a marriage, although that is very limited in the circumstances because we also have the unions that are frequent visiting relationships that we know is part of the sociology of the Barbadian man and not thinking too much about those as a wider understanding of unions. I am wondering if we can even capture that in the definition of what constitutes a union. Those kinds of relationships we still need to find a way of finding some logical framework to make sure that spouses in those circumstances, which would not be supported in the western culture, obviously which were more related to the eastern culture where polygamous relationships were socially accepted, but we really believe that we have carried along some of those retention with us. Some of us might be guilty of these things and did everything today to avoid touching on these things that are very important to our very survival as a people.

Sir, if those social relationships that are "demonised" did not occur, all of us in here would have never been. We probably would never exist. Sir, 40 000 men went to Panama, some went to Costa Rica, some went to Cuba,

some went to Vieux Fort, St. Lucia, some went to Trinidad and Tobago and the others went to Guyana.

Sir, I do not want to say that the males were "escaping" from the pressures of society but the males in good faith went to earn income, in order to come back and honour what they consider as their duty to honour.

I think that sometimes there is a latent thing in our discussions about our men, without facing certain realities. Therefore, I want to enter this debate against a background, and considering all of these things, that we are here after being separated as a people from our loved ones and in some cases, we were only granted permission to share that level of intercourse, based on being able to reproduce a slave or to reproduce an individual so that the plantation owners can continue to have their stocks up.

When Barbados in 1807 was discussing and boasting about strong support for the abolition of the slave trade, it was not because the people who were saying those things at that time, who held us in captivity were supporters of the abolition of the slave trade, it is because their focus was on economics. They understood quite well that if you cannot import them that you could purchase them for us. As a consequence of that, the market in the Caribbean was conducive to large sales for the plantation owners in the region. We have watched again, progressive Governments which is a post-1950 effort, making a major contribution to all of these different areas of life.

We attract also, in not being able to respect the reality of the environment because we are not talking, when we are making these amendments, about Islamic culture, although we are in a Creole or a Pluralistic culture, however you describe it, the reality is this legislation probably imposes a legal position on those who are from an Islamic culture. Therefore, we hear stories of persons whose marriage relationships are of Asianic backgrounds are acknowledged but then there are many others who, although they are a part of the whole matrimonial clan, they are not recognised as being legitimate in the circumstances because of the laws that we have in Barbados.

I also want to touch on this. I am a little concerned. I know that this legislation mentions the word, "international", meaning consulting and looking at other models across the world. Out of the National Commission on Women, when the Australian paradigm was examined, we looked exclusively at that model and we took elements out of that model and we imposed them on this culture. I have heard that people have paid the price for not having the foresight, that they were doing an injustice to themselves.

I believe that if we are looking at models when we are trying to shape Bills and ultimately legislation, that we should look at societies that have had a similar historic journey to the one which Barbados has experienced. I think we should take this into consideration. Another thing is that the laws, unfortunately, are so segmented that we handle those in unions, not unions other than a marriage, but those cases that probably derive from visiting relationships, we handle those cases at the level of the magistrate court. Sometimes, in my view, based on the things that I hear and I observe in the newspapers, the technicalities of law are not fully applied, therefore, persons who are brought before the court for maintenance do not have the same elasticity in advancing their positions, in order to give a genuine defence as to why they cannot honour their roles as fathers in providing maintenance for their children.

On many occasions I have had constituents coming to me and complaining and saying, I am not working. In some cases, the load is too much because sometimes some of these people will have five and six and seven children and they are basically low-income individuals, who are very productive but will hardly ever in their lifetime earn more than $300 or $350 a week, and they have to support five and six children.

The response to that is that these people are not the most caring individuals but they are people who come from poor homes as well because of our challenges and we have to support our brothers and sisters, sometimes our mother. Then, you fall in love with a young lady who is from the same family background: with three sisters and two brothers. Hence, you are probably responsible now for taking care of your immediate family.

Asides.

Mr. T. A. PRESCOD: This is an obtrusive, sociological approach to the subject matter. I am witnessing and observing these things in my fair land.

They are unable to support ten persons because if you are in love and your family is large and they are dependent on you but then when you fall in love, the mother of the spouse also believes that you ought to make a positive contribution, if you are a worthy member of the family to the household, the man cannot honour all. He accumulates great liabilities, debt, and cannot pay it. He then finds himself facing a custodial sentence before the court, and earning a stigmatised title as 'an old criminal', also damaging the relationship between the families, and also stigmatising the very offspring that he could not support at the specific time.

I really believe that when we are going to examine models of a specific type, we need to look to an environment sometimes that has had the same life

experience as Barbados'. So men are involved in Barbados and are charged for being flirts, in flirtatious relationships but are reproducing anyhow and reproducing and giving results that are very positive that we are still here as a people.

We are also conscious that when these relationships become dysfunctional and there is a breakdown in the relationship, the one who perceives himself or herself to be a victim, especially in a union other than a marriage, is very concerned not only about maintenance...If there is a provision for that or if at a later date we need to put an amendment to the Maintenance Act so that issue can be addressed.

Mr. Speaker, I am not part of the Government. I cannot suggest the language that you ought to use in that specific provision but I would just like justice to be done in the circumstances but that is a major consideration.

Mr. Speaker, as it relates to the breaking down of marriages - and that why I say that we have to again compliment ourselves for the good that we have done - there was a time when we had to, in the most vulgar way, expose the deep causalities of the breaking down of the relationship. Through gradually addressing these issues, we do not have to wash the dirty linen in public any more. All that is required in the Family Law Act itself, and we did not have to look at that for any amendment, is that the marriage itself has been irretrievably broken and that there is no way that you can bring the embroidery or re-knit the relationship together in such a way that it can form a beautiful and good aesthetic pattern for a family relationship, so it goes apart. But it is then that other issues also come up because the challenge now is not only achieving the decree nisi but also the Decree Absolute.

In this Bill, we are hearing that will only occur if matters relating to the distribution of property have been settled by the court. I heard that view being expressed. This will be a very challenging issue. Although I am not an attorney or purport to have any great knowledge on these matters, I know that those matters probably would remain with us and people would die without us resolving these specific issues. Mr. Speaker, I do not know if that was the intention but I heard the comment made by a Member on the other side.

While we see that maintenance of the child is an imperative up to age 18, my vague knowledge of the Act itself also addresses the issue of children over the age of 18 but also attending an educational institution and that it is also an imperative that if the relationship breaks down, that it is still a must that you continue to maintain that child until the completion of the child's education.

I really believe, Sir, that constant review, because life is dynamic, of legislation like this which ultimately it will become, is a necessity for all of us. We have to broaden our perspective on these issues. I am still very concerned especially in a contemporary period of discussing these matters. To me they are all fashioned exclusively by the psyche of those persons who have been "Christianised". I believe that like other issues that we have in the society, issues related to sperm banks and other major challenges in modern times, that we have to find a way if we are going to look at the general development of a harmonised relationship across the Caribbean. We also have to take into consideration the other aspects of other people's culture and other ceremonial practices that form part of the configuration of the cultures of various people in the region.

Mr. Speaker, I just wanted in a very short contribution to touch on those issues that I consider as a layman are of some importance and some concern to the general public of Barbados, of all different stratifications in the environment, and to ask that in examining these issues, even in relation to who should pay maintenance, that those virtuous principles ought to guide us and that we should not continue to look...

Asides.

Mr. T. A. PRESCOD: It happens because my view is that the concept of a Caribbean jurisprudence has not been fully developed and it has not been fully matured and as a result sometimes we talk about things simply because these are the guidelines that were given to us and we do not look at the reality of the Caribbean situation. I would hope that probably as we go on that we would see other progressive forms of legislation at least to give some credit to this family across the land as one worthy of respect in general.

I think it is within the hearts of almost all those persons who contributed to the drafting of this document, the original one a few years and now this one with the necessary adjustments, which I must tell you I really agree with some of the things that were taken out of the last one because there was a great challenge to me too. I could not understand it and I was not going to support it.

Mr. SPEAKER: Honourable Member, you have five minutes in which to conclude.

Mr. T. A. PRESCOD: Sir, I believe this is a noble attempt at continuing on a progressive path in terms of bringing this kind of social legislation to this Honourable Chamber and it can only redound to the benefit of Barbadians in general. Thank you very much.

Mr. SPEAKER: Yes, the Honourable Member for St. James South.

Hon. D. O'N. INNISS: Thank you, Mr. Speaker. I rise of course to give support to this Bill before us today which is to amend the Family Law Act, Cap. 214. Let me start by saying, Mr. Speaker, that I will be rather brief. I note the excellent comments made on both sides. I heartedly welcome the support of the Opposition Benches led off by their Deputy Leader, the Honourable Member for St. James Central and of course followed by his supporters which clearly indicated that there is not much of a divide across the Floor on this particular matter, with these Members at least who are present.

Mr. Speaker, let me say that this to my mind is an excellent reflection of the good work that the Democratic Labour Party has been doing over its 56 years of existence in addressing matters pertinent to families and women in particular in this society. I think when one reflects, as the Honourable Member for St. Michael East was attempting to do just now, on the history of this country and the development of family and society, one can well recognise that the Democratic Labour Party has solidly etched its place in the history of this country when it comes to social revolutions, particularly addressing family matters and such matters as confront this society, as reflected in vacation rights, maternity leave, equal rights and of course even the one that we are reflecting on a bit today, the marriages, which relate to eradicating the term "bastard" from among our society and recognising children who are born out of wedlock in this society.

Sir, I think that perhaps ought to set part of the foundation upon which we are building today as we recognise the importance of family in this society. Of course, as part of our policies that we have dictated over time, we do not just see Barbados as an economy but also as a society. While there are those who would say, look, in the midst of some challenging fiscal situations, we are today in Parliament discussing a major societal issue, the reality about it is that it ought to pull us back to a fundamental understanding that Barbados is not just an economy but a society. So these are indeed very serious matters that we are addressing here today.

Mr. Speaker, we are fundamentally seeking to bring clarity to a number of issues that were rather ambiguous, while at the same time making sure that there is no misunderstanding as to how matters regarding family, children, spouses and such like are dealt with when it comes to the dissolution of a marriage.

Mr. Speaker, I noted the comments made on both sides which I do not need to repeat, in terms of the family structure that has changed over time, the challenges that confront many families today that result perhaps in an unacceptable high level of divorces, as well as issues that relate to children who oftentimes are caught up in these matters. Mr. Speaker, I will simply say that one ought to recognise that marriage is a serious institution not to be entered into lightly. I speak as someone who has been married for many years.

Asides.

Hon. D. O'N. INNISS: I am not going to give anybody any secrets, I think the Honourable Member for St. Thomas is still young enough to tie the knot but I will not share her any advice on this matter, but marriage is a serious institution not to be entered into lightly and that once entered into, I believe that both parties need to treat it with that level of seriousness. At the same time, one cannot bury their head in the sand and believe that all will go well and therefore we have made provision over time for divorces and separation to take place. It is unfortunate but sometimes it happens and it happens in the best interest of both parties involved and certainly the children involved.

Sir, I wish to make it clear that I am not one who oppose divorce, when it has to happen it has to happen, time to move on. Mr. Speaker, it is better sometimes to divorce than to continue in a marriage where there is great unhappiness. Oftentimes, we in this society say, well, let us maintain a marriage for the sake of the children but I have always cautioned that to do so is sometimes a recipe for disaster because children ought not to grow up in an environment of hostility, constant distrust and bickering. Let me say those are some of my fundamental points I wish to address at the very beginning.

