
THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 1999 – 2003

THE SENATE

Wednesday, December 5, 2001

The Senate met in the Senate Chamber, Parliament Buildings, on Wednesday, December 5, 2001, at 11.15 a.m.

PRESENT

His Honour Senator Sir Fred GOLLOP, K.A. (President)

His Honour Senator C. L. BOLDEN, C.B.E., Q.C. (Deputy President)

Senator the Hon. G. S. H. MURRAY, B.A. (Hons.), J.P. (Minister of State, Prime Minister's Office and the Civil Service)

Senator T. E. BARKER, B.A. (Hons.), M.A. (Econ.) (Parliamentary Secretary, Ministry of Economic Development)

Senator the Hon. Dame Patricia SYMMONDS, D.B.E., G.C.M., B.A. (Hons.), P.G.C.E., J.P.

Senator Miss J. C. ODLE, J.P.

Senator J. E. D. WILLIAMS, B.Sc., M.B.A., J.P.

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

Senator D. L. HAYNES, S.C.M.

Senator K. D. SYMMONDS, LL.B.

Senator C. A. MASCOLL, B.Sc. (Econ.) (Hons.), M.A. (Public Finance)

Senator LeR. H. McCLEAN, B.Sc. (Hons.)

Senator C. LeR. TRÖTMAN, M.A.

Senator Mrs. P. E. RICKINSON, B.A. (Hons.) M.P.H. (Harvard), S.R.N.

Senator C. K. LAURIE, D.I.C.T.A. (S.T.), FBSTA

Senator Sir John Stanley GODDARD, K.A., B.Com., C.A., Hon. LL.D. (U.W.I.)

Senator B. R. COLLYMORE, C.M.G.

Senator the Rev. L. W. B. ROCK, M.Div.

Senator the Hon. Mrs. V. E. NEWTON, S.C.M., B.A. (Spec. Hons.) M.A., LL.B. (Hons.) (U.W.I.), F.L.A. (Gt. Brit.) L.E.C.

Prayers were led by Rev. Father Errington Massiah.

Mr. PRESIDENT: The Senate is in session.

ANNOUNCEMENTS BY HIS HONOUR THE PRESIDENT

Mr. PRESIDENT: I should like to note the return of Reverend Massiah, the Chaplain of the Senate. I hope he is fully restored after his recent accident and want to assure him that he was in our thoughts and was always remembered in our prayers.

I have received apologies for the absence of Senator Walcott who is abroad and Senator Phillip Goddard who is indisposed.

PUBLIC BUSINESS

ORDER NO. 1 – THE BANKRUPTCY AND INSOLVENCY BILL, 2001

SENATOR THE HON. G. S. H. MURRAY: Mr. President, the enactment of the legislation which we are about to contemplate and discuss comes at quite an August and opportune time in the history of Barbados. I think it is fair to say that its importance is even now more meaningful to the country since in the current climate it is generally concluded that there are many more businesses of various types than ever before in the history of Barbados. Therefore, more and more people are now having more than a passing academic or political interest in such topics as bankruptcy

and insolvency, areas which many people would have considered academic or esoteric and not really having an impact on their lives. Given the upsurge in business activity in the country people have to pay more attention now to these activities which would have an impact on their well-being, their families, the future and the society in general.

When the history of this period 1994 to 2001 is written, the general conclusion has to be that one of the most significant acts of the Barbados Labour Party's Government has been to create a more welcoming, enabling and positive climate for Barbados. This has been done in a number of ways but the most important ingredient has to be the overriding factor upon which businesses are usually based which is the question of confidence. There is confidence in the stability of the country, confidence in the management of the economy and confidence to the extent where people would feel inclined to want to invest their money and to start up new businesses. Therefore, the importance of confidence cannot be understated or gainsaid if a country is to be stable, is to be able to manage its affairs properly and to attract both local as well as international investment.

Like I said, there has been an upsurge of business activity and this enhanced climate is very noticeable because it stands in contradistinction to what would have obtained before 1994 when we all remember the painful days of business closures, layoffs and dismissals because of the then loss of confidence in the country and loss of confidence in the ability of the then government to manage the affairs of Barbados properly. Therefore, what we have now is a changed climate and changed environment that has, therefore, necessitated a fresh look at how we do certain aspects of business in Barbados. Apart from the restoration of confidence, Government has taken a number of steps to make the whole question of business much more attractive, meaningful and accessible to the average Barbadian.

For far too many years the area of business was full of mystery and perhaps intrigue for most Barbadians. If I may speak for myself or for my generation, when I left Combermere School it would not have dawned upon me to seek to start a business because the almost automatic routine expected out of school was to join the Civil Service or become a priest or some other such activity, but not to undertake the risk and the challenges of starting a business, because business and business activity were not part of the everyday parlance or the common and everyday experience of the average Barbadian. Business was seen as an activity which engaged the attention of a small minority of Barbadians because, like I said, it was full of mystery and intrigue and people were not sure exactly what happens.

As a matter of fact, it is fair to say that if a business ran into trouble there was some suspicion that the entrepreneur,

as he is now properly called, must have done something wrong or he did not at best have the ability to manage a business. To have failed in business was viewed as a mark against you which could probably last for the rest of your life. Therefore, in this kind of social and psychological climate Barbadians were not inclined to get into business.

Even more so is the fact that some people held forth to the stereotype that business was not the frontier or the area of endeavour for black Barbadians and that it was best left to other people, because black Barbadians might not have the skills, the inclination or the ability to engage in business, but we know that is not so because the history of Barbados is replete with some highly successful black businesses which unfortunately for one reason or another have not sustained themselves past one generation.

The Government has taken a number of positive steps to make it possible for Barbadians to operate in a much more friendly, positive and encouraging environment. It is generally accepted around the world that small businesses are the leverage for generating considerable business activity. Therefore, great attention is paid to the environment in which small businesses are allowed to operate so as to make it much more positive and possible for them to do business.

Government has paid special attention to the development of the small businesses through the enactment of measures such as the Small Business Development Act, giving financial support to the Small Business Secretariat, the funding of the new Small Business Headquarters, the creation of FundAccess, the Enterprise Growth Fund and other initiatives through which we have indicated how positive we feel about this area and were prepared to go beyond just paying lip service to the ideal, but to make it possible for more people to enter into business activity.

However, in business, there has to be the question of insolvency or bankruptcy because the truth is that with the best intention, businesses open and close everyday all over the world because every business for whatever reason will not or might not succeed. Therefore, when a business fails, it should not be a reflection on the integrity or the honesty of the businessman or businesswoman because there are certain factors over which a person does not have control such as a change in market, a downturn in an economy elsewhere or a loss of market attractiveness. So various factors can impede and even considerably reduce the viability and the longevity of any business for whatever reason. Therefore, it is important to pay attention to the climate.

For example, I have some figures which show that between January 2, 1998 and November 23, 2001 the

Barbados Agency for Micro-Enterprise Development Limited popularly known as FundAccess approved some 335 loans for doing business to the tune of \$4 262 615.46. That is a considerable amount of money that has been made available to enterprising Barbadians through one facility alone.

This Government, in a structured, cohesive and organised manner set out to make sure that businesses, particularly those of small Barbadian entrepreneurs, will stand a chance of opening and succeeding. For example, at the end of February 2000, some 35 new companies have applied for approved status and several accounting firms and private accountant practitioners have collected more than 300 applications from the Ministry of Commerce, an indication that they are all advising and assisting their clients to reach the standard required for approved small business status. We know that small businesses all over the world face great difficulty in obtaining access to finances and in Barbados, it has been no different.

11.25 a.m.

In Barbados small enterprises have cited access to finance as the main obstacle to the development of their enterprises, with commercial banks not always willing to put their deposits at risk because of the whole enterprising nature of the activity. Accordingly, what is known as non-collateral lending was made to small or medium sized businesses and, therefore, Government, because it has a moral obligation to fill the breach and to provide that kind of financing for those businesses who could not have it from elsewhere, provided in addition to the FundAccess the Rural and Urban Development Commissions which have provided facilities for enterprise of small businesses and the Barbados Agency for Micro-Enterprise Development Limited known as FundAccess. Over the last few years or so these agencies have provided loans to the sum of \$2 279 389.20 to some 426 new enterprises. This financing was accountable for 565 new jobs, and I might give you a breakdown of it, Sir.

The jobs run a wide spectrum of activities. Traditionally, in Barbados, small business activity had been the province of people who were involved in wayside vending, itinerant vending, agriculture, artisan activities. Those were the areas that dominated the employment mix. Since then, in the past 10 years or so, particularly the last couple of years and more so in the last three years when these institutions would have come on stream, there have been new and distinctly non-traditional enterprises, so that we now find young Barbadians going into new businesses like desk-top publishing, videography, karaoke services, business consulting, computer programming, internet related services and the area of personal care and personal attention which involves nail technicians, massage parlours, health shops, spas and cosmetiques. They are now all part of the whole area of micro activity on the part of Barbadians.

This has meant a great deal to the lives of Barbadians and has encouraged other people to want also to get into the area of small business activity. Sir, this is a climate in which Barbadians now find themselves and our Government has done everything possible to make sure that they stand more than an even chance to see that their businesses succeed.

One concern has always been what happens to the chances of a Barbadian if he has failed in a business. It is interesting that you can go to school and if you do not do well in your first initial exercises you have remedial classes, you have a second chance where you can go and get up to date and bring yourself up to scratch where the area of education is concerned. Even in religion, we know that religion allows for forgiveness and redemption but, in the Barbadian context, failure at business, to be declared bankrupt or insolvent, meant that there was virtually no second chance for Barbadians. This has been a deterrent and hindrance to the development of business activity, because persons with very legitimate and feasible ideas have sometimes failed to grasp or pursue the opportunity for fear of failing and the implications that that would hold for them in their future life. It was held as a mark against Barbadians and therefore something needs to be done to create a different environment.

Sir, I think that one of the major benefits that will emerge from this new legislation would be the whole question of helping to create a new business culture in which people will see business as a natural area of activity for them and it will be automatic to go to school at various levels whether it is primary, secondary or tertiary and at the same time if you have the inclination, the ideas and the drive to want to open a business. Most of all, if that business fails for whatever reason you will be given a chance to start over, to redeem yourself and you would not be written off or condemned to a fate worst than death in the eyes of Barbadians who themselves have not been fully *au fait* or appreciative of the pitfalls that could obtain in a business for one reason or another and not necessarily through any act of malfeasance or anything illegal on the part of the business person, but that the conditions and climate can often change and leave these people in a virtual speed wobble, as the Barbadians say, a virtual conundrum, as to where to go from there.

Government has been moving towards creating a different environment and different means whereby a person can move on if his or her business fails.

The history of this amendment to the Act, the new Bill, is very interesting because the current Bankruptcy Act, Cap. 303 was enacted back in 1925, 76 years ago and since then there have been some ten amendments taking place between 1956 and 1992. It is a far different business

environment in 2001 in Barbados from 1925 and even from 1992. A lot has changed dramatically in Barbados and in the world and it was seen that there is a need to get rid of the outmoded concept that has obtained in the original Bankruptcy Act and even perpetuated through the amendments so that persons would be governed by a more modern facility that would reflect more modern commercial activity in the society, unlike the old Act whereby emphasis was placed on the creditors' interest at the expense of the interest of the debtor, at the expense of employed persons and even the wider society.

This new legislation is meant to redress that imbalance to create a greater balance between the interest of the creditor and the interest of the debtor. This is all part of the Act which has a kernel that seeks to address the whole question of the rehabilitation of persons who might need to restructure their business and give them a second chance to provide themselves with a worthwhile living, and to operate in a legitimate activity and not be viewed with suspicions thereafter.

Way back in 1983, attempts were made to review the legislation and a committee was set up by the then Government and was scheduled to meet in 1985-86 but that meeting was cancelled and no other meetings were held. Between 1983 and 1986 nothing happened and it took from 1986 to 1995 before this Government returned to the whole question of updating and modernising the question of insolvency and bankruptcy for action to be taken on it.

This area was reviewed in 1995 and Cabinet agreed that the Attorney General should do a number of things, namely, he should undertake a review of the existing Bankruptcy Act, Cap. 303 of the Laws of Barbados and that he should prepare a new draft Insolvency Bill, based on the draft Insolvency Bill of 1994, which had been prepared by the Caribbean Law Institute and was designed to assist regional countries in a general reform of the insolvency legislation.

It was felt that it should have as its main thrust to address the corporate and individual sort of insolvency applied to persons who are resident, domicile, or have a place of business or property within Barbados, to make provision for initiating insolvency proceedings by the debtor through the filing of a petition with the court to protect the debtor from any predatory acts of creditors as a major thrust to deal with the rehabilitation of the insolvent debtor with an emphasis on the re-organisation of the business activity and make provision for the appointment of an administrator who would be an experienced person, qualified in insolvency matters such as an administrator and that such an administrator would function in a semi-judicial capacity to deal with the preliminary regulatory functions and

procedures in insolvency re-organisation among the other duties to be clearly defined in this legislation.

In pursuing Cabinet's decision, the Law Reform Committee reviewed the draft from the Caribbean Law Institute but felt that it should not be adopted in its format since there were some objections to the Bill, primarily on the grounds that it still favours creditors unduly and in an overwhelming manner.

The services of two consultants were acquired and they were engaged to prepare a draft Insolvency Bill, based on the Canadian Bankruptcy Law. These consultants were Ken Rowan, who is a chartered accountant and a practitioner in bankruptcy from Vancouver, British Columbia, Canada and Mr. Hafiz Khan, attorney at law in Barbados. They were engaged to prepare a new draft Insolvency Bill based, as I said, on the Canadian Bankruptcy Law.

This draft that was produced by the consultants in 1999 was submitted by the Chief Parliamentary Counsel to the then Minister of Commerce in February 1999 for his consideration and comments. In addition, the office submitted a draft to the following interested parties in order to get their comments. This demonstrates the intention of Government's desire to engage as many people's attention and to canvass as wide a cross section of views as possible so that any legislation would reflect a general consensus as to what would seem to be most desirable for the society.

The draft Bill was forwarded to the Judges of the Supreme Court, the Registrar of Corporate Affairs, the President of the Bar Association, the President of the Institute of Chartered Accountants of Barbados, the Supervisor of Insurance, Mr. Andrew Burgess of the Law Faculty of UWI at Cave Hill, Mr. Grenville Phillips, Chartered Secretary, Ms. Jacqueline Cornelius, attorney-at-law, the Permanent Secretary in the Ministry of Finance and the Commissioner of Inland Revenue.
11.35 a.m.

The Ministry in turn submitted the Bill to fifteen stakeholders but responses were only received from four of those stakeholders. Therefore, it cannot be said that Government did not seek to consult the rest of society and deal with the relevant institutions which should have a meaningful impact on this Bill.

We have now reached the juncture whereby we can bring to Parliament and the public's attention what the new Bill will seek to do. This new Bill seeks to redress certain inequities and do away with the system where the current insolvency law was in favour of creditors with little or no emphasis on the possible restructuring or rehabilitation of the insolvent debtor or his business.

It was felt that rectifying this situation would provide all businesses in Barbados with a legal and regulated environment which would influence international competitiveness and provide a measure of comfort to investors whose business may have to be re-engineered and restructured as a result of insolvency which may have been caused by certain uncontrollable factors.

Sir, the Bill itself is based on the Bankruptcy and Insolvency Act of Canada and provides for a supervisor of insolvency. Many persons I know will welcome the creation of such an office. It will be a public office with a public official who will be paid to supervise the whole question of administration and management of this bankruptcy and insolvency legislation. It has been felt that under the old legislation when a receiver took control of a business it was often to the detriment of the debtor.

This Bill is designed to bring about an improved way in the management of bankruptcy and insolvency. It has been designed among other things to provide for an investigation into the cause of the company's failure.

Sir, the Bill has a number of key provisions. This one is important and has to do with the question of definitions which will facilitate the appropriate interpretation of the provision and thus minimise our chances of doubt and ambiguity.

Sir, the 2001 Bill defines such terms as what is meant by bankrupt, assignment, an insolvent person and what is meant by a proposal. This is contained in Part I of the Bill.

Part II sets out the circumstances in which a debtor commits acts of bankruptcy and is substantially the same as the preceding law.

Part III provides for receiver orders, interim receiver and secured creditors.

Part IV deals with the question of assignments. This Section identifies a person who may make an assignment. An insolvent person may with the leave of the Court, make an assignment of all his property for the general benefit of his creditors.

Part V deals with proposals. It says that a proposal may be made by an insolvent person; a receiver, but only in relation to an insolvent person, a liquidator of an insolvent person's property and a bankrupt and a trustee of the estate of a bankrupt.

Part VI speaks to the property of the bankrupt.

Part VII deals with the administration of the Estate.

Part VIII deals with the question of bankrupts. This Section addresses counselling required of individual bankrupts, the duties of bankrupts and examination of bankrupts and others.