Mr. Speaker, the Bill before us seeks to widen the scope of the law with respect to the alternation of property interest in a divorce or separation, among other things. Let me say that we have to recognise that in the past the issue of property and property settlement has often been at the basis of tough divorces. Over time you would have accumulated property or wealth and when it comes time for a divorce, the argument then sets in as to who has contributed the most towards the construction of the house, who has paid for the motor car, who has paid the most money to support the children, who has been the main breadwinner. These are all fundamental issues of all who have been involved in these matters over time and will be involved going forward certainly have to address. I do not think there is anything beyond the divorce that contributes more to the time of the court system in Barbados than domestic issues between men and women and issues involving property.

Mr. Speaker, when it comes to the dissolution of marriage, they both converge in that atmosphere of deep hostility, anger and a bitterness that continues ad infinitum. This Bill before us seeks to bring clarity as to how one deals with property settlement in divorce proceedings.

Mr. Speaker, let me also say that in dealing with these matters oftentimes the Absolute Decree is issued and yet one has not settled property matters and that these things drag on for years and years. I do not know whether it is the court system or parties in relation to these matters but certainly when one recognises that you cannot get on with your life after a divorce because the house is still to be settled, who should pay out whom, whether or not it should be sold, there are still issues that relate to the children who have now gone onto university and still have to be supported. A lot of these property issues drag on and on and just cause more hatred and distrust between the divorced parties. Mr. Speaker, what we are seeking here to do is to bring clarity as to how some of these matters are addressed going forward.

Mr. Speaker, one of particular note which I have witnessed as a politician and as one in this society occurs when a party to a divorce proceeding dies, then generally-speaking the matter is abated; you die and therefore it seems as though the issue dies with you and for years, sometimes decades later, you are still trying to have these issues resolved. Sir, by this Bill before us today we are seeking to bring greater clarity to that matter by stating that because one dies, it does not mean that the matter has died or that it has to be abated, this amendment now allows the court the option of flexibility, the option of saying let us continue to address these matters within the matter of the estate and to settle what, if not settled, could continue to maintain some very hostile situations.

Mr. Speaker, there are many individuals in this society who have been victims of divorce in that sense, not because of the failed marriage between a man and a woman but because of a failure of the system to resolve property issues within a timely manner. Oftentimes one finds himself falling from an upper income level to a middle income level or from a middle income to a low income level because of these fundamental issues. I have seen many children who were doing well and found that they had fallen by the wayside, not simply because the parents have broken up but because property matters have not been able to be solved and therefore oftentimes the children have drifted hither and thither. Sir, certainly this Bill before us, once passed here today, and I believe it will be given the strong support from the Opposition Bench, will certainly allow the court to make an order for matters to continue upon the death of a party in a divorce proceeding.

Mr. Speaker, we also have before us the issue to enabling the court when determining maintenance issues, to take into account relevant internationally-accepted principles and relevant findings of published research. This is very instructive because at the end of the day we need to borrow from those other jurisdictions that have tried and tested the system and therefore would have met with some measure of success, rather than seeking to reinvent the wheel. Mr. Speaker, this is important because even, for example, when we look at determining maintenance rates and what conditions become attendant to dissolution of marriage, one must be cognizant of the scientific evidence out there. For example, the court may decide in a divorce proceeding how much should go towards maintenance for the child. There are institutions such as the Welfare Department, the Child Care Board and others that are able to gather information such as what it really cost to maintain a child in the Barbadian society today and give guidance to the judge who is hearing the matter to make an informed decision with respect to maintenance. Therefore, we certainly have other jurisdictions, Australia and Canada come to mind, that have addressed this issue. Therefore, this Bill is giving the court system and other parties the leeway and freedom to borrow from those who have before dealt with these matters so that we can have relevant principles and guidelines going forward.

Mr. Speaker, the Member of Parliament on the other side from St. Thomas did not realise that you could not deduct maintenance charges from the salary of a public officer. I am advised that with this Bill now, that can be done because public officers also do the same thing as those who are not employed in the public sector when it comes to these matters and, therefore, it is bringing a level of equity to the system by ensuring that those who are gainfully employed by the State, whose income is known, that where the court determines that they ought to make a contribution towards the maintenance of their offspring, that the employer is instructed to make the necessary deduction and ensure that it is paid.

Mr. Speaker, we have about 30 000 individuals employed in the public sector, which makes us the single largest employer and, therefore, it would be wrong for us to have one set of rules that apply to those who are not employees of the State and another set of rules for those who are employees of the State and, to my mind, this brings a level of equity to the matter.

Mr. Speaker, related to this, let me state here that this issue of maintenance is one that consumes the time of a lot of us as politicians. Sir, oftentimes you get calls from people who are before the court and they tell you that if they do not pay the child support by tomorrow that they will go to Dodds. Sir, all of us on both sides of the political divide get that almost on a weekly basis. Sir, that is a constant cry and I always say to those individuals, particularly young men, that if they know that child is theirs that they ought to make every effort to support that child. Sir, I say this as a father of two young sons, that you cannot value in dollars and cents, the love, care and support of a child. I often hear men quarreling and saying they cannot find $150 to give to the court system.

Mr. Speaker, I am a little sympathetic with those men who are not working, who have tried everything possible to find a job and they have not been successful in finding a job. You cannot get blood from stone, so if a man is unemployed and he has tried every possible mean to gain meaningful employment and he has not been successful, I cannot crucify him because he does not have the money to support the child, but I have no sympathy whatsoever for men or women in this society, who earn a decent income, who are able to maintain motor cars, who are able to take their girlfriends and their boyfriends abroad on a trip, who are able to buy Pandora bracelets for their girlfriends or whatever, but would not support a child and, Sir, they often do it out of spite.

Mr. Speaker, I have always said that no matter what happens between a man and a woman, a child should not be made to suffer. They were not asked to be brought into this world but once they are here, it is our duty as parents, regardless of any arguments between the husband and the wife or between the boyfriend and the girlfriend to support that child. Therefore, Mr. Speaker, I wish to make it abundantly clear that I give no ounce of comfort or support to any man or any woman in this society who has the wherewithal to support their children and who refuses to support that child. Sir, support is not limited to financial contribution. It is not enough for me to just buy school clothes for my children at the beginning of the school year or give them occasional lunch money or bus fare to get around. Sir, those things are not enough. It is important as well that I find a couple of hours a week, even in my busy schedule now, to ensure that I am there to look over their homework, that I am able to take them to the beach, and that I am able to say to their mother that it is my time to take care of the children and spend quality time with them.

Sir, these things cannot be enshrined in law; it is what we ought to be doing because it is naturally what being a parent is about. I am concerned that we have a lot of fathers in this society but too few daddies. Sir, I think "daddies" is the term that one can rightfully use.

Mr. Speaker, to be fair, there are some women who may find that they are also in that position where they are not pulling their weight when it comes to supporting their children. Sir, oftentimes men are vilified, seen as the biggest criminals and hooligans when it comes to supporting children in this country but there are women too, who are not pulling their weight, either financially or emotionally. Mr. Speaker, the law cannot address everything but I think as parliamentarians and leaders in this society, we have to send the message clearly that the Barbadian society must not lose sight of the fact that our children are extremely important to us and that it is not just about dollars and cents to ensure that boy or girl has a well-rounded upbringing in this society. Sir, once those things are done and we take these matters seriously, you would recognise the connection between that, a decrease in crime and lawlessness and bad behaviour in this society.

Mr. Speaker, let me also say that going to court in front of a judge is not going to necessarily make you a better father or a better mother; these are things that you have to address frontally on your own. I am very happy that we are certainly moving in a direction where we can address a lot of these issues in law that have not been addressed before.

Mr. Speaker, the other issue is marriage counsellors. Sir, this Bill before us today certainly brings clarity as to need and role of having well trained and competent marriage counsellors involved in these matters. Sir, even as we talk about ADR within the judicial system, at the end of the day, two parties having a disagreement can well avoid further hardship and avoid unnecessary costs by having discussions with someone who is well trained in the field. This person should not just be a neutral person but one who is prepared to listen and who is prepared to give an objective opinion on the matter and find sustainable solutions.

Mr. Speaker, this part of the Bill, to my mind, is extremely important because as we reflect over the years, when we hear about some of the marriage counsellors that existed in this society, and realise that they have caused more marriages to fail than to keep more marriages together. Let us not bury our heads in the sand, there have been some individuals over time who have masqueraded as marriage counsellors in this society who, when this Bill is passed, cannot fit the grade. Sir, certainly, all of us in here have talked about this outside of the Chambers, not on the Floor of the House. Sir, people go to these people for counselling and then you find that your wife gets carried away, or even gets pregnant, or that the husband has gone somewhere.

Asides.

Hon. D. O'N. INNISS: Mr. Speaker, this is the reality that we face. Sir, if we recognise that being a marriage counsellor is a special discipline within the realm of social services, then we cannot laugh at it and pooh-pooh it. We certainly have to bring to the fore those skills and ensure that when a judge says to a couple that they should go for counselling, that they are going to go to someone who is competent and someone who is trustworthy, not someone who is going to run off with your wife. Sir, that is the reality that we have to face in this society. I fully endorse this part of it before us today.

Mr. Speaker, as I close on this matter I am satisfied that what we are seeking to do in this Government now is to continue the wonderful work we have been doing since the early 1960s, in terms of placing at the forefront of our

agency family matters, in ensuring that women are not unnecessarily disadvantaged and that the rights of children are not only enshrined in law but that we give the kind of enabling environment that allows them to have rights and to enjoy the rights in this society.

Mr. Speaker, it also seeks to bring great clarity to matters that before have been rather ambiguous and cause a lot of friction in this society.

It certainly brings to the fore as well procedures that would govern the affairs of settling matters of dissolution of marriages going forward and addressing the matter of children who are offspring from such marriages.

Mr. Speaker, with these few words, I am obliged to you.

Mr. SPEAKER: The Honourable Member for the City of Bridgetown.

Lt. Col. J. D. BOSTIC: Thank you, Mr. Speaker. I rise to make my contribution to this Bill which seeks to amend the Family Law Act, Cap.214. I do so, not from any legal perspective because I am certainly not qualified to that, but because I believe that the enactment of legislation is not done primarily for those of the legal profession to eloquently articulate their positions in courts, but I believe there is a human element to this. I believe that laws are made to protect society, to protect communities and to protect individuals. So I consider the amendments to the Family Law Act to be very important to our society and I am very happy to be able to speak on this matter and to register my support early for this Bill.

Mr. Speaker, I believe that this Bill is important and the Act itself is very important because we need in this country to safeguard the institution of marriage as we know it, and where there is institutional disintegration, to provide for a peaceful resolution, and for the safeguard and protection of children who emanate from marriage. I also think that unions other than marriage also require intervention in order to bring them in line with the institution of marriage.

I believe there is a link between poverty and the very things we are debating here this afternoon. Even though that link may be considered to be slim or small, I think that it exists. We live in a society where, as we know, poverty is on the increase. The incidences of intergenerational poverty are on the rise. I believe that one of the causes of intergenerational poverty is the perpetuation of situations where several hundreds and thousands of our children are denied the right of securing a better education, a better life, because those who are responsible for providing for them have not been doing so. So, for me, coming from a community where this certainly exists, I believe that this Bill is indeed very important.

Let me say from the onset that I know these laws were created largely to protect and safeguard women in our society but I would like to take this opportunity, really, to congratulate those men, and there are many men who I believe have been stepping up to the plate; many men who have been making significant strides in this regard even though we have a long way to go. I personally would like to congratulate the men in this country who have been taking care of their children, who have not been delinquent and who have been providing that moral and financial support as required.

One of the things that concerns me is the whole question of counselling. I say so because from experience, I know that is one of the weaknesses within the system. It is a serious matter which needs to be addressed, and coming from a community where unions other than marriage exists, where there are social stresses, I am saying that we need to create some mechanism outside of the formal structure that is being articulated here in terms of counselling, to take care of alternative dispute resolution within communities and within communities that have a large number of unions other than marriage. If we do not make an intervention in this regard, I do not think we are going to be tackling this problem in its entirety.

One of the things I want to draw to the attention of this Honourable Chamber is, Page 16, Paragraph 55(3) which deals with the legislation which makes it an offence for a person who is required to pay maintenance to move or change address without informing the court. I draw reference to this because certainly in a place like a constituency of the City of Bridgetown where people move daily, one week they are living here downtown, the next week they are living uptown, this is a serious matter because it becomes a criminal offence and people can receive, I believe, a six-month incarceration, or a fine of $1 000. In this regard, I think that a serious educational programme is going to be required in order to facilitate this part of it. I think it is a good thing but there must be a strong educational programme because this is going to require a cultural shift within large segments of this society.

Mr. Speaker, we also have to look at a situation in Barbados where large numbers of young men are unable to provide maintenance for their children because they are unable to find jobs. That was alluded to by the previous speaker but I want to take it a step further. There is a large number of young men who are unable to find jobs because they have criminal records and with these criminal records they are being denied, in several cases, the opportunity to work. If they are not going to be allowed to work, obviously we are going to have a problem with the children

being able to get maintenance. So I would like to urge the Honourable Attorney General to look at this situation, to see what can be done in order to either reduce the time it takes to have the records cleaned or expunged, or some other method to be utilised for those persons who have been rehabilitated and who have reentered society, to be able to get jobs much easier.

Sir, one of the Objects and Reasons given for these amendments is to redefine the period during which the parties of a union other than a marriage is required to have continuously cohabited. I think this will bring clarity to a lot of situations that exist. The question of unions other than marriage is something that is here with us. It is a significant number of people who are affected in this way and I believe this will bring some sort of clarity to this particular situation.

We in Barbados have had the situation where most of our families have tended to be matrifocal or mother-centered. So most of the legislation seems to be centered around the protection of women. There is nothing inherently wrong that but as I said earlier, we have a lot of men who are stepping up to the plate and in my goings around this country, certainly in the constituency that I represent, I have seen a lot of men who are actually looking after their children. There are the ones who are doing it on a day-to-day basis and so they must be taken into consideration whenever we make these amendments.

Mr. Speaker, these amendments to this Act have the support of the Opposition and certainly have my support as the representative of a constituency where poverty is high and where the support for children is not what it ought to be.

I have a serious concern about this thing called intergenerational poverty, a serious concern about the fact that a number of our children are denied the life chances to pull themselves out of the jaws of poverty because they do not have that financial support which is required to do so and in a lot of cases, this leads to low self-esteem, when they look around and see their peers being to go this place and the next, when they look around and see their peers who may not be doing well in school being able to go to lessons because some parent is paying for those lessons and they are unable to do so because there is no money coming in and this is something that we need to be able to speak to as well.

We also have the situation of a large number of young men who may be incarcerated and they were the ones who were providing for the children. In a lot of cases the mothers are not working and then this creates a welfare situation. I am suggesting that perhaps instead of cases like these being considered as welfare cases that maybe this Fund could provide maintenance for those children whose fathers are incarcerated and whose fathers would have been providing for them before that period of incarceration.

Mr. Speaker, Sir, it is really a pleasure of mine to lend my voice and my support to this Bill and to say that this Opposition stands ready to support the Government on this matter because we too care about families, we too care about the society in which we live and anything that is being done in that regard and in that direction will certainly have our support.

Mr. Speaker, with those brief remarks, I thank you very much.

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

Mr. R. St.C. TOPPIN: Thank you, Mr. Speaker, I will be very brief in my contribution.

I wish to add my voice to those who have supported what has been brought here today by way of these amendments, and I think that there are some good points in the Bill before Parliament today. I think that it is good, quite frankly, to remove as many obstacles as possible to people moving on with their lives, after they recognise that perhaps they have made a mistake and wished to do so. I note the section in the Legislation, for example, that gives the court the power to grant a Decree Absolute even in circumstances where property matters have not yet been finalised, as indeed is the case where even the issue of the maintenance of the child is not yet finalised. Sir, I give full support to those provisions.

Sir, I would wish to make just one or two observations, however, on the Legislation that the Minister in winding up, perhaps, can address. I note that at section 6A.(1) there is the establishment of a Marriage Counselling Advisory Committee. The first thing that struck me about this Committee is that there is no limitation on the numbers of persons that can be, in fact, appointed to the Committee, which lends of course to the possibility of it perhaps being big and unwieldy. My greater concern with the composition of this Committee is that it has no involvement, whatsoever, of the church.

One of the functions that this Committee is supposed to discharge is to advise the Attorney General on matters mentioned in sections 7 and 8, and any other matters that relate to marriage, as the Attorney General requires. Now, I would want to ask on looking at the persons listed who would definitively be on this Committee, I can see no absolute virtue or advantage in having the Registrar of the Supreme Court being an advisor to the Attorney General on matters relating to marriage, as opposed to anyone else under the sun. I cannot see a representative of the Paramedical Professions Council again, possessing any

extra ordinary knowledge in relation to marriage, as opposed to anyone else and being therefore an institutionalised and named advisor to the Attorney General on matters relating to marriage. I think that stands in stark contradistinction to the omission of any representative from the Church, because there are few people in this world who know more about the goings on in families and certainly between partners: husbands and wives, than a priest. Many people go to priest almost on a weekly basis after church with reports as to how they are getting on between themselves.

I remember, in fact, Mr. Speaker, a former Chief Justice of this country, now deceased, Sir Randolph Douglas, who used to say in court, in terms of the authenticity of any statement in relation to counselling to parties, that if it were a Methodist priest, that he I would be the first to recognise the validity of the counselling and so on and therefore even at the highest judicial level there are those who would recognise, Sir, the church and I believe that the church in any dealings or advising in relation to matrimonial issues on any committee I believe that the church should feature prominently but I believe that is not the case in this Legislation.

I am also seeing, Mr. Speaker, a bit of a conflict or a contradiction emerging in what is before us today because I mentioned earlier and I was very pleased to see that there was ...

Hon. D. O'N. INNISS: Mr. Speaker, on a point of order. The Honourable Member is misleading the Chamber. The Honourable Member has basically stated that the Registrar of the Supreme Court, the Chief Welfare Officers and those listed at section 6A of proposed amendment in this Bill are not qualified to offer advice on marriage or engaged in marriage counselling.

Mr. SPEAKER: Honourable Member, if that is his view, what is wrong with that?

Hon. D. O'N. INNISS: Yes, Mr. Speaker, and the Honourable Member should know better as a lawyer, but it basically states here that Committee, as the Honourable Member described is not in itself offering counselling services. They form the Committee who advises the Attorney General as who should be those qualified as marriage counsellors in Barbados, which to my mind is totally different from what the Honourable Member stated.

Mr. SPEAKER: No point of order found. Honourable Member please continue.

Mr. R. St.C. TOPPIN: Thank you, Mr. Speaker, because I was explicit in saying that this Committee is to advise the Attorney General on all matters that relate to marriage. That is what the Legislation said and that is what I quoted.

Mr. SPEAKER: That is what he said.

Mr. R. St.C. TOPPIN: Thank you, Mr. Speaker, for having heard me correctly.

I am also seeing, as I was saying, Sir, a bit of a conflict and contradiction here because on the one hand you have the situation where we see signs that you want to free the hands of parties who wish to go their separate ways, so you give the court the power to grant a Decree Absolute even where property matters are not settled and even where maintenance matters in relation to even children are not fully resolved, which of course in the case of children's welfare will have to be an exception rather than the rule. I see you were going in that direction of facilitating parties separating where they cannot make it but on the other hand, Mr. Speaker, I am seeing a section where parties must seek counselling before they make an application for a divorce.

Mr. Speaker, I see absolutely nothing wrong with the present situation where a party comes to you for a divorce and you suggest to them that there are counselling facilities available and they make a determination as to whether or not they wish to have the counselling. Sir, to really decide that you are going to make it mandatory that people must have counselling before they can make an application for divorce is really to go against that drift that I saw earlier, where you are facilitating parties separating and going their separate ways by a requirement that compels... It is almost as if you are compelling people to spend more time together.

If a party qualifies to apply for a divorce, it means that by law they have already lived separately and apart for at least one year, and if in the course of one year it has not occurred to you that we should actually go at it again or come back together, it means that it is totally lost, and that is the reality.

Legislation really has to operate, in my view, in the context of perhaps you could say harsh reality. If people cannot make it, they cannot make it. By the time someone comes to you for a divorce, 95 per cent of the time that person is resolved that they have had enough and that they want to get to the courts with this matter. Even as often as you are saying to a party a facility is available for counselling their ears are almost blocked and they are often not even hearing anything what you are saying. They have come resolved with the fact that they want this thing to end and that is it (full stop). Mr. Speaker, I can see no justification for saying to people now that before you could apply for a divorce you have to go and get counselling.

On that, Mr. Speaker, as well, counselling is a business, it is not free, so I want to know if you are now saying to people that in addition to having to incur legal cost associated with a divorce, which would happen whether or not they go and get counselling, that they must also now go and incur an additional financial expense to secure counselling, which really and truly will be of no avail.

Mr. Speaker, if there is one area of divergence that I have, apart from the non-involvement of the church with what is before us today, it is this notion of making it compulsory that parties must go and that an attorney cannot proceed unless he produces on files at the time of the application a certificate verifying that the parties have had counselling. I think that is to add an unnecessary burden on individuals.

In fact, Mr. Speaker, I would even go further in terms of the real world and divorce and say that I believe that it is high time that the issue of applying for divorces should now be one of the items, the application itself, added to the list of causes or cases for which Legal Aid is available because right now you have the situation where persons of low financial standing often cannot afford to apply for a divorce because the legal fees can be a bit high in some cases, but if they go to the Legal Aid Department, they hear we cannot give you any Legal Aid for a divorce application, we will give you to apply for maintenance of the children and so on but not for the divorce.

Mr. Speaker, again, some people are forced to stay together or stay in some "relationship" because sometimes they cannot afford to pay to get out; forcing people to stay in a relationship particularly where there are children sometimes contributes more to the trauma in the psyche of children than if you let them go their own separate ways. It also, as we know, obviously breeds violence as between the said two parties who cannot perhaps by that time even stand the thought of each other and you are doing things to lock people in more and more.