It also provides among things for the trustee to provide two counselling sessions to individual bankrupts. These sessions are to be held on the date of bankruptcy and are designed to educate debtors on budgeting. These sessions are to be held following the date of bankruptcy, and are designed to educate debtors on credit and budgeting.

11.45 a.m.

In order for a first time bankrupt to obtain a discharge from bankruptcy, attendance at both counselling sessions is necessary.

Sir, I think that this is a new avenue which makes a tremendous difference to businesses in future.

It also provides for the automatic discharge provisions for first time bankrupts. This would simplify the discharge process from most individual bankrupts and eliminate unnecessary court time.

Part IX, deals with administrative officials such as the Supervisor. This section makes provision for the appointment of a Supervisor of Insolvency who, subject to the Minister, will be responsible for the general supervision of the administration of this Act and whose office will be a public one. This officer will have total independence and would be able to operate in the most professional manner in the execution of his or her duties.

Part X, deals with the question of courts and procedure. This section was modeled on the existing Bankruptcy Act. It addresses the jurisdiction of the court. Under this Bill creditors will no longer apply to the court for the committal of an insolvent debtor as the key principle of the draft Bill is the rehabilitation of the debtor. In other words, no longer will creditors be able to apply to the court on the question of a debtor to be jailed because he owes a debt which some people believe is inhuman and barbaric, except perhaps where it obtains for delinquent fathers who refuse to accept their obligations and responsibilities for the support of their children and families. It should not obtain in a general business environment where businesses open and close on an ongoing basis and which is not necessarily a reflection of an act of delinquency or waywardness on the part of the debtor.

Sir, Part XI, deals with the question of international insolvencies. It contains new provisions and addresses the situation where foreign proceedings have commenced with

respect to a debtor who has property in Barbados and provides that the court in Barbados may make such orders as it considers appropriate to coordinate the insolvency proceedings, including the appointment of a trustee, the granting of a stay of proceedings and the making of an appropriate order.

Part XII deals with the question of offences. It does not depart significantly from the Bankruptcy Bill. However, additional offences are created in respect of bankrupts, inspectors, trustees, principals or bankrupt corporations, creditors and other persons. Excluded is a provision whereby an offence could be claimed against a businessman for not paying for property obtained. In keeping with the key principle of the draft Bill, honest but unfortunate bankrupts need not carry the onus of proving that they had no intention to defraud.

Part XIII, deals with the general provision. This section closely reflects the provision of the Bankruptcy Act with respect to the making of rules and provides for the repeal of the said Act.

Sir, that is a summary of the intent and the thrust of the new Bill. I think that is an advent which Barbadians, businesses and those who might be contemplating entering the business world will welcome with a deal of enthusiasm. It will improve the general management of business and also make special provision, particularly significant to black Barbadians who, for various reasons, might have had to struggle against certain odds in operating businesses.

If I may quote the Prime Minister as he spoke some weeks ago at the opening of a new business in Bridgetown, the Bayshore Complex, Bay Street. It is a symbol of what is now possible in a new environment whereby defunct derelict properties, through the provision of the Special Development Act which makes it possible for new, impressive and promising activities to be entered into by certain persons.

Government feels that we have to take into consideration certain inequities in the society where businesses are concerned. I quote from the Prime Minister:

“ You must allow me to use this evening’s occasion to state emphatically and without apology, my administration’s determination to encourage the flowering of small black enterprises in Barbados without prejudice to our support to business in general.

The saddest aspect of our economic history is the record of the large number of enterprises owned by black people, which, after promising beginnings, have failed. In the decade preceding our Independence, there was strong evidence of a thriving black business culture at the centre of mainstream commerce and urban activity. That culture has now virtually vanished, while the national economy has grown and that

enterprise culture has shrunk, cynicism of business has increased. It must truly be an aspect of our contemporary efforts at national development to remove the alienation of the large mass of our population from a positive association, the core of the business community, because they believe that there is no place in that business community for them. We will become a better and stronger nation when that cynicism of all business is removed.”

Sir, that is an important statement. We believe that apart from the inherited difficulties and risks that are involved, this Bill makes it possible for everyone in the society, black, white and in between, to be able to enter the business realm, take their chances and for whatever reason they fail, they are not doomed forever from a further venture into business activity because the society sees them as persons not to be involved with and to do business with.

Therefore, this removes further hindrance from the society and persons will now be encouraged, particularly in the case of the small business sector. Government does not just give financial and administrative support. It also gives technical assistance where people are taught certain rudiments of business, accounting, administration *et cetera*, to make sure that even though the enterprise might have the best possible aims or intentions, lack of knowledge and familiarity with certain techniques and practices will not work to bring about the collapse and failure of what would otherwise be a meaningful and productive business activity.

Therefore, I think that this will build national confidence in the business environment. As the Barbados society changes and as more and more people enter into business, particularly the younger generation, this will help to pave the way by removing this stain which has, for far too long, been painted on to persons who had failed and who had become insolvent or bankrupt. In sporting activities, for example, a cricketer, if the cricketer was in bad form, they would have opportunities to redeem themselves. Sir, sinners, in religion have a chance to be redeemed.

Sir, there is no reason why Barbadians should not have the opportunity to redeem themselves in business. I believe that this would make for a more stable, sustainable society where persons would have more confidence in their business activity and feel that they stand a fair chance to make it or not make it, but have a more level playing field.

I think that this can only inure to the benefit of the whole society as we start to develop and further entrench a serious business culture in Barbados, in a way that has never obtained before.

Sir, it gives me the greatest pleasure to move that this Bill be read a second time.

11.55 a.m.

SENATOR Mrs. V. E. NEWTON: Mr. President, I rise to give this Bill my wholehearted support. It has been long time in coming but it is very welcomed. I say it has been a long time in coming because since 1982 when the present Companies Act was passed, the intention was that a new Bankruptcy Act, one which provided for bankruptcy and insolvency both with companies and individuals, would have been passed shortly afterwards. In fact, there was a provision in the Companies Act section 357 – now repealed – which provided that the Bankruptcy Act would also apply to insolvent corporations. Nothing happened and in 1985 the Government then set up a Bankruptcy Advisory Committee to look at the subject. That was the status when the Caribbean Law Institute, which was formed in 1989, started to look at the question of commercial law reform in the Caribbean. The Institute drafted a Bill with the assistance of experts coming from Canada, the U.K. and the Caribbean but interesting enough, I guess this is something that we could have predicted at the time, no Caribbean country had adopted that Caribbean law without amendment, although it was drafted by one of our Barbadians as a matter of fact and had input from a number of other experts within the region.

Be that as it may, this Bill contains many of the provisions of that Caribbean Law Institute Bill and the purpose is to deal with situations like how most corporate banking institutions are now dealt with, by a receiver who usually looks after the interest of secured creditors and apply themselves to saving insolvent corporations.

That situation, coupled with the fact that many small enterprises in Barbados and the Caribbean are severely undercapitalized, resulted in some companies being traded when they are unlikely to meet their financial obligations, and very few attempts are then made to save them and make them again viable. The Bill aims to foster the equitable distribution of a troubled company's assets by the equal sharing of losses by creditors who rank equally and the restructuring of the business, to preserve jobs, pay creditors and produce returns for owners. The objective is to provide a regime for dealing with individual insolvency and bankruptcy. This Bill then presents the marrying of company and individual insolvency that was mooted for a long time and which in fact was only addressed in the United Kingdom in the late 1980's. To go further back, the structure of most modern-day insolvency and bankruptcy legislation is patterned on the United States Chapter 11 Provision which, for years, has been used in the United States to assist companies finding themselves unable to meet their obligations.

Under the Act an individual, a partnership or a corporation can be the subject of the Bill but not banks, insurance companies, trust companies or loan companies. These institutions are governed by their own regime or legislation which is outside the scope of general insolvency law. This is a standard provision in all insolvency Acts.

Of course, a debtor must either be a resident, domicile or have a place of business in Barbados.

As Senator Murray said, the reorganization process starts when a petition is filed in the court that the company is unable to pay its debts of \$3,000 or more. I mentioned that because what it means is that with such a low threshold many small companies are caught within the ambit of the Act. If they cannot pay, then they go to the court and declare their insolvency and seek assistance. The court then appoints a licenced trustee who will look after your affairs. One of the most important things that happens at that stage is that the trustee and the insolvent or bankrupt person and creditors are required to prepare a proposal in which they inform the court how they plan to reorganize.

That proposal may be made by an insolvent person, a receiver on behalf of that person, a liquidator, a banker or his trustee. As far as I can see the Bill makes no provision for a creditor to make a proposal. In the United States, under the Bankruptcy Code, creditor plans are not uncommon but I suspect that there is no such provision in the Canadian Act. However, a creditor has to decide all questions relating to the proposal, except the question of receiving it, which is left to the court. In other words, once you are bankrupt and go to court and file the petition and the court agrees that one is bankrupt and the question is one that the courts decide and you come up with your proposal, then your creditors have to agree with that proposal. They are not necessarily making the proposal but they have to react and agree if the proposal is one that is feasible. Those comments are taken into account by the courts. There is no time to go into the proposal which must be produced, but the Bill states that these are the important points which, in my view, are important:

- (a) The role of the trustee.
- (b) The fact that the proposal must decide for the classification of claims.
- (c) Specify which claims are specified by the proposed plans.
- (d) The court will not confirm all of the proposals if it does not meet all of the requirements of the Bill.
- (e) If it does not seem that the proposal is likely to save the company.
- (f) The court also will not confirm the proposal if its principle is to avoid taxes, but the court has the burden of proof beyond reasonable doubt.
- (g) The court will also turn down a proposal which does not seem to be in the interest of the creditors, because the whole question of reorganizing is not only to help the company continue but to pay existing debts.

The proposal, once accepted by the debtor and other persons interested in its provision. Incidentally, it does not prevent a debtor from repaying any debts, even if one goes to the court with the proposal for a business and it is accepted, when you come into money somehow, you can voluntarily repay any of the debts that you owe.

A corporate insolvent debtor is not eligible for an order or discharge, nor is he entitled to the benefit of exemption of any of his property from being the property of the estate.

A corporate insolvent debtor must either be reorganized or wound up under the Companies Act. You cannot stay in limbo once you go to the court and declare your insolvency.

If the proposal does not work, then the insolvent debtor must be administered under the liquidation provisions under the Companies Act.

Another important provision, is section 29(1):

"The approval by the Court of a proposal made after bankruptcy operates to annul the bankruptcy and to reinvest in the debtor, or in such other person as the Court may approve, all the right, title and interest of the trustee in the property of the debtor, unless the terms of the proposal otherwise provide."

In other words, if a debtor's business flounders through no fault of his own, but in the eyes of the Court he has the skills, knowledge and the experience to continue managing the business, once he goes to the Court with a feasible plan and the trustee approves, the Court will allow him to stay and administer the business. But he has to do it according to the terms of the proposal and he has to be in close touch with the trustee.

Another important feature of the Bill is the stay of proceedings.
12.05 p.m.

The section dealing with creating automatic stay sections is very broad and they seek to prevent the commencement or continuation of any litigation concerning pre petitioned claims. The court has the authority to enforce the automatic stay by accessing actual damage including costs, attorneys' fees and even punitive damages against a wilful violator.

There are certain exceptions to the automatic stay such as criminal proceedings against the debtor. Those will proceed, of course, and the collection of alimony and child support obligations from property that does not belong to the estate that is the subject of the bankruptcy, and the exercise by the Government of its police or regulatory

powers. So that if you are in trouble, if you have committed a crime or if you have family obligations, you still have to meet them and not out of the estate; that is the subject of the obligations.

Mr. President, this Bill seeks in summary to create the environment for the preservation of large and small businesses and for individuals to have a second chance, when they are financially troubled, and I support it.

There is one question I have in relation to the Bill and this is dealt with in Part IV, I think, and it is the Supervisor of Insolvency. It does not say whether this supervisor is going to be one man in an office, whether he is going to have a large staff, and what the charge is going to be on the public purse.

Now, I know in most insolvency regimes there is provision for a supervisor, but in small jurisdictions where there is not likely to be a large number of insolvencies per year to fully occupy such a person, the job of looking after insolvencies is given to an officer, or sometimes a senior officer in the Corporate Affairs Registry. I am just hoping that before we go and commit ourselves to setting up an office, if it is going to be properly managed, it will need more than one person.

Aside.

SENATOR Mrs. V. E. NEWTON: I am hoping that we look carefully to ensure that it is not possible to have the matters coming up under this Act dealt with by existing machinery.

Mr. President, with those comments, I give my support to this Bill. As I said, it was a long time in coming but better late than never, and Barbados is still in the forefront of the Caribbean territories which have moved to adopt insolvency legislation, but most of them still have the old Bankruptcy Act.

Thank you.

SENATOR J. E. D. WILLIAMS: Thank you very much, Mr. President. Like Senator Murray and Senator Newton, I rise to support the legislation that has indeed been long in coming but I want to place my contribution in the context of the philosophy that underpins this legislation and Government's own philosophy that seeks to place small businesses in this country at the centre of business activity.

It is true that all businesses must be given special care and attention by Government and that has been the approach of this administration. We all know that small businesses need very special care. If you look at the Government's

approach to assisting small business over the years, particularly since 1994, it is not surprising, that we are discussing a piece of legislation that will impact on small and medium sized, and more so than ever, small businesses.

Of course, with the final piece of legislation when it comes before Parliament which has to do with fair competition legislation, we would then have completed the necessary legal framework to ensure that small businesses are able to operate and assist the Government in repositioning Barbados in the new globalised environment.

This, in essence, Mr. President, is a part of an exercise by the Government to see the Barbados economy being repositioned in a fashion that creates a stability that when small businesses go through periods of financial difficulty, they are able to come up with creative ways in order to sustain the businesses, and for them to continue to grow.

Barbados has had quite a long experience with small businesses going through periods of difficulty, and there are many stories of small business people who speak to the difficulties that they experience with receivers from time to time, where often those receivers never show the due care and diligence that were expected. The failure rates, once a receiver took over, were extremely high.

The legislation that we presently have is one that, as Senator Murray said, goes back to 1925 and indeed it is legislation that bore a relationship to the realities of that period. Certainly, it cannot address the situation of today. You are talking about a period in time when legislation was inactive, where society was a very harsh judge of a person whose business failed and there was a certain social stigma that was attached to business failure.

In today's business world people take risks, and where people go through difficulties through no fault of their own, they must be able to restructure and continue those businesses. I feel that it is even more important, that an unsuccessful business person, who might indeed be a first time individual, should be able to be given an opportunity to restart his business.

The one thing that I am a little sad about is that the effort to modernise this legislation started in 1983. Some work was done between 1983 and 1986 and by 1986, a committee was set up by the then administration to look at reviewing and reforming the current legislation, but of course nothing happened during that period. I must be honest, Mr. President, I really look forward to the explanations from the two Opposition Senators as to why the then administration did not see it fit or important to address this particular area that impacted small businesses in this country in a significant way even more so than, as I said before, large businesses.

The reality is that nothing happened between 1986 and 1994 and who knows what could have happened, if indeed we had legislation of the kind that we are deliberating today, how many small businesses might have been able to survive, because there would have been a window of opportunity for them to restructure and reposition their businesses in a way that they could have been resuscitated. Again, as I said, I do look forward to their explanations.

12.15 p.m.

The good thing about this legislation that is before us, is the care that was taken in terms of drafting it, the people, the institutions and organisations that were invited to review it both by the initial drafters as well as the Ministry of Consumer Affairs who thought that further persons and organisations should have been brought into the equation to gain greater input. But as Senator Murray said, only four organisations sought to respond and that is a bit unfortunate. So I can only assume and form the conclusion that people were particularly happy with what they had seen.

So with the likelihood that we will soon be dealing with the fair competition legislation we would then have the sort of modern, legal environment that would place small businesses in particular on the kind of footing that is required. This, of course, underscores the importance that this administration has attached to placing small businesses at the centre of our economy and an opportunity like this cannot be lost where we failed to get over the point or the importance of small businesses.

Small businesses, Mr. President, continue to be the upkeep of the larger economies of this world. For example, in the case of the United States of America there are over 17 million businesses of which just over 10 000 of them are listed on the Stock Exchange. The point they are making is that of that over 17 million businesses, over 11 million are operated as sole traders. Those 11 million or thereabouts employ less than 100 persons but account for 40 per cent of the total employment.

We have to understand in Barbados that small businesses will make the difference as we seek to reposition this economy because larger businesses find it particularly difficult to readjust to changing economic conditions. In terms of innovation, small businesses are more innovative and are able to adjust and respond to market conditions better than the larger businesses. So as we move into a globalized environment it is important for us to ensure that we do everything to sustain small businesses in this country.