Mr. Speaker, I am all for those who believe that marriage is sacrosanct and who want to get married and who want to stay married but I also believe that those who want to get out of a marriage should be allowed to get out of the marriage; it is as simple as that. I do not think that you can legislate love or reconciliation. You cannot legislate any of those things so I think the law should fit into the reality and facilitate those persons who have tried and tried again but have reached the stage where they now have said sorry Sir but we cannot make it and we need to move on.

Sir, this Bill today deals with reform. I know that the issue of what qualifies for Legal Aid would not fit into this Bill but I am just making that as a general point. What I would have liked to have seen also in the area of reform of the Family Law legislation is the issue where parties enter into agreements with each other in relation to financial matters or whatever other arrangements they wish in relation to the relationship as they seek to go their separate ways but that agreement that they entered into between themselves is not valid unless it is taken to the court and sanctioned. Section 67 of the Family Law Act deals with that.

I can see again no justification where two parties decide they wish to... In fact, in relation to unions or unions other than marriage, for those relationships to end, you do not even have to visit the courts at all to sever a relationship between two persons in a union, it is not like in a marriage where you have to get a divorce. You could literally walk away from a union. If two people decide, particularly in the case of unions, that we are now willing to enter into A, B or C agreement in relation to financial issues and we wish to sign off on this agreement, why for that to be valid should they have to take it to a court for a court to sanction it? Ninety per cent of the contracts in the world never see any courts at all and they are perfectly valid and enforceable, so why do you take an agreement between two parties who would have had independent legal advice and require that in order to have any validity to that agreement, that validity can only come if you go to a court at expense again and in terms of time consumption to have a court pronounce on what you as two mature adults decided is the way that you would wish to have your affairs sorted out.

Sir, that is one area in terms of reforms that I would have wished that we could have seen today but the Government is indicating that it is moving in the direction of reform and therefore I would expect that is an issue that could be examined as well.

My last point is really more of a question. I would like to have a report on, I am not sure if it is a fund or just a system, that was put in place in relation to mothers getting maintenance in relation to fathers who are not paying. I would like to hear exactly how that is functioning because there was one case where a lady from my constituency came to me in tears because she had gone to see if she could have gotten some money because the child's father was not supporting the child at all and she was told point blank: "Sorry, we cannot entertain your application because the father of the child now lives overseas and there is therefore no way that we would ever get the money back if we give you".

Sir, that is one area where obviously there is a loophole in respect of the system that obviously can be taken advantage of or put differently, certainly would work severely and seriously to the detriment of the child who is the intended beneficiary.

Mr. Speaker, those are my brief thoughts on the matter and with that I am obliged with you.

SUSPENSION

Hon. J. D. E. BOYCE: Mr. Speaker, I beg to move that this Sitting be suspended until 5.20 p.m. today.

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

The question that the Sitting do now suspend until 5.20 p.m. was put and resolved in the affirmative without division and Mr. SPEAKER suspended the Sitting accordingly.

RESUMPTION

Mr. SPEAKER: Good afternoon, Honourable Members. This Sitting is now resumed. When the Suspension was taken we were on Order No. 4, with that we shall continue. The Honourable Member for Christ Church East Central.

Hon. R. D. JONES: Mr. Speaker, I am so pleased to see that both sides of this Honourable House are in fact agreeing on something. It is important that we are all agreeing on that which is the foundation of every society, that is discussions about the family. This Bill brought by the Honourable Member for St. Philip South seeks to put in place a set of orders, a set of principles through which certain behaviours can be orchestrated or patterned, that is essentially what the Bill is seeking to do. The Bill is also seeking to correct anomalies which have emerged over time, because there is no Bill or Act that is perfect in its writing and for that matter in its implementation. Therefore, the Honourable Member should be commended for bringing this Bill to the House.

Mr. Speaker, essentially what we are trying to do is almost impossible, it is almost impossible because we are dealing with human-beings. Human-beings, to some extent, always look for a way out, particularly when they feel themselves being circumscribed in some way. I am not necessarily talking about individuals who by their very nature do not want to take unto themselves any responsibility. I am not talking, as we say in the Barbadian vernacular, to the ram goat who wants to move around the community spreading his seeds as much as he possibly can or any individual for that matter who wants to do that.

Mr. Speaker, I have listened to the Honourable Member for St. Michael East who dealt with the historical sociological connections and the emergence of many of the contradictions which still exist in our family relationships, even now. Sir, even though I understand very well what the Honourable Member was saying, I do not want to tie myself between 1838 and 2013, believing that change cannot take place. I do not want to do that, that is almost to accept a defeatist notion that as a people we cannot change for the better. I am not going to accept that. I am not going to accept that because "Willy Lynch" says that based on what he did at the time that certain social conditions can be bred into the genetic strands of an African people and that therefore we have to behave in a particular way. I am not going to accept that. We have been enlightened and educated. We have been able to read. We have been able to examine, to talk and to discuss over time what should be the better or best approach to protect our families and our children. What has been happening stems out of bitterness and sometimes anger that one party feels for the other, and the obvious consequence is almost a destruction of the child.

Asides.

Hon. R. D. JONES: I believe the Honourable Member for the City of Bridgetown spoke to the issue of how marginalised, how affected children feel in a situation where two adults cannot sit and resolve the difficulties between themselves for the betterment of the child. In fact, our culture is particularly interesting in many ways; it is dynamic and not stagnated. There are instances, and we know of these instances, either as a result of us being not necessarily participants but observer/participant in a particular situation or being told stories of many persons being abused, many children being abused because you simply look like your 'no-good' father. That is the reality that we have encountered because in a situation the mother has not been able to cleanse or to purge herself of the anger which she feels for the man. We do not necessarily know what went on in the environment or we might have heard what went on but into the world came a young man or woman and then the vexation, bitterness and anger is visited upon that person, who does not know how he or she got here in the first place; an innocent child who is suffering the consequences of adult behaviour.

Mr. Speaker, the Honourable Member for St. Thomas or the Honourable Member for St. George North have all been teachers and can tell you of the children with whom they came into contact who were unable, because of these circumstances, to respond to educational stimuli; children who are suffering the burden of parental neglect either by father or by mother, and sometimes these are situations which bring you to tears because of the depth of inhumanity which can sometimes be visited on young people. It is on both sides of the coin where males are sometimes forced to take on the responsibility of their children as a single parent.

Mr. Speaker, we talk about only females being only single parents but I remember a case of a husband and wife, that was so many years ago. One day I saw the gentleman bringing four little children who were of different ages to

school, they were probably separated by a year or two. When I inquired what was going on, I was told that the children came to school, the father went to work, while the mother abandoned everybody, took a plane out of the country and left without saying one word to anybody.

Sir, she did not say a word to the children or to the husbands. She did not even say she was leaving, she just abandoned them. Sir, interesting enough, as you watch those children progress and you watch a caring father who demonstrated that he would not abandon his children even though the circumstances would have been changed.

Mr. Speaker, those are changed circumstances because the father now has to get up a little earlier and get those children ready through the total process of breakfast, getting them ready for school, bringing them to school and heading off to work and if you have to get to work at 7.30 a.m. because you are an artisan or something like that, you have to do that. You have to get them ready and get them into school and hope that some adult is in the school environment to take care of them. Mr. Speaker, thankfully, we have always had pretty good general workers in that time, what we call janitors and ladies who were mothers who took those children under their wings and looked out for them.

Mr. Speaker, the complexity of this is that the gentleman used to be one of those persons who used to go overseas to cut canes in the Farm Labour Programme so that had to be completely abandoned because where would he leave those four children, who were all boys. Sir, he had to create work in the Barbadian space. But those boys then became men.

Mr. Speaker, you cannot remove the scars from those individuals and when we look at some of our children some have deep internal strength and beauty to behold, that out of the muck and mire of their circumstances, they have emerged great citizens of this country, after being abused in ways that we cannot even comprehend because the abuse of the mind, the damaging sharp-edged tongues on young souls is something else because of man/woman situations and relationships and the poison that belches out of the belly onto the backs of our children. Sir, our guidance counsellors, our social workers and our clinical psychologists are overwhelmed today because it still continues.

Mr. Speaker, you just have to experience it. Again, the Honourable Member for the City spoke to the movement between uptown and downtown. Sir, even though Barbados is 166 square miles and Culpepper Island, sometimes it feels as if it is large because you can disappear from St. Michael into St. Philip, into St. Lucy, and into St. Peter and cannot be found. You have abandoned your early commitments and gone somewhere else.

Mr. Speaker, I know that this is a beautiful country, regardless of what I am saying, but there are persons in Barbados who have sisters and brothers going back to the 1940s, 1950s and 1960s when Barbados was heavily agrarian based and a plantation economy and the male who started working on the plantation, let us say at Coverley and then had to shift and go to Bushy Park or somewhere in St. George, who would have had five children from a lady in his district and ended up with seven from another lady in another district. Sir, this the reality of Barbados that we need to write about, because this is sociology, it is action based.

Mr. Speaker, I know of a gentleman, a towering hunk of a man but hard-working, who had 26 children - 13 boys from one woman, and 13 girls from the other woman. It is amazing, the handy work of God. Sir, these things are truly amazing; one woman gave birth to 13 girls and another woman gave birth to 13 boys, and their ages almost corresponded. Sir, this is no story. I have always been fascinated by the ability of persons to co-exist in that circumstances, and I never saw any war [between them].

Asides.

Hon. R. D. JONES: It was not a Jones. I believe the person was a Brathwaite. Mr. Speaker, I believe at the base of a lot of these things is the ability of persons not to be able to live together. I believe the Honourable Member for St. Michael North East once made the statement in Barbadian vernacular that you cannot ‘take a horn’ but I would more refine it and say that if you cannot live with the person, you should move on because then sometimes, one has seen death as a result of people not moving on and then the ensuing result is viciousness, brutality and abuse, either male-on-female or female-on-male. There is vicious abuse and sometimes some of that results in death.

Mr. Speaker, this Bill seeks to bring some calm to the waters for children who are neglected as a result of not being able to satisfy their means and their ends. Sir, I do not want to offer excuses for male or females because as human beings we have to do everything legally necessary to support our off-springs. Sir, in the animal world protection of the offspring is paramount. You see it every day in the ferocious tiger or the lion, it is a sight to behold. When the young is in a position of danger, the lion or the lioness or the tiger or the tigress comes with those vicious fangs that can tear you apart and cushions that little one in that jaw and moves them miles out of danger and harm. How much so can we human-beings who have a cognitive structure, who have an emotional being, a social being and a spiritual being even, how much more so could us as

human-beings move our little one out of the paths of danger.

Mr. Speaker, one makes that point and it comes from the notion that it takes a village to raise a child. Our children are not our children, they are the sons and daughters of the universe. Sir, in other words, we too have a total responsibility to our young ones: "Suffer the little children to come unto me and forbid them not for such is the kingdom of God".

Sir, that is, in the child must be a certain level of innocence and that innocence becomes very badly damaged as a result of what is poured into that child; all of the abuse, all of the neglect. "Get outside because somebody is coming in and I need to make some money tonight". These are the realities of our lives.

I see in our country and sometimes again we make excuses. In the 1950s and the 1960s when mothers and fathers worked beside each other on the plantations of Barbados, children would get something to eat, do not fool your foot; even if it was a stewed potato and a tot of tea. Families ensured that that happened. That is the history of Barbados. Today there are persons who are rushing off to work and saying to their children: "Oh, go down the road. There is somebody preparing breakfast that you can get some." I have no problem with the benevolence of all of these organisations walking about the place preparing breakfast that came out of a project somebody wanted to do; let us now develop a breakfast project and then everybody joined that breakfast line. So it relieves the family of what is an important responsibility for them, that is, looking after your own. I am not saying that children who cannot get, should not get. I am not saying the days of the park food was not important to some people. It is important to some people but you do not push off your responsibility unto others. You look after your family by whatever means necessary. Therefore, if there is any appeal to be made it is for families however they are structured, because we have all kinds of families that we call our own, that is what we have.

I know the days of the extended family even if they were not married before God and man. I know the days of the nuclear family. I know the days of the visiting relationship. I know the days of the casual relationship. I know the days of the almost parallel family structure: one family here, one family here, one man in the center. I have seen all of that in our community. Three are even now emerging family forms which will cause us as a Parliament and as a people to see what we can do. We are scared of touching it but there are emerging family forms which frighten the underbelly of this society; persons who are not necessarily because of the relationship forms, have children within that family.

Asides.

Hon. R. D. JONES: No, I am very comfortable. I am not going to give you anything to run with this time.

Asides.

Hon. R. D. JONES: Mr. Speaker, I will not give them any food for them to eat. I am going to stay on a straight and narrow line. I am speaking of emerging family forms which will come into our space, so it will extend the kind of family forms we now know. How are we going to deal with these? These must be questions which essentially must be answered at some time. We cannot run away from them because societies evolve and new patterns, new contortions of life emerge, but at the base of every society must be families who stick together.

Sir, there are persons who would tell you that they are going up to Dodds; they do not care how many times they come for them, that they are going up to Dodds. Then there are other persons identified who try very hard to support their children. I have seen so many situations. I believe the Honourable Member for St. Michael East spoke to it. Men who out of their pay pack every week would take money to the lady. If they are not taking money they would take all kinds of foodstuff, groceries, things to clean your skin and your teeth for the family, but somehow if that man looks at somebody else then everything breaks down, everything goes to pieces. The next thing you would hear from the mother: "I am putting you in court". And the good lawyers all around the place -there are good lawyers, all of them are - when a client comes to you, you must give them the most effective representation. You go to court and the person who imposes the penalty if you are not married, or whomever, if you are married there are different circumstances prevailing, before you used to get $90 a week for that child and the magistrate or whomever now says $50 or $60. You then leave the court and cry your eyes out because of what you did. All of this happens in this country. This is not unique to Barbados. It is not unique to Caucasians or blacks, Africans or Europeans. We are not necessarily taking onto ourselves something that is unique to us. It happens in the world. You check the United States; fellows run blue murder from New York to California, just to escape the responsibility of taking care of their children.

Sir, we have to breathe a level of consciousness to make it possible to remove the neglect from our children, to remove the issues of hostility, the division of property, if divorced, et cetera. There are many persons who have been divorced, and if you have not gone there you do not know how it is. You do not know, until you walk in my shoes, until you have walk in the shoes of those who have gone there you cannot speak. You do not have the pleasure or joy. You do not know the satisfaction or the dissatisfaction.

Mr. SPEAKER: Honourable Member, you have five minutes in which to conclude.

Hon. R. D. JONES: Five minutes?

Mr. SPEAKER: Yes.

Hon. R. D. JONES: Thank you. You do not know. It is not a matter of which you joke. These things are not joking matters. These things are realities of life brought about sometimes by intractable situations where two persons might not be able to continue, either bred by mistake, either overtly or otherwise, either by malicious wicked rumour, innuendo and everything else that people hatch in the misery of their brains to affect your own lifestyle and patterns. Do not fool your foot. Not everybody carries the same strength to turn away those individuals, those wicked ones who in their penetrative way becomes like the snake in the grass and eat the bowels of your relationships apart, eat it out. That is human life. It not about neither do I condemn thee, go and sin no more. It is human life.

Sir, we have to garner as adults our own strength to surpass, go pass what you call those challenges, those hardness of wall, those hardness of spirit. You have to go pass that to prove your mettle, but some adults cannot. There are persons who have taken their own lives in the circumstances of divorce. There are persons who have done that. There are persons who have seen all that they have built up and unable to prove that they built it up and end up with zero. They have to start from scratch.

I saw a big man cry tears, 'bucket a drop' literally two weeks because of the separation of the resources. Do you know this phrase, Mr. Speaker: "I will take you to the cleaners?" Women are strong, do not let us fool our feet, women are strong and they have supportive structures which buoy them in their quest for what they call satisfaction; and you leave, you stumble down the steps of the court, your face all mashed up, [all the while being] unable to claim anything. Your whole lifetime changed and everything.

Asides.

Hon. R. D. JONES: These are not joking matters. They need a lodging and all kinds of things. They cannot start back. There are some men, thankfully also, who walk away from it and start again, because there are all kinds of different circumstances. All I am saying is that as we look at the human life within the context of relationships, within the context of family, with children, with parents, it takes two to bring children into the world but it also takes many to take those children through the world. This effort is human effort to try to make a difference through Legislation. It is just like when we did that matter to give those parents who might hitherto not be getting the money as quickly through the courts. It was a small effort but it is an important effort that statement was being made that somebody in the country cares. It is not the massive degree because I do not know if $10 million would be enough even to satisfy sometimes the neglect.

I agree with the call being made that we must have constant oversight of these circumstances in all of our social arrangements, so that people who go to any of our social agencies do not feel as though they are worse off for having gone there because of words which then come to them, either in our social welfare agencies or before the court where they go and collect the few cents.

We have to breath, in the 21st Century, a deeper sense of humanity, buttressed by our spirituality, buttressed by our total emotional regime to make sure that all of our people can somehow go to the bar and be satisfied.

I give my full support to this Bill, Mr. Speaker.

Mr. SPEAKER: I am obliged.

The Honourable Member for St. George North.

Mr. G. A. CLARKE: Mr. Speaker, when I first saw this Bill today, I laughed very loudly because I asked myself what was it that the Attorney General wants now? What it is that the Government wants? I remember in the 1980s when a holistic matter of this nature came to the Parliament at the time, the then Attorney General who is now a Knight, brought the Bill and men felt that they were disadvantaged by the amendment at the time. It is true that the Barbadian society benefitted because we outlawed at the time children born out of wedlock but when I first saw this Bill today, as I said I laughed because even though I support the Bill, I believe the part that made me really laugh is when a family has been cohabiting for five years or more, one of the parties left the union for six months or more, and then that person can return to the union as though there was no breakup at all.

I really believe that this to me is not a problem but that we have to explain this to the public. If I am living with a woman other than a marriage for five years or more, she has decided to go on, in other words, she has 'horned' me. I have been 'horned'. She went on with another person. Then after six months, Mr. Speaker, the lady decides to come back with me and I have to take her back. There has to be an agreement. I have to take her back and then the five years continue as though there was no breakup at all. I laughed loudly because I asked myself what it is that the State is getting itself into at this time. I made this point last week. Why is it that we are forcing individuals to get back into a relationship after the breakup period?

I personally believe, Mr. Speaker, that this is going to cause some confusion in the society because many families will ask the question, how long do they have to be separated? Is it only six months? Suppose they were to stay for a longer period, what happens [then]? I heard the Attorney General on the radio talking today before I got here about a personal experience. I am not sure if it was the Honourable Member for St. Philip South's personal experience. But a person in a relationship for 20 years. He did not say if the person was into a marriage. He did not say if it was a man or a woman. He did not say if it was - of course there are no same-sex marriages in Barbados, not at this stage, I wonder what is happening in terms of the same-sex because when you look at what is happening in other jurisdictions, this is really unique to Barbados. I cannot, and I was checking to see if there were any other jurisdictions in the Caribbean where a person after living for five years, breaks up and then go back and you have to take back that person and then share the property with the person. Then the matrimonial property and asset must be divided equally between them. There are assets and property and assets and property must be taken separately.

The question is: At what period do you take [into consideration]? You can have a relationship existing. Mr. Speaker, do I take back the individual and continue the period after five years? Do I start from zero? I think the question must be: Do I start from the five years and counting or do I start back a new relationship? I am not saying that a person cannot get back into a relationship. A person can get back into a relation and this is what I am saying, Mr. Speaker, this seems to be unique to Barbados because it is the very first time I can see that the Government is saying to individuals it is alright. And especially persons with property I think must ask themselves this question. I think we need to look at this very carefully and we need to look at section 9 as well.

Mr. Speaker, in some jurisdictions, many a spouse may be divorced after separation for one year. The Government is saying that you need to have counselling. Counselling is essential. I think that before now counselling was done by attorneys-at-law and it had to be done by the Church in some cases. But you are now duty-bound to have a counsellor's certificate before you even start the divorce proceedings. I wonder if this is not a backwards step because it is going to cause a delay, even though the attempt may be one in which you would want to keep marriages together so you have the counselling, this is going to be a delayed process where the organisation that is doing the counselling can say that the parties needed to have a course of 10 sessions before they could be given that certificate. Hence, you are forcing an individual who may want out of the marriage.

I am telling you, Mr. Speaker, that there are many husbands and wives who are living in the same households but they do not sleep in the same matrimonial bed. They do not sleep together. The man wants to get out of the relationship, but the Government is saying and we are saying here today that you must attend 10 counselling sessions, you must keep your marriage together for a period of time and get the certificate before you could proceed to have your divorce; that is why I laughed so hard at this Bill when I first saw it.

The spouses are not capable of what is called consummatum. They are not consummating. When I first saw this word it was way back when I was doing English History when Henry VIII and Anne Boleyn did not consummate the marriage. I asked myself the question, what does consummatum mean. I was told that consummatum at the time meant, this is what the professor explained, that Henry VIII did not actually had sex with Anne Boleyn and that is what consummatum meant. I later learnt that consummatum means when you do not have a child from the relationship. So I do not if there is no cohabiting and nothing is going on within the relationship, why are you forcing a situation to continue within that situation. I think we need to look at this whole question of counselling again. Do we need? How often do we go to it? Is it that you are saying that we must go to the counselling before you get the final divorce?

When I look also at the "Objects and Reasons", I see here that you are to empower the courts to delay the grant of a divorce until property matters have been settled. Here there is some ambiguity which needs to be clarified. Is this what you are saying here? I understand that within the Bill, because we did not have time to read it through, that the property must be settled before the final divorce? In most jurisdictions properties are settled after the divorce, that is why I have asked the question if this Bill is only unique to Barbados.

Mr. Speaker, what is the position with this? I understand that even though the "Objects and Reasons" at (f) is saying to empower the courts to delay the grant of divorce until property matters have been settled, this is not necessarily the case within the Bill so that needs to be clarified. Do you have to wait until the property has been settled? I think we need to look at that very carefully.

Mr. Speaker, I believe that there is an attempt to pull a number of small pieces together and to make it a holistic way but at the same time we have to be very careful because one of the things that the Family Law Act does look at is the fact that the child must be the focus. I think there must be an attempt to be fair and balanced, that the man and the woman... In some jurisdictions today marriage should not only be formed between individuals of different sex. In some jurisdictions you have marriages between two individuals of different or the same sex. So that one has to look carefully at where we are going because I believe that

the next attempt, if Barbados is to follow the trend within the Caribbean and indeed the world, especially if we are a tourist designated country, what is the Government's position on same-sex marriage and what is the Church's position? You have to look at this very carefully. We have to explain to the population where we are going because this attempt is to discuss and to pull the Bill in a holistic manner in order to provide a new framework to move the country forward.