Mr. President, within CARICOM small businesses account for some 40 per cent of Gross Domestic Product (GDP) and employ over 70 per cent of the work force thus underscoring again the importance of small businesses and

the need for us to use legislation like this to ensure that small businesses are able to sustain themselves. The G7 countries also recognise the importance of small businesses because they see small businesses and medium sized companies as being able to address new innovations in providing the thrust in and to penetrate new markets. So if they are paying that amount of attention to small businesses then it behoves us to do likewise. That is why again I said I look forward to the explanations from the Honourable Opposition Senators as to why we had a period of eight years where nothing was done, not even in terms of creating windows for financing and supporting the small businesses when they ran into difficulty.

The fact of the matter is that the Barbados Labour Party Government prior to the elections in 1994 made a promise to this country that its first job was jobs number one and so was able to address the high level of unemployment that existed then through ensuring that it focussed on the small business sector because it was in that sector that a number of jobs were indeed created.

For example, the Small Business Association was given the fullest support of Government and received the kind of institutional strengthening that could only redound to the benefit of its memberships. This, to my mind, is quite a bit of work for the Small Business Association to do in order to embrace and to help persons who are not part of the association but indeed to assist its memberships.

In Barbados presently, there is an estimation that there are some 6 000 small business people registered and that sector employs some 24 000 persons or 20 per cent of the workforce. That, of course, is sizable in terms of the contribution to GDP. Again, we need to ensure that that sector survive and hence the legislation that is before us today.

Government, like Senator Murray has said, recognised that not only do we need legislation like this but that we needed legislation like the Small Business Development Act and equally or maybe more important the fact that we must have financial windows open to small business people as well as to persons who want to enter into business and hence the setting up of institutions like the Rural Development Commission, the Urban Development Commission, the Barbados Agency for Micro Enterprise Development, the Enterprise Growth Fund, the Small Business Venture Capital Incorporated, the Youth Entrepreneurship Scheme and the Barbados Business Trust. These are all windows where assistance can be provided both to small businesses as well as to persons seeking to establish businesses. One may argue that maybe there are too many windows open but this

Government will prefer to err on the side of having too many financial windows open rather than too few.

What we are basically doing now, having already pass the Small Business Development Act which in itself has greatly assisted that sector through offering technical assistance, is to assist businesses that run into trouble so as to give them the opportunity to be able to come up with ways to restructure and to reposition the business so that they can become successful once again.

Mr. President, with respect to the Act itself, I am happy to see that in this legislation there is now a number of requirements and obligations that are going to be placed on receivers. A receiver must now act in a commercially viable manner because, as I said, when you speak to many small business people in the past they will tell you that they were indeed very dissatisfied with the way the receivers dealt with the business. Therefore, in addition to a receiver acting honestly and in good faith that person must now act in a commercially reasonable manner. So this is a further obligation on the part of the receiver to ensure that he does everything and take the sort of decisions that are in the interest of the business.

12.25 p.m.

Very often we hear about receivers sometimes paying themselves more than some of the business owners were able to earn over the years and it is not surprising therefore that you will find a lot of those businesses collapse at the end of the day and that the resuscitation rate was that low.

The concept of the proposal or the intent to submit a proposal will now give the debtor or the insolvent person an opportunity to be able to come up with a way of satisfying the creditors or at least making it possible to come up with something to help that business sustain itself. Mr. President, I believe that much has been said about this legislation, I almost said that it is timely but, in truth and in fact, we could have done with legislation like this before because I think if that were the case we would have saved a lot of small businesses from going under.

I must congratulate Government for bringing it at this point in time and I do look forward to it receiving the support of all Honourable Senators. I am obliged to you.

SENATOR Sir JOHN STANLEY GODDARD: Mr. President, this is a very comprehensive Bill which covers all aspects of bankruptcy and insolvency, some 199 pages and 257 sections. As has already been said, it is modeled on the Canadian Act which I am told really attempted to bring together matters pertaining to bankruptcy and insolvency in the old Bankruptcy Act, in the Companies Act and in the Common Law.

Mr. President, there is some confusion about the difference between bankruptcy and insolvency. It is my understanding that bankruptcy is the state where the value of the assets of a person, whether that person is an individual or a corporation, exceeds the liability. In accounting terms, there is a negative net worth. Insolvency, on the other hand is the state where the person, whether an individual or a corporation, does not have sufficient cash to pay debts as they come due. Even though the value of that person's assets is more than their liability. To use the accounting terminology again, where there is a positive net worth but there is insufficient cash.

This Bill, and I am referring to section 10.L., in some cases supersedes the Companies Act in that it says and I am quoting section 10.L:

- “(a) the provisions of sections 275 to 287 of the Companies Act shall apply in the absence of provisions relating thereto in this Act; and
- (b) where the provisions of this Act are inconsistent with the provisions of sections 275 to 287 of the Companies Act, this Act shall prevail.”

In other words, a lot of importance and significance is being given to this Act.

As has been said before, and it is worthwhile repeating, this Act is designed to give a more favourable and more equitable treatment to businesses that have got into trouble, and I support that. In many cases, but not all, it would apply to medium businesses but all businesses with very few exceptions start as small businesses. Some grow, others remain small during the life of the business.

On page 148, section 161:

- “(1) ... provision is made for the appointment of a Supervisor of Insolvency who shall be responsible to the Minister for the general administration of this Act and whose office shall be a public office.”

Section 163(1) deals with suspected offences and I would like to quote this because I think it is an important section.

“Where, on information supplied by a trustee or other person, the Supervisor suspects on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this Act or any other Act of Parliament, the Supervisor may, if it appears to the Supervisor that the alleged offence might not otherwise be investigated,

make or cause to be made such enquiries or investigations as the Supervisor deems expedient with respect to

- (a) the conduct, dealings and transactions of the debtor concerned;
- (b) the causes of the bankruptcy or insolvency of the debtor; and
- (c) the disposition of the property of the debtor.

That is a very important section, Sir, because while the Act quite rightly, and I support it, provides for the fair and equitable treatment of persons who are either bankrupt or insolvent, I believe it presupposes that state has come about through genuine misfortune, circumstances outside of the control of the person declared insolvent or bankrupt. It could be, in the case of small business, the death of an important member of that business, serious illness, a change in technology, changing tastes in consumption at the retail level, any number of very legitimate reasons can cause a business to suffer and that can be considered a genuine misfortune.

Sir, there is an important difference between misfortune and misconduct. Generally speaking, misfortune applies to people who have suffered innocently. Misconduct deals with people who are unscrupulous whether in this society or any other society. It is not unknown for unscrupulous persons acting as individuals within a business to take out cash and invest it in other properties or other businesses either locally or abroad. Such activities would jeopardise the survival of that business because it is literally being bled of its cash flow, illegally, maliciously, for personal aggrandizement, whatever, but the persons who will really suffer are the legitimate creditors of that business because that money should be going to pay them what is owed to them but instead unscrupulous businessmen have different priorities. They are prepared to take that business out for personal gain at the expense of their creditors.

Sir, I believe the Supervisor of Insolvency has a very important job to make the distinction when a person, individual or company go insolvent or bankrupt whether it is due to misfortune. This Act was designed to help and protect that person. If it is due to misconduct, I hope the Supervisor of Insolvency would ensure that justice is done because this Act is not designed to help those persons.

Sir, with those few remarks I am happy to support this Bill. Thank you.
12.35 p.m.

SENATOR K. D. SYMMONDS: Mr. President, I want to associate myself with this Bill. It is often useful at the outset of exercises such as this to try to ensure that we are on all-fours with what deficiencies we are trying to correct when Government comes to Parliament in an effort to bring pieces of legislation of this nature.

Sir, it is useful in that context to bear in mind that the concept of bankruptcy finds its genesis in medieval Europe where in Italy the phrase '*Banca Rotta*' was used to describe tradesmen who were deemed to be corrupt, worthless and unable to pay their debts. In 1541 it was embraced in the United Kingdom under a piece of legislation at the time when King Henry VIII was on the throne.

In our legislation in 1925 we see the vintage thinking and philosophy which informed the United Kingdom, Scotland and Wales at the time that King Henry was on the throne. While we do not have, for example, that you can be penalised by way of a death sentence as existed in that old legislation, we certainly retained the concept of imprisonment.

Sir, in an effort to get past that antiquated way of thinking and come out of the old colonial way of approaching business, this legislation brings a breath of fresh air to the whole question of bankruptcy and insolvency not only of corporations but of individuals as well.

The old legislation would have transcended privileges of Parliament. It would have treated a bankrupt as incapable of retaining his seat in the House of Assembly. It would have deprived Honourable Members of the Senate from sitting. It would have been a bar to the right of a spouse to claim on her husband's estate.

In a real sense there is a very punitive concept behind the old legislation. What is being attempted here is to bring Barbados into a climate where you are not seen as a social scourge because your business has failed, but rather brings us to a point where we readily have a society that appreciates that the person has failed and gives that person a second chance. It is, therefore, in a broad sense an effort at legislative social transformation. I have said *ex-cathedra*, outside of this House, what I would say now *in-cathedra*. Sir, the concept of social transformation is not limited to the narrow idea of assisting persons with disabilities, poverty alleviation and so on. Those things have their particular place and undoubtedly, are very important.

12.45 p.m.

Sir, it has to encapsulate, in a broad sense, the philosophy which says that you must assault those vestiges of old colonial society which still exist to suppress and even repress persons who are trying to advance themselves

economically and financially in this world; that is about one mischief in my mind.

I think that there is a certain mischief to the old legislation. It primarily treats the concept of receivership as a means by which the primary focus of the legislation is to secure the creditor's interest. In a real sense receivership is very much part of the agency principle. In law, therefore, it would be correct to say that a receivership is as much under a duty of care to the debtor and the commercial interest of the indebted corporation as he would be to secure the creditor's interest. Sir, the fact is, perhaps, nine out of ten cases in Barbados one sees companies falling into the hands of the receiver and thereafter they are virtually on their way to the graveyard.

I think, perhaps, what has been missing, is the effort to exercise and strive to achieve a good balance in protecting the commercial interest of the corporation and the good faith interest of the insolvent organisation or person and also protecting the interest of the debtor.

Sir, it is against those backdrops that Government has to be congratulated for bringing this legislation, because it cures the imbalance that I spoke to and it seeks to rehabilitate business along the lines of what is in their best commercial interest, while at the same time protecting the interest of employees *et cetera* in the wider society.

I want to make the point that the legislation forms part of the continuum in Barbados. There is, in a real sense, a lot of enabling legislation which has been passed in recent times in this country. We have heard of the Small Business Development Act. Other pieces of legislation, such as the Fair Trade Commission which encompasses e-commerce legislation, copyright and the soon to be on stream telecommunication legislation. Those types of things create an enabling environment. One should also mention that there would have to be a regulatory framework created when we look at the creation of the Security Exchange Commission. You do not only have an enabling environment being created but you then seek to regulate in the interest of those vulnerable players within the arena that you are creating.

Sir, I think that what comes next is this logical step which Senator Williams referred to as a safety net in the form of this bankruptcy legislation. It is not only the small players because big companies will run afoul of successful business practice as well. That continuum is a critical point. It speaks to a commitment on the part of Government to ensure that the legislative architecture is there to propel the development of commerce, the expansion and promotion of the sale of goods and services within this country. I believe that is a point on which Government should be congratulated.

I want to say that I join Senator Williams in his observations that life could have been, perhaps, a lot easier had this legislation been on stream as early as 1991. The fallout of our relationship with the International Monetary Fund tells the tale that legislation such as this can protect business and the interest of the wider society. It is, therefore, to be regretted that no effort was made to put that legislation in place at that time.

Sir, speaking specifically to the Act, I want to say that the creation of an ability to deal directly with cross board insolvency is a most useful and worthwhile aspect of this piece of legislation, in my view. We are often heard to make heavy weather about the coming on stream of the Caribbean Single Market and Economy. There is also much to be heard about the Free Trade Area of the Americas. We in Barbados, for a long time, experienced the visitation of transnational and multinational corporations to our shores. The reality is when a business which is operating in Barbados, but also operates in other parts of the world, has financial difficulties, and is sued in other parts of the world, it does not mean that the stake that is placed on a 'Smartmart' in the United States of America to protect that business there must also, automatically, impact on Barbados.

I think what we have done is to move in a concise manner to ensure that rights of creditors here in Barbados, unless there is a specific effort to put such a stay in place in our jurisdiction, the rights of creditors here are not compromised.

Sir, under Section 29 where the debtor's business fails, he can still continue to administer that business with the benefit of the trustee's assistance. I think that is a very marked and sharp departure from what took place in the old legislation, where you fell into the hands of the creditors and were dictated to. We are introducing not only the trustee but the court in the equation. We are allowing the individual to keep the business on stream as long as he has good ideas and intentions. I think that type of enabling facility is worthy of some compliment towards Government.

Sir, I believe that we are seeing a message being sent. There is a genuine interest in the expansion of development in this country, a genuine interest in the maintenance, a genuine interest that there is an opportunity for the creation of wealth in a broad setting and not in a limited way. That obviously requires a salvage and saving of business enterprise.

Therefore, if one is going to save such enterprise, there is no reason why the individual who has good ideas, who can demonstrate that there is an absence of fraud on his part, should not be given the opportunity and flexibility to rehabilitate his business to a commercial endeavour and to

set himself up to go again. I believe that the principle of creating that avenue for a second chance is fundamental. It is of significant political value and as suggested, the legislation is, perhaps, very non-academic.

Sir, I do not believe that it is purely of academic interest. In a real sense we are ensuring that vulnerable sector of this economy has nothing to do with your potential to be vulnerable because as we have learned from September 11, the external shock can impact in a very drastic way on the biggest of businesses. Vulnerability is to be protected and it need not be protected to the detriment of the creditor.

I think that legislation attempts to strike a balance between protecting the interest of the creditor, while ensuring the interest of the debtor and giving that debtor some sort of flexibility. I believe that it is worthy of support.

I thank you.

SUSPENSION OF SITTING

SENATOR THE HON. G. S. H. MURRAY: Mr. President, I beg to move that this Sitting be suspended until 2.00 p.m. today.

The question that the Sitting be now suspended until 2.00 p.m. today was put to the Senate and agreed to and Mr. PRESIDENT suspended the Sitting accordingly.
12.52 p.m.

RESUMPTION

Mr. PRESIDENT: This Honourable Senate is now in session. The Honourable Dame Patricia Symmonds.

SENATOR THE HON. Dame PATRICIA SYMMONDS: Thank you, Mr. President. I rise to support this Bill with great pleasure. The moral and cultural beginning in bankruptcy can be found in times of jubilee in the Bible. I hope that I am correct in saying it was at the times when the forgiveness of debt took place every seven years. If I am not correct I know the Senator here will put me right later on.

As Senator Kerrie Symmonds has alluded to the United Kingdom bankruptcy legislation goes as far back as the Elizabethan period. In the 19th Century, Charles Dickens in one of his famous novels *BIG HOUSE* vividly portrayed the dreadful ramifications of bankruptcy and especially the conditions of debtors prisons in the Elizabethan times. In the first half of the 19th Century a number of reforms were enacted in the United Kingdom and these resulted in the United Kingdom Bankruptcy Act of 1838 which formed the

model for the Bankruptcy Act of 1914. This, Mr. President, was a model for the Barbados Bankruptcy Act, Cap. 303, enacted February 12th, 1925. Sir, the present Act corresponds to an age which looked upon debts as being something that was shameful. I know this has been said but I think it bears repeating; today the borrowing of money entails the taking of risks and does not carry the same humiliating and shameful stigmas as it did back then.

This new Bill seeks to ascertain that a person's interests and reputations are not damaged and creates a balance between a debtor and a creditor. I have to say I understand, although I consider my former profession was the noblest in the world, I am not a lawyer, but many coloured bankruptcy systems tried to achieve what has been called the fresh start. I know that the Leader of Government's Business has mentioned fresh start. It has been so called objectively and the legislation before us will give debtors a chance to have that fresh start and also to get rid of their debts.

Another thing which I think is very important is the far-reaching consultation that has taken place and the number of persons who had been approached for their views have already been mentioned. Another outstanding point is that the legislation both applies to individuals and companies. It also gives a creditor the right to apply to a court for a Receiving Order and moreover a licensed trustee becomes the Receiver. This too, is a divergence from the current legislation.

In keeping with certain criteria, trustees must now be licensed and be of good repute in order to look after the affairs of debtors, especially when there are perishables and matters have to be dealt with swiftly. Another innovation which I observed is the amount of time given to debtors. The Bill provides that during a period of ten days following the sending of a notice to the debtor the secured creditor shall not enforce the security in respect to which the notice is required unless the debtor consents to an earlier enforcement of the security. Where receivers are concerned, they must act, not only in good faith but in a commercially reasonably good manner.