Mr. Speaker, since we are talking about fairness, since we are talking about the focus must be to help the child, not only to help but also must be in the best interest of the child, we have to look carefully at what it is that we are doing in terms of child support.

The Honourable Member for Christ Church East Central did make the point that many children suffer because they are not getting adequate support from the family structure and we need to look at that very carefully. I have made the point before that we need to look at where persons are not adequately supporting the child, where parents turn up at a court and do not get any money and the person is working, we have to look at that carefully. In some jurisdictions there is compulsory garnishing of wages. I think that if the Bill was to be completed, that we should have at least included the garnishing of wages for persons who do not support their children. That is one of the things I would have loved to see in this Bill.

Mr. Speaker, I believe a lot have been said on this Bill but I would want to hear from the Minister what is the best reason to give, to force individuals who have been separated for a period of time back together and then to allow that period to continue as though it was never interrupted. I think we have to look at that very carefully; it is one of the contentious issues that begs the question.

Sir, this was discussed by the Family Law Council, I am not sure that many Barbadians got the chance to see it for any length of time, this is the very first time we have seen it. I am sure that many Barbadians are hearing it for the very first time today and would not have gotten a chance to have debated or discussed it. I know that the Government wants to pass this Bill here today but I hope that in the fullness of time we could discuss it and if it needs to be amended, we will have to do so but it is very contentious and is something that we will have to look at. I am obliged.

Mr. SPEAKER: The Honourable Prime Minister.

Hon. F. J. STUART: Mr. Speaker, I just want to lend my support to these amendments to the Family Law Act and to congratulate the learned Attorney-General for the timeliness of the introduction of these amendments. Of course, the Family Law Act was passed around 1981 and came into effect in 1982, so that 31 years later is as good a time as any to have a look at the legislation after it has been worked for over 30 years, to see what have been its strengths and what have been its weaknesses.

Mr. Speaker, when the legislation was introduced, of course, it represented a marked departure from the legislation which it was replacing. The legislation which it was replacing was largely a piece of legislation based on English law and practice. For a divorce, for example, in order to get a marriage dissolved before 1982, an applicant had to be able to attribute fault to the party whom he or she was trying to divorce; you had to prove either adultery, cruelty, desertion or insanity. If you were required to prove adultery, of course, the standard of prove was very, very high; you had to cite a correspondence, you could not just make wild allegations. If you are saying that your wife or husband was unfaithful, you had to call names; that required men and women to be out at awkward hours of the night, with searchlight spotting about, spotting through cart roads and that kind of thing and dredging up all kinds of unwholesome information to satisfy a court that adultery was, in fact, being proved. The standard of prove was very high and there were many cases where the courts did not think that the evidence before it met that standard and therefore the applications were disallowed, but the damage to reputations was nevertheless done.

Mr. Speaker, it was thought that kind of scenario was not desirable for a society that was placing emphasis on building relationships and welding a society together, therefore a serious look was taken at the law as it related to family. Sir, the object, of course, was to try and keep families together but the law, of course, is quite realistic, it had to recognise that relationships will break and that when those relationships break, ways have to be found to ensure that persons walking away from those relationships could walk away with their dignity intact.

Mr. Speaker, the Cannon Law, as distinct from the Common Law, which was older and which obtained for the most part during the Middle Ages, and even after the Middle Ages Cannon Law principles continue to apply, there used to have a maxim that said that the husband and wife were one person but that the husband was that person. That maxim should give some idea as to where the Cannon Law located women in the marital relationship; the husband and wife were one person but the husband was that person.

We have come a long way from the Cannon Law concepts and from the concepts of Old English Law where a certain equality between husband and wife is now acknowledged by our Family Law which delinked from English Family Law and linked up with Australian Family Law, on which our Family Law Act, 1981-1982, is based.

Mr. Speaker, the other marked departure of the Family Law Act, 1981-1982, was a recognition that there were types of relationships other than the strictly marital relationship recognised by Christendom. As the Caribbean has evolved, through slavery and colonialism, the reality is that our sociology discloses reference to a kind of family practice that is slightly different from the formal marital relationship done for many years with the benefit of clergy.

Mr. Speaker, our Family Law Act acknowledges that there can be other types of unions other than what is formally called marriage. Sir, that concept in our Family Law Act had its genesis in 1975 when the Succession legislation acknowledged the existence of unions other than marriage. It was the Succession Act, 1975, that first enacted that if a single man living with a single woman cohabited for five years or more, the law had to presume that they were living as man and wife and in the event of the death of one, the other would inherit the property as if the two of them were married. Of course, it went one step further and accorded recognition to the children produced by those relationships.

Mr. Speaker, the Family Law Act of 1982/1982 took its signal from the Succession Act of 1975. I think it just went one step further than the Family Law Act and did not insist that the two parties should each be single. Now, under the Succession Act, only a single man cohabiting with a single woman could qualify for the status of man and wife after five years but under the Family Law Act that word "single" is not necessarily there and, therefore, persons who are not divorced can construct unions other than a marriage. The law made a great leap forward between 1975 with the Succession Act and the 1982 Family Law Act and here we have today our Family Law Act and 31 years later, we are able to look back at it to see what are its strengths and what are its weaknesses.

Mr. Speaker, I have practised family law for 25 years consecutively and I have had a chance to see how the Act has worked. Sir, so far as the issue of counselling is concerned, I have heard the Honourable Member for St. Michael North and there is some merit in what the Honourable Member has said, although there is not total merit in it because I think there have been a few cases and the Honourable Member himself may have had an experience or two where counselling did work. I have certainly had a few experiences where referring people to counselling worked. Of course, it all depends sometimes on the state of alienation between the two parties and it depends too on the counsellor because some counsellors are better than others and, therefore, the results produced by one can be superior to the results produced by another.

Mr. Speaker, I do not ignore the efficacy of counselling in appropriate circumstances and I am very glad that the amendments are putting counselling on a much firmer footing than exists as present and that the credibility of counsellors is being put beyond dispute by the legislation. Of course, at present, lawyers almost perfunctorily put in their applications that they have advised clients of the counselling facilities available but very often that has not happened because people do not even want to hear about counselling in some circumstances and they are ready to proceed to a dissolution of the marriage.

Mr. Speaker, the issue of maintenance is another issue. There is a distinction between maintenance procedures in the Magistrate's Courts and maintenance procedures in the High Court. I know that the Family Law Council, when I was Attorney-General, was of the view that one should not deal with maintenance issues in the Magistrate's Courts and ignore maintenance issues in the High Court; that one should aim for a holistic solution to the problem. There is some merit in that argument, except that one might have to wait until the Second Coming to get that holistic solution because the issues in the Magistrate's Courts were sufficiently troubling to require urgent attention. The Honourable Member for St. James Central raised the issue and it is a very valid issue. I have raised it on the Floor of this House before, that it is remarkable that Marshalls of the Court can sometimes find it so difficult to find persons who need to be served with document summoning them to court, when everybody else knows how they can be found.

I know that applications, usually women under the Maintenance Act, have complained consistently, insistently, and persistently about this; that they know where the man is working, they know which bus he catches every morning, they know the bus stop to which he goes every morning, they know the shop at which he drinks, they know the bar in which he socialises, yet the Marshall cannot find him. I have had to speak about this before when I wore the hat of Attorney-General and I think it is a matter that we have to confront squarely.

Mr. Speaker, for the purpose of High Court applications, applicants can secure the services of independent persons to serve their documents and pay them - it used to be $50 when I around but I do not what it is now - and get their documents served and the Magistrate's Courts situation may well have to come the stage where you take Marshalls out of the picture altogether and allow applicants to have their documents served by persons of their choice for a small fee. I am confident that if that is done, you will get more people before the court more easily than has been the case over the last few years, but that is a problem that cannot be allowed to continue to fester. It is leading to unendurable frustrations on the part of applicants who turn up to court and sometimes have to lose a day's work to turn up to court, only to hear that the defendant has not been served because he cannot be found, when

everybody knows where he is working and where he hangs out. Sir, that is an issue which I think we have to confront.

Mr. Speaker, the Honourable Member for St. James Central made some other observations about the Chief Marshall's Office and so on which I think the Government has to look at. This is not a new problem but it has been around long enough that we cannot ignore it any more. There was a time before the establishment of the Marshall's Office when these documents used to be served by police officers. The Marshall's Office, I seem to recall was created some time around 1978 and time may well have come for us to have a look at that too to see how that has been functioning and to see whether we still need it, or if the quality of service it renders can be improved. Sir, that is a very important issue and a very valid one raised by the Honourable Member for St. James Central.

Mr. Speaker, still on the issue of maintenance, the amendments point to the fact that the judge is now being given the power, as I understand it, to substitute property for maintenance. Sir, in other words, to use property in satisfaction of maintenance requirements. Sir, that may cause certain eyebrows to rise but the truth is that the policy of the Family Law Act is to try to bring to a conclusion as quickly as possible ...

I think it is Section 60 of the Act that used to say that the whole policy of the Act is to try to bring relations between the contending parties to the closure as quickly as possible and as finally as possible, because maintenance has been used over time as a subtle form of blackmail where men have been known, because usually there are the men who have to pay maintenance, to play snakes and ladders with the emotions of the women who are to receive maintenance and by extension play snakes and ladders with the emotions of the children who are supposed to be the beneficiaries of that maintenance as well. That cannot be a satisfactory situation. Whatever mechanisms are required to make sure that the potential for that kind abuse is minimised, those mechanisms have to be respected.

Sir, the issue of the abatement of the claims of parties to litigation by the death of one party has been a sour point in the Family Law from 1982. I myself have represented clients, either working for the applicant or working for the respondent, where one or the other side has died. Sometimes my client has been the beneficiary of that death, sometimes my client has been the person on the losing side, but it cannot really make sense in the context of a modern law of succession that if two people were married for thirty years and are now having their marriage dissolved, and - horrible to relate - one person dies, that the accumulated rights of that thirty-year person dies with the person and even though they are leaving children and relatives and so on, that their estate cannot benefit from those accumulated rights.

Undergirding the Family Law is the idea that whether a party has contributed financially to the acquisition, preservation or enhancement of the property or not, as long as that persons has been cohabiting with his partner, husband, or partner in a union other than a marriage, has been around the house rendering services of various kinds, working the gardens, changing the curtains, doing all other things around the house, if those services had to be procured from a stranger those services would have to be paid for. Therefore, the policy of the law is, it is not an argument to suggest that because we cannot prove that your wife or your husband has actually written a cheque or written cheques to contribute to the acquisition, the preservation of the enhancement of the property, that the person is not entitled to any share of the property. If that is so, after 30 years, 25 years, 15 years or 10 years ipso facto, by that fact itself, it must mean that the person has contributed to the property in whatever state it is, and if the person dies that person's estate should be able to benefit: their children, or other relatives should be able to step forward as administrator, executor or whatever and carry on the claims and allow the estate to benefit.

I think that this amendment is a beneficial amendment. I think it is long overdue. It was sticking point for lawyers for the full duration of the life of the Family Law Act. I am very pleased that we have now got to the stage where we are going to deal with it and put that sorry history behind us. There are many persons who have lost as a result but we are in a position to turn over a new page and to draw a curtain across that horrible past. Sir, I am very pleased that we are dealing with that issue and I am sure that the legal profession, that part of the legal profession that deals with family law issues will be glad to know that this amendment has come at last.