Another innovation is the ability of a debtor to file a notice of intention to file a proposal. This gives him an added six months. What I also think is worthy of mention and of great importance is that this new Bill prohibits utility companies from discontinuing their services to an insolvent debtor. This is important and very humane. He is therefore allowed to maintain a certain standard of living determined by the Supervisor, who as has been pointed out, has vast powers. This has been stressed with understandable repetition and is a new creation; the position of the Supervisor.

These reforms are salutary. They reflect very favorably the imaginative insight of this Government, a Government that has set up the Fair Trading Commission, and provided a range of resources for small businesses. It recognizes in the words of Alexander Pope that 'to err is human, to forgive, divine' and that those who fail should be given a second chance to rebuild. Sir, with those few words, I again say that I am very pleased to totally support this Bill. Thank you, Mr. President.

Mr. PRESIDENT: Senator Marshall.

SENATOR D. D. MARSHALL: Thank you Mr. President. As always, I feel honoured to speak in support of legislation on behalf of this Barbados Labour Party (BLP). The BLP has always, over the years, shown itself to be a very far-sighted and clear-thinking party when it comes to bringing new pieces of legislation to the table. It is recognized, of course, that change is inevitable but we also recognize that we cannot change for the sake of change only. The legislation which is being repealed simultaneously with the passing of this Bankruptcy Act, was enacted as Barbados Law in the year 1925.

As is characteristic with many of our old pieces of legislation dating back to the earlier part of the Century and beyond, there has been a fair measure of tinkering done to it so as to cause the legislation to fit with the changes that are taking place in the commercial market. Some of these instances of tinkering would, of course, be more substantial than others but sooner or later any Government recognizes that the situation has so drastically changed that tinkering ceases to achieve the ends that it would want to achieve.

It therefore became manifestly clear in the early 1980's that given our new commercial legislative framework, a new piece of legislation dealing with bankruptcy was required. The old legislation, I suppose we can say, served us well. Though from my personal experience as an Attorney who has, on several occasions, tried to put several entities into bankruptcy, I have to say that the legislation seems to be so old as to be unfamiliar. In fact, I do not know if it is to anybody's credit that very few bankruptcy applications were being made. Certainly in cases where bankruptcy applications were made, the system seemed so unfamiliar to the authorities and the processes seemed so cumbersome that even the taking of the simplest steps took between five to eight months and sometimes longer. This, of course, is not a situation which redounds to the advantage of the debtor or any of the creditors but, in fact, many persons have been content to get a judgment against the debtor and to leave matters at that.

This Bankruptcy Act has the advantage of being more thorough in its scope and more modern in its thinking. We

have to recognize that in today's world, there are going to be pitfalls befalling any businessman. Those pitfalls might come in terms of foreign terrorists attacks like September 11 or a world wide recession, *et cetera*. May I say here that these pitfalls are pitfalls that do not only befall small businesses, but they befall businesses of all sizes. I would like to say categorically that this legislation is not a piece of legislation that is directed to small business. Several of the preceding speakers have spoken very laudably and articulately about the advantages which this legislation holds for small businesses but I believe that it is fair to say that this is not a piece of legislation focused on small business. We must always be mindful of the fact when we talk about small businesses to be careful not to convey the image that small businesses are doomed to fail or to become bankrupt.

2:10 p.m.

Certainly, I believe many small businesses, because of their very nature, have the advantage of being very resilient and are able to change in ways that large businesses cannot change. There are many small enterprises that are changing the way in which they operate. They bring family members into the enterprise and so on and they are really very resilient and very flexible.

I would want to say that I believe that this legislation is not small business oriented. However, there are some things that I believe are important to point out about this legislation. It is important to recognise that in a situation where a company becomes bankrupt, the old image of a feeding frenzy is no longer a part and parcel of a bankrupt's existence.

Certainly, again drawing from my own experience, when a company reaches this stage, everybody starts to call in the chips. "You owe me \$10. I want it." You owe somebody \$100 and they want it. Everybody is descending on you like prey to try to exact whatever is owed to them. It is an environment which easily causes a business person to panic.

It is an environment which prevents that business person from making sensible choices for the short term or for the long term and, in fact, when his creditors descend on him or her, very often the only thing left to do is to throw your hands up in the air and surrender the entire enterprise. It is then chopped up and at the end of the day there is nothing left.

It is not fair to suggest that receivers, under the old legislation, could not facilitate that kind of thing. I know that there are many instances in Barbados where receivers have, in fact, tried to facilitate that kind of approach, but at the end of the day, creditors tend to panic and want to get their money straightaway and that is the source of much difficulty.

Sir, with the passing of this new legislation, we will see the coming into play of several important other figures, for example, a supervisor. I was quite keen on the comment made by Senator Newton when she queried whether this supervisor would be a substantive post, or whether it would be an officer fulfilling the role of supervisor. I do not pretend to know which avenue will be taken but it is clear to me from the scope of this legislation that the role of supervisor is going to be critical. The appointment of the supervisor clearly sets out its role.

Section 161(2) says that the supervisor shall supervise the administration of all estates on matters to which this Act applies. This gives us one tier of responsibility below which there are several other tiers. Below the level of the supervisor, we have the tier of the creditors and this piece of legislation does give the creditors a role to play in determining how the business or enterprise of the bankrupt should proceed.

Sir, under the creditors, there is another tier, that is the tier of the inspectors, and below the inspectors there is the tier of the trustee. This multi-tiered approach is a very sensible approach. Now, a person may argue that it is very cumbersome but at the same time, if you are going to manage that delicate balancing act between satisfying the interests of the creditors, the business, the employees, and the owner of the business himself, it is going to be important that we establish several levels of responsibility so as to ensure that things are proceeding within a manner that reaches the interests of all parties, and keep the interest of the business central.

One interesting thing about the supervisor is the requirement in Section 123, that is that the office of supervisor is entitled to a levy. I am firmly of the view that while we need to operate businesses in a climate of conciliation and mediation, at the same time the business is going to be one of the primary beneficiaries of the function of this bankruptcy legislation. It is therefore important that provision be made for this bankrupt business to bear its share of the financial burden of providing this supervisory service.

Section 123(2) indicates that there shall be a levy of 5 per cent of all payments and this levy shall be charged proportionately against all payments and deducted from payments by the trustee before the payment is made. Sir, it is part of an approach which says to a bankrupt or a bankrupt company that we will move toward a position of putting them on a strong footing, but at the same time, they have to bear some financial responsibility for the measures that are being put in place to protect them. I believe that this is a very important commitment to the role of the supervisor.

I am of the view that as time passes, because the supervisor is a pivotal officer, we have to be sure that his office is properly staffed and has all the facilities that it needs. It is a very difficult thing to supervise any bankrupt enterprise and the bigger the enterprise, the more difficult it is going to be, and at the end of the day, the supervisor has a responsibility which is unlike the responsibility of the other individuals.

This supervisor is not going to be a volunteer. This supervisor will have a strong responsibility and commitment to the Government and the people of Barbados for the discharge of his responsibilities. Therefore, we have to be sure that he is equipped with the necessary staff and power to discharge his responsibilities to the best of his ability.

We mentioned in this debate the fact that this legislation includes references to family and those kinds of arrangements and I would like to dwell on these provisions for just one moment. Section 51 of the Bankruptcy Bill provides that a debtor, who is married but who is the sole registered owner of a matrimonial home which does not exceed one acre, his or her spouse is entitled to claim a one half interest in the net proceeds from a sale.

Sir, to put that in straightforward terms, say there is a married couple and the woman happens to fall into bankruptcy, the man is able to claim one half of the net proceeds. This provision is quite interesting because, under our Family Law Act, a spouse is not automatically entitled to claim a one-half share of the matrimonial property. This particular section brings a somewhat different tating to the arrangement and it appears to vest a spouse with a one-half interest.

This may be a provision that we may have to look at to see how it works in the future, because if one imagines a situation where a married couple might have been married for only three years, under the way our courts approach the distribution of property on a divorce, that spouse claiming, may be entitled to 10 per cent, 15 per cent or 20 per cent may be a relatively negligible percentage.

If you take that same situation and cause one of the parties to become bankrupt – and again, just to be fair to the lady Senators – and the woman becomes bankrupt, then that man is automatically able to claim a one-half share of the net proceeds. And so, we may very well have to look at this again to see how it actually works in reality.
2.20 p.m.

But we must not lose sight of the sentiment and the policy which governs this particular provision. The fundamental thing is that a family arrangement or a spousal commitment cannot be cast aside like offal in the wake of a

bankruptcy proceeding, because we have to ensure that the family remains protected. While it does not give the children any rights, a spouse with children needs to be satisfied that he or she and their children can still have some corpus of an asset to go after or to rely on for their support.

The only other family type provision is to be found in Section 115 of the Bill which says that:

“A father, child, mother, brother, sister, uncle or aunt by blood or marriage of a bankrupt is not entitled to have a claim preferred as provided by section 113, in respect of wages, salary, commission or compensation for work done or services rendered to the bankrupt”.

Again, this is an interesting provision, so before I get into the meat of it, often remind myself as I look at legislation that one famous writer of jurisprudence said that the role of government in framing legislation is to engage in a balancing act to satisfy the interests of all competing parties and use that particular term with a minimum of friction and waste. So, what is the balancing act that we are trying to examine in this case?

It is often known that people who are insolvent and who may move to bankruptcy try to enter into pseudo commercial relationship with family members. Sometimes after the petition for bankruptcy is filed people would come out of the woodworks and say that they were an employee for so many years and they used to do this and do that and their uncle owed them money because they used to be the messenger for the last eight years and so on. Very often these are not jobs that could easily have been documented, so it is clear that there is a strong possibility of communicating the true state of affairs when it comes to who were employees and so on. So this particular section of the Bill is clearly designed to ensure that a bankrupt cannot encourage a host of relatives to come tramping in saying, ‘well, I was owed wages, I was owed this or I was owed the next thing’, and in that way try to carve out sums of money which ideally would find their way back into the hands of the bankrupt.

But we have to consider competing interests and the competing interest in my view is this. One of the historical characteristics of small business people has always been the fact that many of their employees have been family members. In fact, I believe one of the things we so often cry out and lament about is that families tend not to be involved in businesses anymore and the things that make for cohesive enterprise are the things that are vanishing.

So on the one hand while we want to protect the creditors against a bankrupt tainting the proceedings by bringing up fictitious employees who are family members, at

the same time we may well have done a little damage in terms of encouraging the involvement of family members because if a person employs quite legitimately in his or her business a mother, a brother, a sister or somebody in the family who is willing because of the family connection to work perhaps longer hours over the Christmas season than the employee who is not a relative then it may seem a little unjust that such an individual, who not only puts in time but an amount of dedication, may find himself or herself disadvantaged as a result. But as I said, it is the case really of balancing competing interests and so we may well find that we need to come back to this particular section in the future to address it.

There is one slight thing which I believe is clearly narrow and I am sure it is likely to be subject to an amendment relatively quickly. Section 93 talks about appointing inspectors to oversee the estate of the bankrupt and then it goes on to mention the estate of the trustee when I think it is clear from the context that the estate of the bankrupt is what is intended. But that is a relatively slight matter.

So the legislation which we are debating today is in a sense a breath of fresh air. It does provide many more mechanisms to ensure the longevity and continued success of businesses. It eliminates the feeding frenzy that was attendant to bankruptcies in the past and I believe that it goes a long way to satisfying the requirements of today's modern commercial framework.

While as an officer of the court I am bound to defend our structures and our systems, and while I often say to people that some of our legislation might be old but our society still works well in spite of it, we have to recognise that the time always comes when we need to look at and modernise our commercial framework. In fact, we have to ensure that our commercial framework more than any other framework is cutting edge and is going to take into account internationally recognised approaches and principles.

Our bankruptcy legislation was around for 75 years and the time has clearly come when we need to put it to rest. It has served us well but no doubt this Bankruptcy Bill when it becomes part of the laws of Barbados will serve us even better in the future and will ensure the continued success of all businesses whether they be small or large.

With gratitude, Mr. President, I will stop here.

SENATOR LeR. H. McCLEAN: Mr. President, this particular piece of legislation is certainly not one that the Opposition would want to oppose because we do accept that this is a piece of legislation that is necessary at this time. However, we need to continue to offer a word of caution

because Government Senators sometimes seem to get carried away because they may seem to believe that they are on to something good, so this is the opportune time for them to sort of throw everything including the kitchen sink at the Opposition and blame everything that has gone before and which is sort of being corrected on the Opposition.

For example, Senator Murray in introducing the Bill made reference to the difference in the business environment that exists now as against what existed pre-1994. Certainly, if we want to stretch things to the ridiculous we can talk about what existed pre-1986 or pre-1961 and we can go on and on and make these comparisons which really and truly do not in any way contribute to the development of this country. I must continue to remind Members of the Government that saying that the Opposition did not do something does not make them necessarily look good. It is their performance on which they will be judged.
2.30 p.m.

We have always accepted our judgment and will only hope that persons will accept theirs when the time comes. An example given of this great business environment was the fact that the Fund Access and other institutions were set up to facilitate the granting of loans to small business persons, and it was interesting to hear at least one figure which was quoted at approximately \$4.21 million being lent to persons under Fund Access. I believe 365 loans accounted for this \$4.2 million. That works out to \$11 000 per loan on an average.

The reason why I want to pay attention to that is that sometimes loans of this nature really put people in trouble. It is true that very often many of the enterprises which people are getting into nowadays do not require large sums of money in order to get going, but we have a situation where to secure very small loans, there is a level of security that is required and even though you say persons do not require security for these loans or they are loans which can be easily accessed by small people you will find that there are certain constraints, for example, the guarantors they have to get and all the other requirements for the loans. Sometimes, you believe they want everything including granny's false teeth in order to give them access to these facilities.

Very often we have a situation where people get loans to start enterprises and the loans put them in further difficulty because it seems as though whenever certain people have access to money they are placed under more stringent conditions than others. For example, in the case of some of these small loans, persons owning a house are required to put up their house as security and in the event that the business runs into trouble obviously the first thing that people want to call on would be that property. In fact, sometimes I believe in the case of banking institutions,

whereas the old loan sharks would break a knee cap, the banking system nowadays operates with the only difference being that they want your property.

Only recently, two different businessmen of different ethnicity related the same story to me with respect to a particular banking institution in Bridgetown, cases in which these persons have got loans which were already secured but the bank came to them and in one case one fellow was in arrears by \$6 000 on a loan which was \$160 000. He had security which was more than twice the value of the loan and the bank said to him that he has a property which they would like to include in the security. This is after the fact, long after the man had the arrangement for the loan. Because he got into arrears they said "I wanted additional security, his property now as security."

Another businessman of a different ethnic group related the same story. His overdraft had gone up and reached the point where he was merely managing to keep it at that point. It was not going any higher but he could not get it down because of a downturn in business and the banker said: "You know, you have a piece of land which we would like now to hold as security as well."

This is why I say that the old loan shark used to break your knee cap but the banks nowadays look for properties to sell. They continue to operate on the same principle. Whatever is the easiest thing to get, they will get.

Sir, we have heard the point made earlier of the undercapitalization of businesses and this is why I referred to this matter of giving these loans to small businesses. Very often what happens is that a person might have a feasibility study done and determine that it requires \$20 000 to get this business going, but persons would say they cannot lend him \$20 000 but \$11 000. Now that immediately puts the business at a disadvantage because you start out being undercapitalized.

There never seems to be any rational reasoning why you cannot be loaned the amount of money that is required. Very often it is because somebody feels why should I lend him that amount of money? Or perhaps he is asking for more than he really needs. You get all kinds of strange considerations coming into question and therefore persons end up in a situation where they are never able to keep the business going and they continue operating at a deficit. This is why I said that perhaps you are putting small people at a greater disadvantage and putting them in trouble when you give them some of these loans.

Sir, I get back to the business which the Government is claiming to be so great at, at this point in time. The fact of the matter is that there are many persons that will tell you

that the business environment in Barbados at this time is not what Government would want us to believe it is. Businesses are still being forced to operate in a climate where the cost of doing business is too high. The cost of utilities is high, the efficiency with which certain services are delivered by utility companies and by government agencies continues to be very low.

Business people very often find themselves at a serious disadvantage, especially in situations where they have to compete against other businessmen in other countries. We have a situation also where those persons who are in control of the distributive sector basically control what is happening in the economy and how other business people are treated.

The reason why I say that is this. Take for example, a manufacturer in Barbados, very often has to purchase raw materials from a local supplier because very often he does not have the kind of money to source the raw material directly. He might be buying from a local supplier and then you will have that same local supplier of the raw materials for the manufacturer concerned importing the finished product. They are selling the raw materials for the local manufacturer to make the product but they are also bringing in the finished product to compete against the local manufacturer and sell it at a cheaper cost. That is something that is happening. Very often what they are bringing in is inferior to what is being manufactured in Barbados.

Sir, this brings me to the matter of this same business environment in which we are encouraging people to buy local. Inasmuch as we would want to support any such programme I personally am not too optimistic that it will succeed because the role which the distributors in this country play, unless they are prepared to give the local manufacturers their full support, then no campaign will succeed.

The reality is that few local distributors are prepared to give their full support to local companies. I was told by one gentleman that the local manufacturers cannot offer the incentives that the foreign manufacturers can because very often they would be invited to a "conference" in Miami and be told that they can bring their wife and children. What it really is, is a trip to Disney World so that you will be encouraged to continue buying from the foreign supplier.

You also have a situation where the local distributor would be prepared to buy an item that is imported for a few cents less than what it costs from the local manufacturer. Again, because the incentives are not there, when they do buy from the local manufacturer they want to buy six pieces now and ten pieces later on, or somebody comes and says he wants one of those items and he calls the manufacturer and says he wants one now and if he cannot supply that one

when called for, he asks if you cannot supply one, how will you supply a thousand?

In actual fact, they behave as though you are waiting for them to call you to tell you they want one item even though it would take a week to produce. We need to get people to understand that the survival of every business in this country depends upon the cooperation of all.
2.40 p.m.

Mr. President, whether private or public sector, everybody has to play a part in order to ensure that businesses survive. Whereas there is the necessity for legislation of this kind, it is more important that we try wherever possible to ensure that businesses can survive, and the provisions of this legislation would not be required unless the circumstances are very extreme. It is of primary importance that we provide a climate that can permit businesses to survive.

Interestingly enough, even though the legislation deals with failure of business, at the same time, while it is being introduced by the Government, we hear that it is being introduced in a climate where things have never been so good for business. One would wonder if things are so good for business why is there a need to make provisions for the failure of businesses. Sir, this is not something that I want to dwell on because we see the legislation as being necessary.

I want to continue to make the point that Government must not get carried away when they believe they are on to something good because very often they send contradictory signals. On one hand they are saying that things are excellent and on the other hand they are saying that it is necessary to provide for failure. Sir, we will, nonetheless, support the legislation.

Sir, we have to deal with the attitude of the banking sector to small business people generally because a business like Julie'N for example, by no stretch of the imagination could be considered a small business. There are other businesses that employ 25 to 30 people that also came under severe pressure from bankers and certain Government agencies. There is also the predatory nature of business in this country. Sir, this is something that has been occurring over the years. When an individual comes up with an idea and it seems to be one that can make money, suddenly people who have money decide that they want the idea. They are not satisfied to see other people get into the game and make a success of anything. Some people believe that anything successful they must be a part of.

The reconditioned car business is an example. There were attempts to force the small people involved in that out of business, and having failed by one means they have been

able to do so by other means. Sir, I also know of a case where a young man, because of his skill and knowledge of computers, was able to come up with a system for marketing using the computer particularly in the tourism industry. As soon as he launched the first terminal, a very big business in Barbados was on to him. They said they had been trying to work out the system for years and had tried to copy the system from a foreign company. They asked him how he was able to do it and offered the young man a lot of money, but what in actual fact was a pittance when one considered the value of the system. This was a conglomerate that sells from nails to tractors and there was no need to want to move in on a small person of this nature.

As I said, some people are not satisfied to be successful in one area, they believe they must be part of everything that is happening in Barbados. We see it every day where people come up with ideas, are told that their ideas are not viable ones and then a few months after you see the same idea being put into practice by someone who had more money to be able to get it going.

If we continue to see these things happening we will always have people who will be dissatisfied, and people will become bitter because they are unable to use their creative skills in a meaningful way. We should not believe that people should be involved in cottage industry and craft items only, and if these people decide that it should be something bigger, somebody will decide it is not for them. It is one of the sad things happening in this country.

Mr. President, people have become bitter because they have gone to University and came back with skills but when they try to get ventures going but cannot get financing because people tell them it cannot work. Some time later somebody has the exact venture making a lot of money from it. Sir, we cannot allow that to happen.

Sir, when we talk of this excellent business environment in this country, we must also be mindful of the fact that there are things happening that are not in the interest of the people of this country.

Sir we also see persons appointed as receivers who turned out to be liquidators rather than receivers. There are very few businesses in this country which have gone into receivership that came out successful. We have seen receivers come out with large sums of money and the business dies, but we never see a situation where a business went into receivership and that business recovered and became a viable entity once again.

When Government Members talk about this economic continuum and all kinds of legislation is put in place, the legislation is only good if it contributes to the development

and welfare of the people of this country. If we have legislation which does not impact in a positive and meaningful way on the lives of the people of the country, perhaps it is better not to have it than to have legislation that is of no use to the people of the country.

A case in point is the Fair Trading Commission. The Fair Trading Commission has been established but the provisions for the functioning of that commission have not yet been put in place. Yet, we hear of a utility company being able to have a hearing dealing with the utility side but nothing has happened yet with respect to the consumer and the legislation which has been promised which is supposed to be part of the package when the Fair Trading Commission was set up. That has not yet come and Government has gone silent on it.

It is not good enough for Government to boast of bringing these pieces of legislation that they believe are great while, at the same time, failing to bring other essential pieces of legislation which would contribute to the welfare and well-being of people in this country. We have to get people to understand that many of the measures that they have been able to ride on and contribute to the eight continuing series of growth, while they want to ignore that we can go back to where the old legislation was used by the same Barbados Labour Party to deal with their opponents.
2.50 p.m.

The late great Sir Grantley Adams told Barbadians that they have short memories. Sometimes our memories are jolted and we remember things that people would want us to forget. There are two cases in this country where bankruptcy legislation was used to silence opponents. The first case was Adams vs. Wickham. Mr. Wickham, a great journalist, was chased out of this country because of an action brought by the then Grantley Adams.

In more recent years, we had the case of Forde *et al* vs. Maxwell, you will remember that case. Mr. President, this was another situation in which suppression ...

SENATOR THE HON. G. S. H. MURRAY: On a point of order. Mr. President, I hate to interrupt the Honourable Member who is in full flight, not saying much, but in full flight. One thing he did say in the context of the bankruptcy legislation being used against an opponent, I would like to remind him, and he can verify it by checking the historical records, that Grantley Adams was the lawyer. The case was brought by a Bailey against a Wickham. Sir Grantley Adams was only the lawyer. He did not bring any action against Wickham. Please get your facts straight.

Asides.

SENATOR LeR. H. McCLEAN: Adams was involved in the action against Wickham.

Asides.

Mr. PRESIDENT: I think that you have restated that again. I think that the Senator has corrected you in terms of the historical record. Please proceed.

SENATOR LeR. H. McCLEAN: Mr. President, whether one wants to accept it or not, Mr. Adams played a significant role in destroying Mr. Wickham.

His HONOUR SENATOR C. L. BOLDEN: Mr. President, with all due respect to the Honourable Member, this forum has never been provided to castigate lawyers in practicing their profession. If an attorney is employed to do a job, by an oath he is sworn to act to the best of his ability. He does not instigate anything and the Honourable Member should be made to withdraw that statement.

Sir, what the Honourable Member is doing is claiming that any attorney who works for a client and the opposition gets the worst of it, that client is wicked in what he is doing. The very Act on which he is speaking makes provisions that even if proceedings are wrong it cannot throw the matter out of the court. I do not understand how you can say on one hand that a Mr. Adams worked for a client and he was instrumental in driving someone out of this country on the same Bankruptcy Bill. Section 2 (12) makes provision for attorneys that even if they make a mistake in court, the court supervises the action. The Honourable Member should be made to withdraw the statement.

Mr. PRESIDENT: Senator Bolden, your point of order that the Honourable Member is misleading the Senate, that point has already been made by Senator Murray. I advised Senator McClean that he has been corrected and I invited him to proceed. I think it would be a good idea if you move away from the point. Honourable Senators have raised a valid point of order.

SENATOR LeR. H. McCLEAN: Mr. President, in more recent times we have had an action brought against Mr. Maxwell. This was an action where he too was forced into bankruptcy and literally chased out of Barbados, based on the action brought by members of the Barbados Labour Party.

Sir, the only cases which we can recall...

His HONOUR SENATOR C. L. BOLDEN: On a point of order, Sir. The Honourable Member must not give half of a story. The Honourable Member must tell the Chamber that Mr. Maxwell acted as a journalist writing in the newspaper

of the Democratic Labour Party and libelled, who is now, Sir Henry Forde and Sir Harold St. John over the Codrington College matter, where they acted as attorneys-at-law for a trust. He must not do this, Sir.

Asides.

Mr. PRESIDENT: I think Senator Bolden has made a valid point. Senator McClean you are referring to matters which are of record. These are matters which were before the court and if you are going to refer to them, which you are quite entitled to do under the Standing Orders, you must be accurate. You must not, whether deliberately or accidentally mislead the Honourable Chamber.

I would ask you to proceed but bear in mind that in references to matters of historical record of which Members of the Senate are aware, let us get the record straight.

SENATOR LeR. H. McCLEAN: Mr. President, I assure you that I am in no way attempting to mislead anyone. I just made a statement. I have not gone into any fine details of the matter. I made a statement and made reference to two incidences that took place in Barbados. Sir, I take your point. If Honourable Members want to deal with accuracy, so be it. Sir, these incidences did take place in Barbados.

Asides.

SENATOR LeR. H. McCLEAN: Mr. President we support the principle of this legislation because we still do not believe that Government should be carried away on certain issues, giving the impression that all is well in this country when, in fact, it is not the case. All of this business environment that is being talked about, we have had a downturn of business in this country. For example, there has been a downturn in the international business sector. There are very few international companies that are attracted to Barbados these days.

The legislation is necessary. It is a good piece of legislation but why do you have to use the fact that you are bringing a good piece of legislation to talk about things that are not necessarily the case. Government wants to ride...

SENATOR Miss. J. C. ODLE: Mr. President, on a point of order. I believe that from the statements that the Honourable Member just made, he is suggesting that errors were committed by previous speakers by suggesting that they told untruths and they are misleading this House deliberately, Sir. I ask that he would withdraw that statement.
3.00 p.m.

Mr. PRESIDENT: Please proceed. That was not quite my understanding.

SENATOR LeR. H. McCLEAN: I will not accuse Members of misleading anyone. All that I am saying is that they are getting carried away and that they seem to believe because they are on to something good, that everything good is happening. But it is the responsibility of Her Majesty's Loyal Opposition to remind the Government when they are going overboard with anything. Our job is not to agree with the Government. We do not have to come in here and sing "How great thou art" to the Government of Barbados. We will tell you when we believe it is necessary. No one has ever told me that I have to come here and support the Government. When I have to support an issue I will, but I do not support the Government because I was appointed by a person who commands the respect of the majority of those persons who do not support the Government, as defined under the Laws of Barbados.

I would therefore say that it is not my duty and has never been. Nor has it ever been the duty of an Opposition Member in the Other Place or an Opposition Senator or when the Barbados Labour Party was in Opposition, to support the Government. Therefore do not expect me to come here and support the Government or to step lightly if I have to say something against the Government.

Sir, I have to say that this BLP would want people to believe that everything is well in this country but it is not and, therefore, when it is necessary, we have to say that not everything is well. Sir, the BLP has been fooling the public that they are doing a lot for the small businesses in this country when, in fact, many of the small businesses that are being established have a very short life span and a lot of persons who have taken the risk of going into business have absolutely had to get out as quickly as possible. Sir, how are you going to say the big businesses are suffering...

Aside.

SENATOR THE HON. G. S. H. MURRAY: On a point of order, Sir. In my presentation I mentioned the number of businesses that have been established over a period of time. If the Member is claiming that some have been closed down, I think that he should give those figures, otherwise he is just making up things as he goes through them.

Mr. PRESIDENT: No point of order. Please proceed.

SENATOR LeR. H. McCLEAN: Mr. President, as I must repeat, it is not my job to give him those numbers. I am saying that many businesses that have been established have had a very short life span. I would like to advise a lot of persons who would want to jump and go into business – because the Government is giving them the impression that that is something they should do – I advise them to think very carefully before taking the steps. Sir, I think it is wrong

for the Government to be giving persons the impression that all is well and it is easy, that the best thing one could do is to start his own business when, in fact, the reality is that there are sometimes insurmountable obstacles for persons attempting to go into business on their own in this country.

Sir, in fact, all that is being done is that this talk about persons going into small business is merely a method which Government is using to deal with the unemployment situation. That has been the strategy; to give somebody \$10,000 or \$12,000 and give the impression that that can start a business, when the first thing that one has to do is to look for over \$2,300 to become incorporated. Therefore, what kind of business can be started in Barbados with \$10,000 or \$12,000 that can be viable, given the cost. The only kind of businesses that can start with that sum are the small Mickey Mouse businesses which some persons believe is all the average person in this country is supposed to have. Sir, this is engaging in disguising unemployment, because you cannot make enough. There are very few businesses that can be set up with \$20,000 that can give one enough to enjoy a reasonable standard of living, because you have to pay yourself a salary. How much can you pay yourself out of a business costing \$11,000 to set up. There are very few businesses because there are very few things that can be produced. You have to market at a rate that you can earn a living out of that enterprise.

Therefore, Government must stop trying to fool Barbadians that they are into something that is so grandiose and so great for the people of this country. As I said, it is a mere camouflage and I always refer to it as a mere feel-good mentality in this country when you tell someone that everything is rosy. If you tell them often enough maybe they will believe it and that is what is going on in this country at this point in time.

Mr. President, I always try to disregard the Asides and I continue disregarding them because I do not hear them, but when some persons feel that they have finally got something that they can respond to and have been able to make a reasonable contribution in this Senate as former Senators have done, sometimes they do it so rarely that they too get carried away because they have the opportunity to say something. Therefore, I believe that persons in that regard should not at all get carried away. I notice there are those who when they first spoke in this Chamber were not in the same frame of mind, but seemed to be rather subdued, all of that is part of the nature of things, but there are some good days, others are not so good. Today one of our colleagues had a good day and unfortunately his colleague did not have a good day and we understand that.

Aside.

Mr. PRESIDENT: Senator McClean, does this have anything to do with Bankruptcy and Insolvency?

SENATOR LeR. H. McCLEAN: Mr. President, I have said what I wanted to say on this matter, but I just needed to compliment Senator Marshall for his rare contribution. I think that he did do himself well today and we can only hope that in the future, he would at least let us be the beneficiaries of his vast knowledge and not be so silent in this Chamber.

Mr. President, again, I would like to say that we do support this legislation. Perhaps if it was enforced a year ago, there would be one or two businesses that would still be in business.

3.10 p.m.

Sir, there are two points which I quickly want to make. I notice the specific mention of farmers and fishermen, when it comes to their claims on a person who becomes bankrupt and I think that those provisions are indeed commendable. They should be in there, because these people are very likely to suffer in the whole matter.

I would also like to say, Sir, that where the Government is one of the creditors, particularly when it comes to that person owing the Government taxes, and the Government using the machinery available to force the person out of business, I believe that under this Act, the person should be able to follow the necessary procedure in order to protect themselves from being forced out of business simply by the Government taking action easily.

In this regard, and perhaps if it was enforced a few years ago, other businesses might still be in existence in this country and persons would not be able to use the leverage available to them through Government agencies in order to exercise their own will.

With those few words, Sir, I would like to give my support to this legislation.

SENATOR D. L. HAYNES: Mr. President, this Bill reminds me of batting in a test match where if you are out for nought, you get a second chance. What is being attempted through this Bill, must be seen as part of Government's approach to the repositioning of the Barbados economy.

Sir, in looking at how businesses are allowed to respond to periods of financial difficulties, since in reality any business may experience the kind of difficulty that only requires restructuring to put it back to a position of viability, presently, in many instances such businesses are often put into receivership and our experience is that few are ever restored to a sound footing.

Mr. President, the old Bill allowed some banks and financial institutions to appoint top management accounting firms who charged high fees, thus making it impossible for these businesses to get back on a sound footing. Banks and financial institutions will mortgage your business like they mortgage your home.

These receivers do not know anything about your business and they cannot run your business any better. One might say they would come in and make suggestions of paying the staff less, advising you not to buy certain types of machinery, but that money which you save goes back into the receivers' services in the fees that they are paid. Sir, these receivers make loads of money.

Therefore, when we put legislation in place, we must be careful that we do not stop the small businessman from getting a loan. I believe that the financial institutions should make suggestions and offer financial advice to the small businessman.

Mr. President, I welcome the creation of the office of the Supervisor of Insolvency. It is my hope that such a person would monitor the systems put in place, to save the business and to regulate the fees paid to the receivers. This is important for businesses in Barbados, especially black businesses.

This Government has placed tremendous faith and support in the small business sector in Barbados. The Government promotes a climate of business development at all levels, particularly at the level of small and medium-sized enterprises. This Government has ensured that while it continues to create an enabling environment for large businesses that it will never be at the expense of small or medium-sized enterprises.