There are other areas of the present amendment to which one can draw attention. For example, the right to garnish. This, of course, is an amendment to the Crown Proceedings Act, the salaries of public servants. It was always thought that it must have been within the contemplation of the original draftsmen of the Family Law Act that public servants were not to enjoy any special dispensation in terms of the garnishment of their salaries, but the truth is, the legislation does not specifically say that public servants can have their salaries garnisheed and therefore this amendment is intended to cover that eventuality. Since the law was not explicit on it, judges erred on the side of caution and the public servant got away. Of course, in some cases, not all, the children and the spouses of those public servants were losers in the process. This amendment should now put all that beyond doubt and inject that element of certainty needed in this area of the law to make the whole idea of garnishment more consistent, more equalitarian and more easily applicable to all those persons in respect of whom judges have to make decisions on garnishment.

Similarly, the amendments try to deal with the whole issue of flouting court orders. Now, I do not believe that judges take any delight in having to send anybody to prison or to cite anybody for contempt or anything like that, but the truth is, based on my own experience as a practitioner of the family law when I was in the Bar, too many people, both men and women, have treated orders made under the Family Law Act lightly. In fact, it has taken sometime at the Bar for even lawyers sometimes to treat Family Law as real law. I have heard persons actively involved in the practice of Family Law over many years ridiculed as not being 'real' lawyers because they only deal with who should get the bedstead and who should get the bed and so on. They were ridiculed by some of their colleagues. Happily, over time a coherent jurisprudence has developed here in Barbados in respect of the Family Law and we now treat it very differently and its implication, of course, for the stability of the society is not to be lost on any Honourable Member of this House.

I am glad that the legislation is addressing the issue of how people treat Orders made by Judges in respect of Family Law matters. I hope that the word will go forth to those who have Orders made against them that the law is being stiffened in this regard so that their obligations in terms of the Orders made should be taken very seriously.

Mr. Speaker, all of that is wholesome, all of that makes sense, all of that is good, but one of the most troubling aspects of family practise in Barbados has been the amount of time it has taken to get issues of matrimonial property settlements or settlements in respect of unions other than a marriage resolved. So far as unions other than marriage are concerned, I do not have the problems to which the Honourable Member for St. George North adverted. These are real practical problems; people have differences in a relationship and sometimes somebody goes off for a cooling off period. It does not necessarily mean that the person has gone off to be part of buffet table for anybody else. These things happen. Even if the Honourable Member is right - and I do not doubt that there may be a few circumstances in which that happens - it is not easy to walk away from a relationship to which you have felt committed for a very long time. These things are all part of the flux of life and we have to accept them.

It was William Shakespeare who put in the mouth of one of his characters to say:

> "If my mistress says she loves me, I believe her even though I know she lies".

These are old stories. You do not bother about these things; you just get on with living. But one of the difficulties that has bedeviled the practise of family law - and from the noises that are being heard now extend this concern even beyond the family law - and it has to do with the delays in the court system.

Now, I know that there is always a certain amount of hesitation when it comes to this issue because one does not want to be accused of trying to interfere with the administration of justice, or one does not want to have it said that one is bad-mouthing the system or whatever. The truth is that from where I sit nowadays, I get many, many complaints and this has been going for a very long time. I know before I left the Bar I was hearing good advocates say that they were not going to spend too much time in court because you have to waste too much time.

Now, we cannot have a justice system that attracts that kind of reputation and you know, there is an old case, 1936, I think the name of the case was Ambard vs. the Attorney General of Trinidad and Tobago, 1936 and it had to do with comments made by a newspaper on some aspect on the administration of justice. The case went to the Judicial Committee of the Privy Council and Lord Atkin, that great judge of the 1930s, made a statement in the judgment which has been quoted by lawyers who read ever since then. He said:

> "Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and [the] respectful [even though outspoken] comments of ordinary men".

That dictum of Lord Atkin has been quoted for many, many years ever since 1936 when Ambard was decided.

The noises one is hearing in Barbados about the delays in the court system, I have to confess that some of the noises I hear are not always respectful but the truth is, justice is not a cloistered virtue and I want to think that these noises are being heard where they should be heard and that some effort will be made to ensure that people's issues are resolved properly but certainly a little more expeditiously than seems to be the case at the present time.

We have some of the plushiest physical surrounds available now to our Judiciary. We have twice the number of judges on the Bench that were there when I came to the Bar in 1984. When I came to the Bar in 1984, there were four judges on the Bench. There was the Chief Justice and three others and they doubled up as a divisional court hearing appeals from the Magistrates' Courts, and as a Court of Appeal, hearing appeals from one of their brother judges. Whichever one was appealed against, the other three sat in judgment over him. There was no separate Court of Appeal at the time but there were no complaints about delay either. It worked.

Around 1990/91, we had a separate Court of Appeal, that came into existence then and appeals from the Magistrate's Court and from the High Court went straight to the Court of Appeal and we have seen the complement of judges expand and judges now work in some of the most favourable conditions you could want for any set of people who have to leave home on mornings to go to work.

The Prime Minister's Office in inferior to where judges go to work on mornings, but that is not a complaint, it is an observation. I am saying that people in the society hurt when they have to wait for inordinate periods of time to get decisions out of the courts, and they hurt even more when judges retire and leave decisions unwritten and leave their situation in a state of chaos; that is not satisfactory. As I said, I know how treacherous this terrain is, I know how easy it is say that you are trying to interfere and all of that. Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and the respectful, even though outspoken, comments of ordinary men.

I get too many letters of complaints about delays in the court system; about judgments outstanding for four and five years and some longer; about judges who have gone off the Bench and not written decisions and people are still waiting on them. I myself am still waiting for a decision from a judge who has retired long, long ago, but I have told my client to forget it and get on with his life.

In the Family Law it hurts even more deeply because in some cases, I think some Honourable Member on the other side, maybe the Honourable Member for St. James Central again, may have said this morning, if not him somebody else, that it hurts that one party is hurting because they are waiting on a decision and the other party is either enjoying the property or getting on with his or her life, and the suffering party has to look the other party in the face and suffer their smiles or their smears because they are waiting on a judicial decision. I think that Barbados has a Judiciary that can do much better than what we are hearing about sometimes.

I know that the Caribbean Court of Justice has had to, not more than one occasion, on more than one occasion to comment on how long cases take to come through the courts of Barbados. I hope that we can wrap up all of this and that we can get down to the business of dispensing justice, not flippantly or recklessly but certainly with appropriate expedition. That aged-old dictum "justice delayed is justice denied" still applies to this very day. In the area of Family Law which is our subject of discussion here today, interminable delays hurt. They hurt spouses and they hurt children.

Mr. Speaker, having talked about the delays in the system, I have to say that a lot of the matters that get in the court system in the first place - Family Law excluded now because most Family Law matters have to be resolved through the court system - do not have to get there at all if only lawyers would stop allowing their clients to lead them, and provide the kind of leadership that their professional training requires.

I have known in my time too many lawyers who have hidden behind the words, yes, I understand what you are saying but my instructions are. If your client can instruct you to do any kind of foolishness, he or she is the lawyer not you. The truth is, I think that when a client goes to a lawyer, he goes looking for advice and for proper leadership, and if a client does not have a case or does not have the kind of case that can stand up or that is credible, I think clients have to be told that. You would have to forego a larger fee but at least the system would not be clogged with a lot of issues that should not get there. Of course, then there are other matters that can be resolved amicably which become unnecessarily contentious and clog up the system unnecessarily.

Mr. Speaker, I think that these amendments are long overdue. I think they are all very important amendments. I think they will improve the functioning of the Family Law Act. The Act, as I said, is now 32 years old and the amendments we are talking about were looked at from around 1997/98. The time is really come for a revisit of this legislation overall to see where else we may need to do some tweaking to make sure that it responds to the imperatives of the times in which we live, this second decade of the 21st Century. It is 32 years old now and we really have to look at this along with, and again I agree with the Honourable Member for St. James Central, the Maintenance Act which again has been a sore point for lawyers for as long as it existed, which only allows a single woman to apply but denies men the same rights.

In a world and in a country that now claims that we always have to be politically correct when we are talking about men and women, yet men are discriminated against in that piece of legislation. There are a few other things that are wrong with it or that are deficient in it which have to do with the powers given to the magistrates in terms of issues of access to children and that kind of thing. There is too much that is left hanging. It was a great improvement on what it was replacing but I think the time has come now that we have seen it at work, to revisit that as well. I am certain that the Attorney-General's Office is looking at that and we should be able to come to Parliament in the not too distant future to deal with some amendments to the Maintenance Act as well.

When all is said and done, Mr. Speaker, we are committed to the effective functioning of the family in Barbados. The first and paramount consideration under the Family Law Act is the welfare of the child. As the Honourable Member for Christ Church East Central made

clear, children do not choose their parents, they end up saddled with them. I have never been in any doubt that if some children had the opportunity to choose, they would not choose the parents that they now have. I am in no doubt about that. In fact, I have heard it myself, but that heightens the responsibility of parents in the discharge of their responsibilities in relation to their children. We do not know how many hidden injuries children bring into adulthood as a result of various forms of abuse which they are exposed to as a result of the delinquency of reckless and uncaring parents in some circumstances.

We have to monitor or continue to monitor this situation. It is not only the law that is going to do it. I keep saying, I believe I said it when the Honourable Member for Christ Church West Central had his consultations on the society, that the most important rules which we as human-beings have to obey are the rules that are not written down. The rules that are written down are limited in their scope. There are no rules written down anywhere saying that you must love anybody or care for anybody or be humane; those are rules that are not written down but are more important in terms of the daily functioning of society and the interaction that must take place between people than anything this Parliament can pass. It is those unwritten rules and the meaning and the importance of those unwritten rules that we must impress on people from day to day so that we can have a society or continue to have a society of which we can all feel justly proud.

I am obliged to you, Mr. Speaker. This Bill has my full support. I thank you.

Mr. SPEAKER: Yes, the Honourable Attorney-General.

Hon. A. D. BRATHWAITE: Thank you very much, Mr. Speaker. Mr. Speaker, let me begin by thanking all Honourable Members for their contributions. Indeed, this morning when we began I never thought that at two minutes after seven o'clock that I would actually be on my feet still with this Bill. In many ways it is testimony, I think, to the maturity of the Honourable Members on both sides that notwithstanding certain comments we heard with respect to timeliness or otherwise of the availability of the Bill that we had some outstanding contributions from both sides. I do not wish to single out anyone in particular but I do wish however to just touch on a few matters that were mentioned.

The Prime Minister who just spoke did a holistic analysis of all of the issues. I do believe, however, that as Attorney-General I do have a responsibility to just update Members in Parliament on where we are with respect to a couple of issues. In particular, I would just like the Honourable Member for St. James Central and this House as a whole to know that we are indeed working on certain amendments to the Maintenance Act because we recognise that there are some deficiencies.

Again, as I said to my colleagues in the Ministry, if we wait for perfection, then some of the ills that are going on will continue for quite some time. As the Prime Minister, the Honourable Member for St. Michael South, just highlighted, a simple amendment to ensure that males and females could approach the Magistrate's Court is one that is obvious that we need to address. Mr. Speaker, it is my hope that in the not too distant future that in fact that we could bring an amendment to the Maintenance Act.

Mr. Speaker, there were one or two calls from the other side that we should have a Standing Committee like that was suggested in 2000/2001 to look at Family Law issues as a whole. I can confirm that we are presently looking at all matters with respect to minors and to Family Law as a whole. We have committed that we will have a Law Reform Commission, so that there will be a continuous update not only of our Family Law but of our Laws as a whole. Sir, you may recall this morning I said that notwithstanding the fact that we were looking at the Family Law Act holistically, I believe these amendments within this Bill before us were immediate and that we needed to move along and not wait for a complete revision of the Bill.

Sir, I say to the Honourable Member for St. Michael North who I believe raised the issue of Section 67 of the Act, we are looking at the Act in its totality. At some point in time it is my hope that we would have a new Act after we have looked at all of the issues. There are consultations going on, as I said, we will go to the public, we will have wide and far consultations, we will involve the Opposition because on a matter such as this, which is so fundamental to the way our citizens interact with each other, whether within marriages or unions, we would want to ensure that we have as wide a cross-section of views being canvassed in this country, so you have my assurance that will take place.

Mr. Speaker, there is one other issue I thought I could address in Committee stage but I will address it now so that it will give Honourable Members time to reflect on where we are going with this; it is the issue of counselling. I heard two Honourable Members on the other side raised the question of counselling, particularly the mandatory nature of counselling. We within the Ministry and the Family Law Council have discussed this at length and it was felt that the present system of counselling, that is, when parties come to attorneys-at-law that the attorneys-at-law recommend counselling but quite often at that point in time the litigants would have already made up their minds. As an Honourable Member said at lunch, when clients come and sit in his black chair, by then they have made up their minds it is divorce that they want.

Mr. Speaker, we have taken the position that if counselling is to make a significant difference, then we have to find some methodology that counselling will, in fact, take place, that is why we have proposed that counselling should be mandatory. How we are going to do that is that we are going to disseminate this information far and wide. We will use the Government Information Service and whatever else medium possible so that the public knows of the counselling services available, so that it can be meaningful.

Mr. Speaker, to repeat, let me say that the complaint has been that if you accept counselling is useful, then to leave it so late, that is, to leave it until the clients come to you and say, I want to have a divorce.

Asides.

Hon. A. D. BRATHWAITE: I am heartened to hear from the Honourable Member for St. Michael South that in his experience he has had cases where counselling has made a difference. Notwithstanding the fact that there have been cases where counselling has made a difference, we are concerned that we need to get an earlier opportunity for persons to have the benefit of counselling, that is why we are proposing this particular amendment. As I said, I could have left it for Committee stage but I wanted Honourable Members on the other side who flagged it as an issue maybe to have an earlier time to reflect on the rationale for this particular amendment proposed in the Bill.

Mr. Speaker, a number of other things were raised but I believe that the Honourable Member for St. Michael South in his presentation has addressed most of them. To the Honourable Member for St. George North who raised a query with respect to a union other than a marriage, I am not sure how I can explain this to you in the time available to me but suffice it to say we are not changing the definition, we are, in fact, curing an ill that has caused some damage to many persons in this community and it is beneficial to them. I am sure that your colleagues on the other side who probably have a better understanding of how to explain things to you would be able to assist you in this regard.

I can end by saying that this particular amendment has been around for quite some time. I am sure when the Honourable Member reflects upon it, the Honourable Member would see that it is, in fact, a very positive amendment.

Mr. Speaker, in all I want to thank all Honourable Members who spoke. I am heartened that we have reached this stage. I believe that this Bill before us, when passed this afternoon, and I am assuming that it will be passed, will indeed redound to the benefit of the people of Barbados and that is what we as legislators are supposed to do in terms of enacting legislation.

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

Hon. J. D. E. BOYCE: I beg to second that, Sir.

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

On the separate motions of Hon. A. D. BRATHWAITE, seconded by Hon. J. D. E. BOYCE, the House resolved itself into Committee on the Bill. Mr. JAMES D. PAUL, Chairman of Committees, in the Chair.

COMMITTEE

Mr. CHAIRMAN: This House is now in Committee.

Clauses 1 - 5, inclusive, were called and passed.

Clauses 6 - 10, inclusive, were called and passed. Clauses 11 - 15, inclusive, were called and passed.

Clauses 15 - 19, inclusive, were called and passed. The Schedule was called and passed.

On the motion of Hon. A. D. BRATHWAITE, seconded by Hon. J. D. E. BOYCE, Mr. CHAIRMAN reported to His Honour the SPEAKER, the passing of one Bill in Committee, and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of the Hon. A. D. BRATHWAITE, seconded by the Hon. J. D. E. BOYCE, the Bill was read a third time and passed and cited as the Family Law (Amendment) Bill, 2013.

ADJOURNMENT

Hon. J. D. E. BOYCE: Speaker, Sir, I beg to move that this House be adjourned until Tuesday, July 9, 2013, at 10:00 o'clock in the morning.

Hon. A. D. BRATHWAITE: I beg to second that, Sir.

The question that the House be adjourned until July 9, 2013 at 10.00 a.m. was put and resolved in the affirmative without division and Mr. Speaker adjourned the House accordingly.

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BRATHWAITE, Hon. A. D. (St. Philip South)
CLARKE, Mr. G. A. (St. George North)
FORDE, Miss C. Y. (St. Thomas)
HINKSON, Mr. E. G. (St. James North)
INNISS, Hon. D. O'N. (St. James South)
JONES, Hon. R. D. (Christ Church East Central)
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LASHLEY, Hon. S. A. (Christ Church West Central)
PAUL, Mr. J. D. (St. Michael West Central)
PRESCOD, Mr. T. A. (St. Michael East)
SINCKLER, Hon. C. P. (St. Michael North West)
STUART, Hon. F. J. (St. Michael South)
SYMMONDS, Mr. K. D. (St. James Central)
TOPPIN, Mr. R. St.C. (St. Michael North)

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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 correcting and preparing this report. Members are named as in the 2013–2018 Parliament.

Q1. *Front matter.* The time of meeting, 10.30 a.m., is as stated in the heading of the transcript; the line 'Mr. Speaker took the chair.' gives no time. The PRESENT list and the officiant at Prayers are as given in the transcript, with post-nominals set in house style.

Q2. *Minutes.* Mr. SPEAKER refers to 'the Minutes of the Meeting held on Tuesday, May 15, 2013', but the motion of Hon. J. D. E. Boyce reads 'its meeting of Tuesday, May 15, 2012 and Tuesday, May 22, 2012'. In 2013, May 15 fell on a Wednesday; the House sat on Tuesday, May 14, 2013, so the dates may be May 14 and May 21, 2013. Printed as in the transcript; please confirm.

Q3. *First Readings of Bills.* Both Bills are cited with the year 2012 ('The Value Added Tax (Amendment) Bill, 2012' and 'The Interpretation (Amendment) Bill, 2012') at a Sitting in June 2013. Printed as in the transcript; please confirm the year of each Bill.

Q4. *Throughout.* The bare time-checks in the transcript (for example '10.32 a.m.', '3:43' and '11.27 p.m.', the last out of sequence) have been omitted. 'Asides' notes are printed in italics.

Q5. *Order No. 4, after the suspension until 5.20 p.m.*. The seconding by Hon. F. J. Stuart and the formula for the suspension run together in one paragraph in the transcript; they are printed separately. At the resumption Mr. SPEAKER calls 'the Honourable Member for St. Christ East Central'; this has been printed as Christ Church East Central, the constituency of Hon. R. D. Jones, who then spoke.

Q6. *Order No. 4, Mr. R. St.C. Toppin.* Mr. SPEAKER calls 'the Honourable Member for St. Michael North West' before Mr. R. St.C. Toppin, the Member for St. Michael North, rises (St. Michael North West was the seat of Hon. C. P. Sinckler). Printed as in the transcript; please confirm.

Q7. *Order No. 4, Committee.* The clause ranges read 'Clauses 11 - 15' and then 'Clauses 15 - 19', so that clause 15 appears twice; and the third reading formula cites the measure as 'the Family Law (Amendment) Bill, 2013', where the Official Report form would be 'the Family Law (Amendment) Act, 2013'. Printed as in the transcript; please confirm against the Votes and Proceedings.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The House met at 10.30 a.m. on Tuesday, June 25, 2013, with Mr. Speaker in the Chair; Prayers were taken by Reverend Canon Ivan Harewood. On the motion of Hon. J. D. E. Boyce, seconded by Hon. A. D. Brathwaite, the Minutes were taken as read and confirmed. Hon. C. P. Sinckler moved the first reading of the Value Added Tax (Amendment) Bill and Hon. A. D. Brathwaite that of the Interpretation (Amendment) Bill. Standing Orders 6, 16, 18, 20, 42(5), 43 and 44 were suspended for the remainder of the Sitting.

Under Order No. 4, Hon. A. D. Brathwaite, Attorney-General, moved the second reading of the Family Law (Amendment) Bill, 2013. He said that the Family Law Council, established under section 92 of the Family Law Act, Cap. 214, had called for changes since 1999; that a 2002 Bill had not been enacted because of the so-called 'stepfather' provision, which was not in this Bill; and he read the Objects and Reasons, which included widening the law on the alteration of property interests on divorce or separation, preventing certain claims from abating on the death of a party, allowing the courts to delay a divorce until property matters were settled, requiring marriage counsellors to be officially approved, and empowering the courts to order arrest and imprisonment in proper cases. Hon. F. J. Stuart seconded.

Mr. K. D. Symmonds, the Member for St. James Central, said that the Opposition would be as supportive as possible and spoke on maintenance and discrimination. After a short suspension he was followed by Hon. S. A. Lashley and, after the luncheon suspension, by Mr. E. G. Hinkson, who said that the Opposition supported the Bill in principle. Hon. D. St.E. Kellman replied to him, and on a point of order Mr. E. G. Hinkson explained that the earlier controversial clause concerned the maintenance of a partner's child in a common law union. Hon. M. A. Lashley, Miss C. Y. Forde, Mr. J. D. Paul, who asked for flexibility for voluntary and church-based organisations under section 7, and Mr. T. A. Prescod also spoke.

Hon. D. O'N. Inniss supported the Bill, and Lt. Col. J. D. Bostic spoke of its human element. Mr. R. St.C. Toppin questioned the size and membership of the proposed Marriage Counselling Advisory Committee under section 6A; on a point of order Hon. D. O'N. Inniss said that the Committee would advise the Attorney-General and would not itself counsel, and Mr. Speaker found no point of order. After a further suspension until 5.20 p.m., Hon. R. D. Jones and Mr. G. A. Clarke spoke. Hon. F. J. Stuart said

that the Act had been passed around 1981, raised the delays in the court system and quoted Lord Atkin in Ambard v. the Attorney General of Trinidad and Tobago (1936): 'Justice is not a cloistered virtue'.

Replying, Hon. A. D. Brathwaite said that a Law Reform Commission would be established, that the Act was being reviewed as a whole, and that counselling was proposed to be mandatory so that it took place earlier. The Bill was read a second time, considered in Committee with Mr. J. D. Paul, Chairman of Committees, in the Chair, reported and read a third time and passed. On the motion of Hon. J. D. E. Boyce, seconded by Hon. A. D. Brathwaite, the House adjourned until Tuesday, July 9, 2013, at 10.00 a.m.