We need all businesses, large, medium and small and they must be promoted, but special attention must be given to small business. There are approximately 6 000 small businesses. Sir, it was mentioned by Senator Williams that there are six thousand small business people registered in Barbados, employing twenty-four thousand persons. This represents about 20 per cent of the work force which makes a significant contribution to the GDP.

We need to educate and train our small businessmen. We know that the small business is always seen as a family business but we must encourage them and we must ask them not to be too scared to hire people from outside. Very often small business fails because of its mismanagement. Therefore, they must understand that they are to make profit, keep their customers happy and they have to be efficient.

They must also seek professional advice. Networking is important and marketing is important. They should seek information from the Internet which is a viable form of information. They must understand their role in the community and if I might mention, judging from myself, as a small business person, and living in Holders Hill near to Marshall's Bar, which is a small business, and which the President of the Democratic Labour Party might say, would be my constituency in the next couple of years...

Asides.

SENATOR D. L. HAYNES: ...I find that to be a successful business and it should be encouraged.

Mr. President, I support this Bill 100 per cent and I see this Bill as an important piece of legislation for the success and development of business in Barbados.

I thank you.

Mr. PRESIDENT: Senator Haynes, you can now be said to be off the mark.

Asides.

SENATOR Miss J. C. ODLE: Mr. President, in rising to support the Item before us, I think it is important that we look at a number of factors. Sir, what immediately comes to mind as I consider the whole issue of bankruptcy and insolvency, is that I wonder to what extent individuals who run businesses in this country actually have measured the business to see where they stand with respect to its success.

Sir, I wonder if some of the comments that I will make immediately following may not hit targets for some individuals in which this piece of legislation would seek to give them some measure of comfort and a way forward. Some of the questions I would ask, Sir, would be:

1. Are there individuals today arguing with their spouse or significant other over bills?
2. Is the greater percentage of their income being used to service debt payment?
3. Are individuals chronically late in paying their bills and extending the repayment schedules?
4. Are individuals borrowing to pay for items that were formerly bought with cash?

3.20 p.m.

Are individuals putting off medical or dental visits because they imagine they cannot afford them right now? Is there any threat of repossession of cars or credit cards? If individuals lose their jobs, would they be immediately in financial difficulty? Finally, are there individuals who are one month away from a take home and where would they be?

Sir, I asked those questions because very often many individuals and businesses in this country and elsewhere believe, especially if it is a cash business, that they are making money. This may be the plight of many small businesses because we all well know that if you are a cash business, you will be taking in cash every day and if you are not following proper accounting procedures, because you may not know or you may not have sought assistance in your expenditure component, then indeed you may fool yourself, particularly those businesses which the Senator on the Other Side referred to as Mickey Mouse businesses. I disagree entirely with him on that because I do not believe that any individual who set up business in this country whether it be with \$5 000 or \$10 000 or more dollars should be referred to as a Mickey Mouse business and I take a personal grievance with that.

SENATOR LeR. H. McCLEAN: On a point of order. I referred to certain businesses as Mickey Mouse businesses. I never referred to a person.

SENATOR Miss J. C. ODLE: Mr. President, I...

Mr. PRESIDENT: Senator McClean is on his feet on a point of order.

SENATOR LeR. H. McCLEAN: So when the Senator said that I referred to a business or a person as Mickey Mouse, I never included persons. When I spoke about Mickey Mouse, I said Mickey Mouse businesses. That is the nature of the business.

Mr. PRESIDENT: I will treat that as a point of elucidation.

SENATOR Miss J. C. ODLE: There are facts on records that would suggest that many of what we referred to as small businesses in this country in particular are managed by women. Mr. President, I know very often that when I rise to speak on achievements that women may have made, I get all kinds of Asides but you have advised me never to listen to the Asides, so I will not do so today if there are any in that regard.

Sir, it is a fact that many women, because they were unable for one reason or another to secure financing from the established commercial sectors, put up their own money to

set up a business. So it is not right for someone to suggest that businesses below a certain size are considered Mickey Mouse businesses. I think they should be commended and lauded for the effort in that regard.

Sir, I cannot quote statistics as other Senators have, but most of the businesses in Barbados that are contributing significantly to the economic stability of this country are small businesses and entrepreneurs like myself. I am not here to pat myself on the back, but the point must be made that there are businesses which were able with their own small investment, not an investment from commercial entities because they did not consider them to be viable, to sustain the time including the structural adjustment programme which struck this country under a former Democratic Labour Party administration and were still in a position to hire people and to create opportunities for them too to become entrepreneurs. So, Sir, it is with pride that I feel that I have to make comments to this Bill because like so many others I too, through my business, may have gone another road, but I was fortunate and was able to pull on resources.

I feel that the issue of small businesses is very relevant to this Bill as a whole because this Administration has made every effort to ensure, by way of the Small Business Act, that they can function competitively. I would say though that one of the instruments required for their establishment and for being allowed to be registered as a small business in order to receive the 25 per cent tax benefit is the whole issue of the audited financial statements that are required before they can be registered as such.

Mr. President, the Companies Act does not speak to requiring an audited financial statement in order to be so registered and I believe that it is onerous. I am not suggesting that it be done away with but perhaps at some stage we should seek to see how we can make that more realistically manageable for many businesses because if your sales are under \$2 million, as another Senator has said, and you have used up your provision on your staff, your family, *et cetera* to run your business, you will want to make sure that you do not incur further debts in order to keep the business afloat.

Sir, I want to make one other comment with regard to small businesses. This is not an accusation or the pointing of a finger at all. In bygone days, many people who eventually went into businesses were persons who had been deprived in one way or another from having access to a certain quality of life and certain material goods and services in this country. It is unfortunate that many of them had not sought advice and guidance particularly in cash businesses to regulate some of those resources back into the development of the business to expand it and to make it more viable. What is seen very often are significant lifestyle changes which are quite reflective in

most societies where a person came from not having and then having access to and perhaps being misguided and getting carried away a little bit.

So, I would want to urge businesses which may fit those criteria to take advantage of some of the benefits that this Government has made provision for. I am speaking specifically of the Small Business Venture Capital Incorporated because, as was pointed out, many businesses start on insufficient capital and if that is the case then sustainability is certainly not assured, but the Small Business Venture Capital Incorporated will assist you if your business is one that could be viable, is interesting and probably has the potential for significant growth to be engaged in equity financing.

Many companies do not wish to have a non-family member or somebody who might not be a friend sitting on their board, but they would be well advised to do so because sometimes it is better to have an outside interest to take a bird's eye view at the way your business is being managed and to make suggestions. So if one engages in equity financing through the Small Business Venture Capital Incorporated this is one of the initiatives that would take place. I think it is to this Government's credit that this provision has been made. Other Senators have spoken extensively about Fund Access and so I would not speak to that today.

Mr. President, the Bill also speaks about rehabilitation for businesses or individuals who find themselves on the borderline and I think this is creditable because points have already been made that the business is usually snapped up, high fees are paid and at the end of the day there is no hope for resuscitation. So it is very instrumental that that has been included in this particular Bill.

In speaking to the insolvency component I have been advised that usually what is used to pay the debt is what is referred to as floating assets which become crystalized and formerly Government debt was the first bill that was paid. I am pleased to see at Section 113 that funeral expenses, cost of administration, supervisor's levy, wages and salaries and commissions, excluding severance, rank high because in the former Bill the wages came way down the line and very often, Sir, there was nothing left to pay the wages of the staff who would already have contributed their time and services and would not have received payment.

3.30 p.m.

Coming high on the list in the new Bill would be National Insurance contributions. Sir, this speaks volumes as well because if a company folds, very often one of the things that have not been serviced has been the national insurance component. I believe this is very often so because many

businesses believe that payment of Government debt or bills such as National Insurance and PAYE is more a nuisance and unnecessary. Unfortunately, Sir, that is not so. It is a necessary nuisance, if I can put it that way. The fact that the National Insurance contributions will now rank high in terms of coming out of the bankrupt issue speaks to the future of the employees because even if the company closes, they can rely on the benefits due to them under the National Insurance from their contributions.

Mr. President, Senator McClean spoke to Fund Access just lending money. He can correct me if I am wrong but I believe that is what he said, but he made no reference to the fact that there was a technical component attached to any lending of funds from Fund Access. Technical assistance with regard to marketing, technical assistance with respect to packaging, these are things that businesses require if they are to be competitive in this globalised world.

The whole question of product design, even if one is selling an item from a cottage industry, it must be appealing and be able to stand the test in this market and outside, because lost is the country that hopes only to service the persons who reside on the island, the 265 000 of us by any product, goods or service. We are in an era where it is necessary that we export our commodities and goods and services.

We recognise, Sir, that our quality of living being as it is, very often it is costly to produce, especially as so many of the raw materials are imported, although in many instances this Government has ensured that there is a lower rate and provision made for importation of goods to manufacture items. I believe we must pay special attention to the whole issue of the human resources services that we offer. For example, Sir, many offshore companies, persons here sell accounting services abroad and receive payment very often in foreign currency.

The Fund Access and other agencies will advise, if businesses took note of it, that you can be eligible for the export guarantee scheme which would allow for zero rating with respect to monies earned in that measure. Similarly, we have always been lauded for our high ability in language, and Dame Patricia would be able to speak to that broadly, to the point now where we are "exporting teachers". Teaching of English is something that companies across this world have made tremendous amounts of dollars from, and there is a possibility for international language skills if you have it by way of English to be taught by Barbadians. That revenue can then be generated.

That means that we are not only operating on shore but we are operating offshore and can therefore benefit from a zero rate of VAT and that would be an innovative, newer

type of company, moving away from a goods type of market which, if they so structured themselves in that manner, would give the company an opportunity to grow, to tap revenue from different sources like offshore services, and hence make that company more viable and therefore less likely to find itself in a position to take advantage of the Act we are discussing today.

Mr. President, I am really pleased that this Act has now come to be amended. One of the previous Senators spoke to an issue concerning the matrimonial home at Section 51. He took great pains to mention it so that the women in this Senate would not feel badly, but I want to remind him that very often nowadays that home may not be a matrimonial home but there may be a significant other and it would be in the name of a woman. It is a fact that many women are not only heads of households but are homeowners more so than in the past and it is just as possible for women to be bankrupt. I do agree that the Act is structured in such a way that whichever of the spouses is bankrupt the other can have protection with respect to one-half the interest in this home. I am pleased that note has been made of that as well because I know of instances where there was a bankruptcy issue and the significant other was left to face the door, so to speak. I am pleased that this Act will address that.

Mr. President, with those few remarks, I want to support this Bill and commend it to all other Senators, and on a final word, to urge small businesses in particular to take advantage of the possibilities created by this Barbados Labour Party Administration to ensure that your business can be a viable business that will stand the test of time and contribute significantly to the economic success of Barbados. Thank you, Sir.

His HONOUR SENATOR C. L. BOLDEN: Mr. President, I do not want to cover the grounds which have been covered by other persons this evening, but I want to note especially Section 35 and hope that it will give the Government a direction in which to go in respect of other people, particularly the older folks in our society. Section 35(3) on page 66 of the Bill deals with the issue of public utilities not being able to discontinue service to insolvent persons for certain reasons.

I have always been of the opinion, and I know it is so in many overseas jurisdictions, that public utilities cannot willy-nilly cut off services from its customers. I would hope that this will now move into other aspects of our social legislation when Light and Power and the telephone company can overnight chop your services without saying anything. There are many old people in our community who have to wait on the Welfare Department to pay these bills and I think this should move forward to deal with these circumstances.

The other point I would like to deal with is Section 51 which seems to have caused some concern, and I believe it will cause greater concern at a later date and I do hope that the Government could quickly review section 51 in the light of pronouncements by our courts. Section 51(1) states:

“Where any interest of the bankrupt in any property at the date of bankruptcy was held in joint tenancy, the bankruptcy shall operate as a severance of the joint tenancy and a reversion to tenancy in common.”

That automatically changes the law of conveyancing and what follows thereunder because it means that if a couple, a husband and wife, bought a property as joint tenants and some years later the husband in business becomes bankrupt, the conveyance now looks at the property as tenants in common, which means each party owns half the property. It may seem simple here but let us go into 51(2) and you will see where the problems are going to arise based on interpretation of these in the courts. It says:

“Where a debtor who is married is, at the date of bankruptcy, the sole registered owner of the matrimonial home and any immediately related real property not exceeding one acre, the spouse of the debtor shall be entitled, within 10 days following the bankruptcy, to claim in the prescribed form a one-half interest in any net proceeds from a sale or disposition by the trustee of the property after satisfaction of any valid and enforceable charges registered in the appropriate registry.”

That is going to throw up some good legal position.
3.40 p.m.

Sir, under Section 51(1) if the husband becomes bankrupt, this Act automatically cuts the property in half as tenants in common so the other spouse automatically owns one half of the property in her own right and it cannot be touched by the receiver, administrator or anybody else and under Section 51(2) she can also claim one half of the bankrupt's property, so she claims one half of the other half that is left and she, therefore, gets three quarters of the property. The difficulty here is that under the Family Law Act she might not be entitled to anything because the marriage might only be three years old and the spouse might have had the property for ten to fifteen years.

Sir, while it may seem simple here, Government might have to look at this as soon as we have the first bankruptcy. I am not saying that it disadvantages the creditors; I am saying that between the parties it creates an imbalance in my view.

Sir, the next point I want to look at is Section 1(15). One of the problems I have had in my legal life and my time in Government is that we sometimes fall for suggestions made by consultants from overseas who are not *au fait* with the psyche of the Barbadian society.

In my view, Section 1(15) disadvantages the very people who might have formed a company and brought it along the road. Section 1(15) says that a father, child, mother, brother, sister, uncle or aunt by blood or marriage of a bankrupt is not entitled to have a claim.

Mr. President, many businesses in Barbados, including those who have grown to conglomerates, were started by families.

Mr. President, I keep saying I am thankful for the time spent in Parliament because it was only since the Severance Payments Act came into existence that many families became listed on the payroll of companies. If you are a relative by blood or marriage and the institution now fails, this Act deprives you from being a preferred person but earlier in the Act, it allowed any other workers who might have served the institutions for the same years as the father or the son to be paid as a preferred person. Therefore, the Act contradicts itself and disadvantages those family members who brought this institution along the hard road.

I am not looking at this as a piece of legislation particularly for small businesses. I am looking at this in relation to what is happening in globalization because I do not believe that businesses in Barbados have looked to see what globalization is doing and will do and also the predatory nature of certain businesses in Barbados.

Mr. President, I speak here from experience through my legal work. I will tell a story about a man who now resides in Barbados but lived in England. This man started a sewerage business in the north of England with one hundred pounds. After about six years in business, a large corporation went to him and advised him they were moving into the area and wanted to buy his business. He told them that his business was not for sale but they advised him to speak to his solicitor. The solicitor told him that since they intended to move there and he could not prevent it, he should sell because they would cut prices to such an extent that he would not be able to survive. They offered him two million pounds for his operation which he took and came to Barbados to live. Mr. President, this is what is going to happen and is happening in Barbados today. We will see more and more foreign businesses come into Barbados and sell or produce the same thing that Barbadian companies have been producing, but because of their size and purchasing power they will be able to put products on the market at a lower cost than the existing businesses here.

Mr. President, I have faith in Barbadians because they will be able, after a period of respite, to restructure their businesses, and in this world there are certain businesses that are profitable to small enterprises.

Therefore, I am looking at the family who started the business and whose name appears on the payroll as having the same rights as the non-family member whose name appears on the same payroll. We have to understand that outside of Barbados there is not that family linkage as we have in this country. In the United States there are not many families who know where their sons and daughters are and this is why Thanksgiving Day is a day of such movement in the United States of America because sons and daughters travel from all over the United States to come back to one point.

In Barbados sons and daughter are in every business. We will have to look at that in the Act. If this is based on the Canadian Act the family cannot be the same in Canada as it is in Barbados.

Mr. President, I want to draw to the attention of Senator McClean that he must not criticise lawyers and attorneys for carrying out their profession. You never hear anybody criticising doctors even though doctors cling together. In this Act at Section 4, Subsection 17, the Act relies on the ability of persons trained in law to get this Act to work.

Senator McClean and other persons on the Other Side keep criticising Attorneys-at-law but if the police come to their door at two o'clock in the morning every one of them will call an Attorney-at-Law and expect him to get out of his bed and come.

Asides.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, we get criticised when we do our jobs and we get criticised when we do not do our jobs.

Mr. President, I lend my support to the Bill. It has come at an opportune moment. We are seeing more and more businesses rise up today. As I said, with globalization and the predatory nature of a number of businesses in Barbados today who will want to prey on smaller businesses, we will need a Bill of this nature. Sir, there is only one thing that I would like to say. I hope that we do not have the number of institutions, which the Government has set up recently to enfranchise more people, and that we move away from what happened with the old Barbados Development Bank. In that institution we spent more money providing projections and estimates. By the time you received the loan, you did not have enough to get the business going. Sir, that

institution folded, as far as I know, because more money was spent in administration than was given in loans.
3.50 p.m.

I want to congratulate the Government for its foresight in enfranchising our people, because in the end there are those small businesses that will keep our people in work. Therefore, I congratulate the Government in bringing this Bill at this time and give it my full support.

I thank you.

SENATOR C. A. MASCOLL: Mr. President, I rise to support this Bill because I regard it as extremely timely. I consider it to be timely for other reasons. There is no doubt, as we have been told, that the question of bankruptcy comes into play where it has been established that an institution's network is in the negative.

I suspect, from my understanding of what has happened over the last five to seven years in Barbados, that a lot of businesses in Barbados have overvalued their real assets. I think that this is a direct consequence of most of what we have seen within the land and property markets, in particular. We are aware that shares for a long time have been overvalued in Barbados. This is evidenced by reports coming out of even the Stock Exchange of Barbados.

Sir, I say that, not lightly, because I am of the view that any potential threats to the business environment in Barbados would see us having to revalue our assets base within the business community. If that is so, then I am suggesting that the issue of defining bankruptcy may be altered in such a way that we may begin to see that most businesses have overvalued their net worth.

Sir, this makes this Bill very timely from the point of view of the potential for experiencing bankruptcy on a much larger scale in Barbados in the not too distant future. Bankruptcy does not only come because of the overvaluing of assets at a point in time. We are well aware that the economic environment has deteriorated and so has the business environment in Barbados within the last year or two.

Therefore, I am suggesting that the potential for this legislation to be utilised is now greater than it was in the past. Even though it may appear that all of our economic indicators are sound, I think that there is an abundance of evidence that many businesses have started to struggle within the last two years. Therefore, I repeat that for another reason this Bill is extremely timely because it will provide some degree of comfort to those businesses that may encounter difficult times ahead, those businesses that would go to the stage of either insolvency or reach a stage of bankruptcy.

The regulations that existed before are not deemed to be appropriate at all in dealing with this magnitude of difficulty experienced by businesses. We have never seen in Barbados a crisis situation as it relates to bankruptcy or insolvency. What we have seen, maybe is one or two cases in which businesses have run into difficulty but we have never had a crisis situation.

Sir, I am not preaching doom and gloom at all. I am suggesting that if circumstances in the world economy boom, as expected by some, then it is quite possible for our local business environment to reach a stage where this Bill becomes extremely relevant. I make that comment not out of doom and gloom. Even our Government is seeking to prepare itself, whether correctly or incorrectly, for a very rough road ahead with the recent borrowing or attempt to borrow \$300 million.

4.00 p.m.

Sir, certainly that in itself should tell the business community something; that if the Government that already has record levels of foreign reserves can make a decision at this point in time to borrow an additional US\$150 million, then there is something that the Government seems to be aware of that we, the average citizens are not aware of. I would hope that the businessmen in Barbados would be as well informed as the Government to prepare themselves for a rocky road ahead. Therefore, I repeat, this makes this Bill particularly relevant as it may become far more useful than we anticipate at this stage.

The other thing is that there can be a potential crisis if there is excessive credit expansion in the community. There has to be a balance between what it is one is seeking to produce and the availability of financial resources. If there is too much anxiety on the part of the Government to allow excess credit within the system to make it appear as if the economic activity is buoyant, there is the potential up ahead for danger. Therefore, one's source of difficulty can be as much externally as internally caused. Again, I am recognizing the very timely nature of this Bill. There has been a lot of discussion about the importance of small businesses to this economy but this economy is no different. Indeed, in the United States of America, it is believed that 75 per cent of all businesses are small but one must recognize the question of defining "small" can be much different in an American economy than it is in the Barbadian economy and so, as has been the temptation, we cannot believe that small does imply failure.

I think what has happened in recent times is that there has been the huge attempt on the part of Government to seek to encourage the establishment of businesses. What has not been attempted has been the real enabling of the environment to allow businesses to flourish. There is a difference between making capital available, as has been the case through

several different sources: Small Enterprise, the Urban Development, the Rural Development, the Enterprise Growth Fund. All that we have actually done is that we have taken the dismantled Barbados Development Bank and replaced it by a number of small financial institutions and only time will tell whether or not such a strategy of dividing up the larger institutions into very small outlets for the provision of credit or capital to whoever desires it, is contrary to the whole question of consolidating institutions so as to get reflective and better economies of scale not only in the wider interest of those business persons who approach these institutions but also the wider interest of the country.

As we well know, when one borrows from a financial institution, that loan will have to pay staff, electricity, the air-condition units, security, interest, *et cetera*. Therefore, when one takes an institution of that magnitude and divide it up into several small components, it is difficult to understand how those institutions would become more efficient than the much larger entities which those institutions have replaced.

The important thing to note is that the desire to make capital available to small businesses is a political desire on the part of this Government and there is absolutely nothing wrong with that. The important thing, though is whether or not we have created, within this economy, enough opportunities for people to run profitable businesses and to become business persons that can be emulated by the younger ones.

I do not say that in any contentious way because I honestly think that there is an abundance of evidence, even in Bridgetown among taxi men, where we may not recognize that there has been a lot of business failure in the transportation sector of Barbados. While we have been able to seek to empower small businessmen in transportation with the delivery of a license, we have not thought about the other side of the business equation. Would there be the demand for these services that we are seeking to supply? We are supplying them through the provision of a licence? Then we are making provision for them to access funding to purchase their vehicles. What I think we have recognized in the decline in tourism is that quite a number of taxi men continue to struggle to maintain their small businesses because there is an absence of demand for their services. That example can be multiplied across the business community in Barbados where we have been told that this is the time for small businesses to flourish, but we have not looked at whether or not there is the demand for the several areas in the small business which we are seeking to establish. That, therefore, explains in a large measure why we have started to see the kind of collapse in the supermarket business which has now become a new thing on the business horizon of Barbados. There is no good explanation for the demise of several retailers in the supermarket business except that there has

been a reduction in the demand for such services in Barbados.

Sir, if it has happened at that level, one can begin to understand what would also have happened with entities that are much smaller than the medium-sized businesses that existed on the landscape of the retailing sector in Barbados, particularly the supermarket business. Again, we can see that this Bill is indeed timely because I think that it is going to coincide with the beginning of difficulty for several businesses in Barbados.

4.10 p.m.

If you look at the manufacturing sector and you see the extent to which there have been fallouts, and the extent to which the fallouts will continue in a new global environment, you can again appreciate the timeliness of this Bill.

If you look even within tourism, to see the difficulties that have been experienced not only by hoteliers but by persons who provide auxiliary services to the tourists in Barbados in the restaurant business or in the provision of art and craft, you will see the difficulties that they have been experiencing.

If you look at the Pelican Village project which was established a couple years ago, it has not really taken off in spite of the fact that we sought to encourage small craftsmen to get involved in the provision of those special kinds of goods to tourists, especially those tourists that come off the cruise ships in Barbados. We would also recognise that that particular area of activity has, in fact, not taken off to the extent that we would have expected.

Therefore, there is an abundance of evidence that there will be severe fallout and there has been some fallout especially among small businesses. It has not stopped there. Even in an area of business, such as the duty free shopping which was supposed to be an area of opportunity for Barbadians, there has been some degree of fallout among major players in the duty free shopping business to the extent where we now know that on Broad Street by the end of this year, some 43 persons will lose their jobs in a major duty free shopping mall in Barbados. Sir, that is directly connected to the performance or the changing character of tourism because there is evidence and it does not make sense to pretend that the evidence does not exist.

Again, one wonders whether we have really looked at the business environment in Barbados to see if the kinds of initiatives that are being taken can be supported by the purchasing power of both locals and tourists alike. Now, there is nothing wrong with renovating old buildings in Barbados and making them look very attractive because it adds to the environment and the physical beauty of

Bridgetown, but have we really studied whether or not these small businesses will survive in the not too distant future?

Again, it is not that these businesses have come to the market at an inappropriate time. Yes, there has been some expansion in the economy. Yes, there have been some growth and some creation of wealth, but when you look along the wharf side at the kinds of development that is taking place there, are we really satisfied that those businesses are emerging at the right time in the Barbados economy? I think we all know by now that this economy, by the end of next month, would have experienced three successive quarters of economic decline. In the United States it would have been described as an economic recession.

Sir, after two successive quarters of economic decline in the United States, it is called economic recession. Now, do not confuse a recession with a crisis. People in an attempt to try to cloud the issues, make those kinds of comparisons. A recession is not a crisis. A recession is cause for concern. A crisis is when the concern has already been caused and at that stage, you have to look for solutions. I am saying that as a Barbadian I am concerned about the state of the Barbados economy at this stage, because I am not satisfied that we have the business environment in which small businesses can flourish and, Sir, even the larger businesses are experiencing severe difficulty as I speak.

Sir, it does not take much to appreciate that when a large conglomerate in Barbados could sell a particular brand such as Mitsubishi to Simpson Motors, a competitor across the road...

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, on a point of order, the Honourable Senator must not make these statements which will go in the records of this Chamber, when he knows that what he is saying is not correct.

If the Honourable Senator is talking about Mitsubishi and its transfer from one entity to the other, he should go on to make the full statement. That is, the Mitsubishi shares were bought out by the company of which the business across the road is the agent in Barbados. All they are doing is transferring the goods from somebody else into their own agency. It is not a transaction dealing with Barbados.

He talks also about what is happening in Broad Street. He must also tell you that the duty-free business had been bought out by an overseas concern and, Sir, that is why I said that nobody in Barbados seems to be looking at globalisation, and how it is going to affect us here.

Sir, that is why the Honourable Senator must not use these examples and say that they are the direct consequences of the Government of Barbados.

SENATOR C. A. MASCOLL: Mr. President, the issue here is not an emotional one at all. The fact of the matter is that even if it is a simple transfer across the road, it has implications for employment and that has been described already.

If it has implications for employment which it has, then it must have implications for the persons who would have lost their jobs. If persons lose their jobs, then it must have implications for spending in the economy.

While those may appear to be only thirty-five jobs, if you multiply that across the economy, then it eventually becomes large enough to be significant...

Aside.

SENATOR C. A. MASCOLL ...So that my concern really is not about whether Simpsons Motors now has the franchise and they have taken it away from BS&T, the question is that there has been a shift of Mitsubishi, which would have been the best-selling brand of all of its products. Are you saying to me that you have an entity that is in the business of selling vehicles, it would have constructed something as large as Galaxy in the emerging town in Barbados at Warrens, it now loses its major product and it has no implication at all for that entity? Well, according to the Chief at BS&T, they made...

Aside.

SENATOR C. A. MASCOLL: I did not get that impression, and it does have implications for the Barbados' biggest conglomerate.

Sir, that is what I am talking about so I am not here simply to put on my boxing gear and to punch at the opponent in the hope that it connects. I am here skillfully floating around and bringing into the boxing arena all of the ammunition that I have gathered over the last two to three years, and all I am doing here is making the connection now between what has come before us in the form of a Bill for bankruptcy and insolvency and the potential of that Bill to be fully utilised within the not too distant future, because of the prevailing business environment in Barbados.

Sir, that is where the nexus is and I do not have the ability to speak to the legal issues and I do not pretend that I am so given. I have the capacity to deal with what I know best, that the import of this Bill has to do with its potential for use and as I can see, it has great potential to be used in the not too distant future in Barbados. That is the important thing for me in this Bill and not the contents. I am not so trained, neither do I pretend to be trained in all the jargon and all the clauses and the implications thereof.

Let me end therefore, Mr. President, because as I said this is not contentious at all. I am saying that I have a major concern that most business assets in Barbados are now overstated in their real and property values and that is known.

4.20 p.m.

I am also saying that as far as shares of businesses are concerned they are also overstated. I am saying that the greatest difficulty confronting Barbados is a potential adjustment of the assets base of businesses because if that happens then it has implications for the net worth of most businesses in Barbados, and if businesses are going to be existing on the margin then there is a potential threat to the net worth of these businesses to the extent where they may go the other side into the negative and then become potential cases for bankruptcy. That is a look at the Barbadian business environment as I see it using the skills that I have.

I am not here, as I said, to be contentious and rude today, I am simply saying that at the end of this note in a very strange way the timing of this Bill will be far more appropriate than we first anticipated.

I thank you, Mr. President.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, first of all, I want to thank all Honourable Senators for their contribution to this debate in which the overwhelming majority of them rose to the occasion because of the import of this Bill to national life. Sir, I must deal with a number of issues that have arisen during the course of the debate. Senator McClean wanted to know what is the status of the Fair Trading Commission as well as the consumer protection legislation. I would like to assure him and the country that the issue concerning the Fair Trading Commission is not dead and that those in charge are actually in the process of selecting staff to operate it, and that Government has not gone silent on the consumer protection legislation but that in itself is going through a process and is almost reaching completion.

Senator McClean sought to scoff at small businesses by describing such businesses as Mickey Mouse businesses but I would like to point out to him, as other Senators have indicated that most, if not all businesses start out small. I am sure that Senator Sir John Stanley Goddard will tell us that his family business, Goddard and Sons, started out as a family business but it has grown into the conglomerate we now know it to be with branches throughout the Caribbean. Even Bill Gates himself started a small business in a garage.

SENATOR LeR. H. McCLEAN: On a point of order. The Honourable Member is misleading the Chamber. I never

said that small businesses are Mickey Mouse businesses. What I said was that there are too many cases where Government seems to believe that only Mickey Mouse businesses make up the masses of the people.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, Senator Mascoll spoke about how he was floating like a butterfly and stinging like a bee in his presentation.

Asides.

Mr. PRESIDENT: He just said that he was floating.

Asides.

SENATOR THE HON. G. S. H. MURRAY: He was floating. Maybe he has no sting and I was imputing powers which he does not possess. I would like to describe that comment by Senator McClean as a rope-a-dope tactic because like I said Bill Gates started his business in a garage and look what he has become. Most of all, what Senator McClean described as Mickey Mouse businesses fall into that very same category of the poor, small black man that his party is always trumpeting the cause about. There is no doubt that his party equates small man with small black man.

Given the ethnic composition of the society which is overwhelmingly black and given the fact that blacks themselves do not yet own the majority of businesses in Barbados, the logical conclusion then would be that the businesses that are starting up these days will be overwhelmingly black. So for Senator McClean to describe that sector as Mickey Mouse businesses is an insult to the Barbadian population who are seeking to enfranchise themselves by developing a business culture to make something of themselves. I think that was an unfortunate comment which, I predict, will come back to haunt Senator McClean and the Democratic Labour Party for a very long time. They cannot on the one hand seek to be their champion and at the same time are jeering and sneering at them as objects of ridicule. I think that is unfortunate but there are so many unfortunate things happening in his party that this is just another one in the series but I am glad that he made it not under the streetlight but on national radio for the public to hear for themselves. So that takes care of that.

Senator Mascoll protested at the beginning that he was not preaching doom and gloom but at the end of it all it still ended up to be all about doom and gloom. I think he himself recognises that he protested too much in that instance because the intent and the import of what he said ended up in the same vein. He was not predicting this time, he was only dreaming and speculating about doom and gloom but the net effect was there.

Sir, he spoke about the Barbados Development Bank (BDB) being separated into small pieces and, therefore, losing the benefits of economy of scale. What I remember of the BDB, however, was that it went into abeyance. I would be charitable to say, not so much because of the lack of enjoyment of the economy of scale but rather because it became insolvent and bankrupt and hence was doomed to extinction because of becoming insolvent and bankrupt. I am sure that everybody here is very familiar with the history of the BDB. Therefore, for someone to insinuate that there are several other entities that have succeeded the BDB and that have blown up, are themselves defeating the purpose of economy of scale and is a misinterpretation of the facts of history.

Sir, I want to reiterate the Government's firm commitment to the small business sector as a serious sector. Government has just invested several hundreds of thousands if not millions of dollars in the erection of a Small Business and New Enterprise Centre on Fontabelle occupying that very interestingly shaped and configured building that was once owned by N. E. Wilson. Would a Government invest that kind of money and put in the kind of infrastructure and services in that entity if it did not consider the small business sector as a serious and performing sector? It is all right for Senator McClean to scoff at and be patronising towards the small business sector by calling them Mickey Mouse businesses, but we cannot scoff at the fact that since its establishment, the Small Business and New Enterprise Centre has dealt with 3 074 small businesses in an effort to help them to become more efficient in their operation. During the year 2000 alone, the centre provided technical assistance to 351 small businesses, 261 were first time contracts and the other 90 were existing contracts.

We cannot, Sir, scoff on these businesses like Senator McClean and call them Mickey Mouse businesses because we see them as legitimate entities. During the last year, they were provided with loans totalling \$2.2 million to create 426 new enterprises, and 565 new jobs were created. Five hundred and sixty-five new jobs are nothing to scoff at because that will affect the lives of four or five different people who will benefit from that.
4.30 p.m.

Sir, I would also like to set the record straight as to the kind of performance that a number of these entities have given in the year 2000. Let us look at Fund Access that loaned \$1.8 million, the Urban Development Commission Small Business Sector loaned \$233 700 and the Rural Development Commission loaned \$150 216 to bring it to a grand total of \$2.2 million.

The cumulative loans to the small and medium enterprise businesses between 1998 and 2001: Fund Access

accounted for \$3 868 762.90; Rural Development – \$2 368 919.22; Urban Development – \$2 025 136 for a grand total of \$8 262 818.12. Sir, those are not peanuts. That is not money to be laughed at. Never before in the history of Barbados has so much been injected financially and otherwise into the small business sector as has been done.

It is making an impact. The same persons you are describing as Mickey Mouse businesses are persons who are making successes and the record of repayment to these enterprises is far different from the record of payment to the Barbados Development Bank. The Barbados Development Bank failed because of their very poor loan repayment record. People know how notoriously delinquent persons were about it and I am sure that Senator Mascoll and Senator McClean would be familiar with many cases connected with that institution.

Sir, I have no hesitation in reflecting the general mood of this Chamber and giving my fullest support as other Honourable Senators have indicated and ask that this Bill be read a second time.

The question was put and agreed to.

On the motion of SENATOR THE HON. G. S. H. MURRAY, the Senate resolved itself into Committee on the Bill, HIS HONOUR SENATOR C. L. BOLDEN in the Chair.

COMMITTEE

Mr. CHAIRMAN: The Senate is in Committee.

Parts I to XIII were called and passed.

On the motion of SENATOR THE HON. G. S. H. MURRAY, Mr. Chairman reported to His Honour the PRESIDENT, the passing of one Bill in Committee and Mr. PRESIDENT resumed the Chair and reported accordingly.

On the separate motions of SENATOR THE HON. G. S. H. MURRAY, the Bill was read a third time and passed and cited as the Bankruptcy and Insolvency Act, 2001.
4.40 p.m.

ORDER NO. 2 – RESOLUTION TO APPROVE THE
COMPULSORY ACQUISITION OF LAND
SITUATED AT ST. PATRICKS IN THE
PARISH OF CHRIST CHURCH
FOR THE PURPOSE OF
ROAD IMPROVEMENT

SENATOR THE HON. G. S. H. MURRAY: Mr. President, this Resolution seeks the agreement of this

Chamber for Government to acquire 205.6 square metres at St. Patricks, Christ Church for the purpose of road improvement. Sir, the Ministry of Public Works has embarked on a mission to upgrade roads all over Barbados and this one is between Searles, Christ Church and Six Roads, St. Philip. When this heavily used roadway, was being improved, the opportunity was taken not only to improve the road but to upgrade the junction at St. Patricks, Christ Church by means of the construction of a roundabout.

Sir, it is well known that prior to the improvement in the roadway the junction was a cause of great concern and in some instances there were serious accidents between vehicles seeking to negotiate a very problematic and troublesome junction. This roundabout would be part of the general improvement in the ambience and infrastructure of the area.

Sir, it is well known that roundabouts are cheaper to maintain and are more attractive than traffic lights. The roundabout is meant to bring improvement and allow people who use the highway to go about their business. Sir, in constructing this roundabout there was a cause for Government to acquire two properties. One property owned by Carson Brewster and comprising 871.5 square metres of land which was acquired by private treaty. The second property was owned by Mr. Pearson Harris and comprised 205.6 square metres of land. Compulsory acquisition was instituted in respect of these properties since the owners did not possess a good and marketable title and Parliament is now seeking permission for the acquisition of that land.

I would like to point out that more is involved in this area through the improvement of this roadway than a roundabout. This whole improvement is from Searles to Six Roads. There will be construction of three roundabouts, one at Searles, one at St. Patricks and the other one at Six Roads as well as the general rehabilitation of the roadway between Searles and Six Roads which covers the extent of the project.

Sir, the roads have been expanded from 5.0 metres to 7.0 metres which would make for better trafficking. In addition, sidewalks have been put in on both sides of the roads and there has been improved drainage by the provision of reinforced concrete boxing and additional suckwells in that hitherto flood-prone area of Woodbourne.

It is intended that these facilities will help to minimize such flooding in future and anyone who has traversed that road in the last month would see a general improvement in the layout of the area.

Sir, in carrying out this project, the residents of that area and the users of that road have had to put up with a

number of inconveniences because of the nature of the excavation, dust and diversion but that is a price that persons pay and people are understandably irritated by the length of time it takes and the conditions in which they have to exist, but they usually see the long term benefits of it.

Sir, I remember very well the first paved road at Chapel Gap in Spooners Hill. There was disruption, dislocation and dust but everybody realised that, at the end of the day, we would be better off. Sir, that road transformed the neighbourhood and the lives of persons and the same thing will happen all over Barbados.

Sir, a few months ago the hue and cry was about the stretch between University Hill and Carlton Supermarket in Black Rock and now people take it as a matter of course and accept that the inconvenience was worth it particularly from the fact that not only was the main highway improved but also the sidewalks were improved.

Government has indicated that all the roads that abut and abound on major highways will be improved as part of the overall project. Government has determined that in future whenever a highway or major artery is improved, all of the connecting roads, small or big, must be seen as part of the overall project and will be fixed at the same time.

Sir, the same thing that happened in Black Rock is going to happen at Welches, Government Hill corner and Tweedside Road. I have begun to use some of the roads like Eagle Hall which are now opened and already I see that there is a lessening of traffic congestion and traffic is not as bad at it was feeding into Bridgetown. Although they are not completely finished, when they are finished there will be a vast improvement not only to the persons who live on them but for vehicles using that road. Government is seeking to improve the lot of those persons at St. Patrick in the same way.

I beg to move that this Resolution now pass.

SENATOR LeR. H. McCLEAN: Mr. President, in moving the Resolution the Honourable Minister has gone far and wide in terms of trying to justify the inconvenience suffered in the execution of some of these projects.

Sir, it is worrying that persons should believe that simply because you benefit at the end of the project that you must be made to suffer great inconvenience for an inordinately long time merely because at some time you will have a good road.

Sir, people in Barbados have not been complaining about the fact that Government is improving the roads; they have been complaining because everything is being done at

the same time whether in St. Michael or outside of St. Michael and people are being forced to suffer unnecessarily and no consideration is being given to ease the discomfort of people. You are being simply told that it is part of the price you have to pay to get good roads. Sometimes the price is a bit too high, Mr. President.

4.50 p.m.

Sir, with respect to the acquisition of this parcel of land, I want to draw to this Chamber's attention that it is not always the best thing to simply pay people for their land. In the circumstances that exist in Barbados today where land is becoming more scarce, wherever possible, an alternative piece of land can be provided for the person from whom the land is acquired. I would like to hear that the Government has accepted the principle that you do not necessarily have to take land from people and give them a few dollars. Sir, very often the money that they get for the land cannot buy a piece of land somewhere else.

In addition to the roundabouts that are being constructed, the Honourable Minister has pointed out that part of the rationale is that roundabouts are easier to maintain. However, we have seen many difficulties associated with the roundabouts. I recall the late Mark Todd saying to me that when the roundabout at Collymore Rock was being constructed, that this will prove that roundabouts do not solve traffic problems. Mark has not lived long enough to see it but I have seen where that roundabout has demonstrated that roundabouts do not necessarily solve traffic problems.

The Honourable Minister has just given us the real reason for going in the direction of roundabouts. I always wondered why. We now know the reason for the roundabouts. It is easier to maintain than maintaining traffic lights.

SENATOR THE HON. G. S. H. MURRAY: On a point of order. Mr. President, I was not giving the reason directly in connection with this project. I was mainly giving some information why people have sought to justify the use of roundabouts compared to traffic lights. I never said that this is the reason for roundabouts. I was dealing with a general principle about the installation of roundabouts.

SENATOR LeR. H. McCLEAN: Mr. President, another reason why the Minister did not remember is that it also affords the opportunity to name the roundabouts after someone.

Asides.

Mr. PRESIDENT: Order, please.

SENATOR LeR. H. McCLEAN: Mr. President, the Minister made reference to lights. There are some matters that we need to draw to his attention. On that stretch of road there is a road leading to Six Cross Roads, where there is a sign pointing to a side road marked Foursquare. If you are a visitor to Barbados and you want to get to Foursquare the visitor might try getting to Foursquare via that road. I made the mistake of traveling that road only to discover that down that road, the first half of the road is good and the remainder is even worse than any cart road that you can ever go through. Sir, the road has been completely destroyed.

If it is not intended to be a public highway any longer, I believe that the sign should be removed because persons may use the road expecting to reach Foursquare. The only thing you can use is a four-wheel drive vehicle. I hope that the Government could pay some attention to that road because it is a source of inconvenience to people trying to get to Foursquare from Sunbury.

In addition, I would like to point out that there are some junctions which require proper lighting. There have been serious accidents at the junction at Kingsland, Christ Church. If you are going to turn off the highway to the Deighton Griffith School, there is an island in the road and there is no lighting there. Very often persons end up colliding with the island or turning on the wrong side of the island. There is a serious need for proper lighting at that junction. This has caused several accidents, resulting in the lost of life and nothing has been done to correct the problem.

A few years ago, a gentleman was attempting to cross the road and he was killed on the spot. Vehicles coming from Kingsland or on the straight road continue to be involved in accidents in that area and I hope that some attention will be paid to matters of this nature and not only to the resurfacing of the roads.

I made the point in this Chamber, at an earlier stage, relating to the stress that the long wait in traffic is putting on persons. When I made that point, some persons on the Other Side were scoffing at the idea. Interestingly enough, only last week a medical doctor wrote an article in the newspaper which dealt with the stress caused by the long waits in the traffic on the road. It is unfortunate that we cannot get the statistics. It would be interesting to know what has been the increase in stress related illnesses as a result of the confusion that people face on the roads. Sir, if you go through it and I am sure that all of us have had to, you would know that there are tremendous problems in the road. It is not enough to say that now the roads have been opened one should be happy. It seems almost cruel...

5.00 p.m.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, the Honourable Member is misleading the Chamber. I did not even imply that now that the roads are opened, people should be happy. What I am saying is that the partial opening of the roads so far has already resulted in an improvement in the traffic flow; that one is able to get into Bridgetown much easier than before.

SENATOR LeR. H. McCLEAN: Mr. President, the point continues to be made by persons in Government that one has to pay a price, but persons in this country are not saying that they have to pay a price. We know that a price has to be paid for progress, but what we are saying is that there should be better sense and judgment, better planning and programming if Government knows that it is going to close every major highway. This is what Government failed to recognize and every time that an official of Government speaks to this matter, they seem to be telling persons that they should not be complaining. Persons have a right to complain, because this is part of our democracy, if they are experiencing any inconvenience. Do not give us the impression that we should be grateful because something is going to happen, do not complain, keep one's mouth shut.

As I said, Sir, there are persons who would want us to be eternally grateful regardless to what inconvenience one suffers, but that will not be the case. When the people of this country are dissatisfied, we will voice that opinion. We still have that measure of democracy and freedom and we will exercise them. Therefore, wherever there is the need to complain, we will do so.

Sir, I would also like to compliment the Government on the fact that the stretch of road between Searles and Six Roads is now a much nicer road on which to travel. No one denies it. What we are saying, however, is that it should not have taken the number of years that it took in order to get it done. We would hope that Government does not always have this sadistic attitude towards these matters...

SENATOR THE HON. G. S. H. MURRAY: Mr. President, on point of order. I must ask that the Honourable Member withdraw that term 'sadistic.' As a part of Government, I would not be party to any sadistic act against any human being and I think that it is an uncharitable comment and should be withdrawn.

Mr. PRESIDENT: Although I do not give it the wide interpretation which the Senator does, I think it is fairly unparliamentary. I ask you to withdraw it for that reason.

SENATOR LeR. H. McCLEAN: I most humbly withdraw it, Sir, but I am mindful of the Prime Minister's enunciation; that everybody wants to go to heaven but

nobody wants to die. That, in my view, sums up the way that Government approaches this development. One must pay the highest possible price and they must extract the pound of flesh that is closest to the heart whenever one hopes to achieve anything. I thank you, Sir.

Mr. PRESIDENT: Senator Rickinson.

SENATOR Mrs. P. E. RICKINSON: Mr. President, I do rise to support this Resolution and I am glad for the improvements in the roads. In fact, the road leading down to Batts Rock is one of the most dangerous roads in the island where there are a lot of accidents taking place. Also, Mr. President, that Lazaretto hill needs cutting away.

Sir, what I would like to say is that it gives the impression that the various agencies that are doing the roads are not coordinating with or speaking to each other and therefore what we are getting is far too many areas being dug up at one point in time. Mr. President, this has serious repercussions to the people of Barbados, particularly those people that get sick and go to the Accident & Emergency Department where they overwork both the nurses there and those nurses in the walk-in clinics. This places stress upon those nurses all because we are having an over-abundance of roads and dust being dug up at one point in time. For example, going up Free Hill, they have been digging up that road for a very long time and it seems as though they do not want to finish it. It was supposed to be finished in about two weeks' time, but it is still going on and making people sick, including myself, who is not usually ill. I think that there needs to be coordination of the work, when it is being done and getting together and doing it in a more orderly fashion so that we are not butting about. One morning one sees a road opened, the following morning the same road is closed and it takes persons about an extra half an hour to an hour to get through. People complain about the gross inconvenience. On the other hand, I too would like to congratulate the Government on what they are trying to do but I feel that it can be done in a different way because I too realize that there is the need for infrastructure in order to let the economy grow. Children need to get to school, people need to get to work, to travel, et cetera. I am only just pleading to see if it can be done in a different way in order to cause us less sickness and stop overworking the nurses. I thank you.

Mr. PRESIDENT: Senator Rickinson, I am somewhat disappointed that you made no reference to the Resolution, but be that as it may. Senator Kerrie Symmonds.

SENATOR K. D. SYMMONDS: Sir, if I may just be very brief. I only rise to rectify a couple of misconceptions that I feel Senator McClean labours under. Sir, the question of whether or not Government has a practice of compulsorily acquiring land and then in lieu of money, offering another

piece of land has already been dealt with before in the Lower House. Sir, it was on Tuesday, 6th July, 1999, when the former Attorney-General of Barbados made it abundantly clear that there was a family in Bryan's Road, St. Thomas, the location of whose property was threatening the Harrisons Cave. Those persons have found alternative accommodation...

Mr. PRESIDENT: Senator Symmonds, I know that you are a relatively new Member but I should draw it to your attention that there is a fairly well established Rule of Parliamentary Practice that reference to Debates in the current session of the Other Place are out of order.

SENATOR K. D. SYMMONDS: Sir, I would not want to read it. I would want to refer Senator McClean to the fact that that issue has been covered and that there is no difficulty in the sort of approach that he is suggesting and that that approach has been followed by Government in previous instances.

Mr. PRESIDENT: You have made your point.

SENATOR K. D. SYMMONDS: That is the substantive point that I want to make, Sir.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, in moving that the Resolution do now pass, I just want to make two quick points. One refers to Senator McClean's observation that it should not have taken as long as it did to do the Searles to Six Roads Project. I just want to point out to him that the roads were not undertaken by a Government department, but by a private contractor and therefore, there were problems that were outside the Government's control.

On the other hand, Government does not go around "willy-nilly" or sadistically acquiring people's land. Sir, in this same project, there were some properties for which there were acquisitions and for which the owners were compensated. There are others in which there have been acquisition and which the owners will either be provided with new houses at the existing sites, or from the new houses which the Division of the Ministry of Transport will be conducting at Lead Vale, Christ Church. Therefore, there is the variety of approaches depending on the circumstances in dealing with the issue. With those words, I beg to move that the Resolution do now pass.

The question that the Resolution do now pass was put and agreed to without division.

ORDER NO. 3 – TO MOVE THE PASSING OF A RESOLUTION TO APPROVE IN ACCORDANCE WITH SECTION 5 OF THE CROWN LAND (VESTING AND DISPOSAL ACT) CAP. 225 IN VESTING IN THE BARBADOS TOURISM INVESTMENT INC., OF THE PARCEL OF LAND SITUATED AT BAY STREET, ST. MICHAEL

SENATOR THE HON. G. S. H. MURRAY: Mr. President, this Resolution is for the vesting of 2,092 of Government-owned land at Bay Street, St. Michael in the Barbados Tourism and Investment Inc. It is all part of a process whereby Government has invested in a number of properties in the Bridgetown and Speightstown areas into the control of the BTI to permit that entity, at the appropriate time, to use these as leverage to the private sector in order to obtain private sector investment and to provide for the optimum development at the sites of these properties concerned. In this regard, some of the already vested properties would include:

1. The old Harbour Police Station, which is now the spanking and impressive Bay Shore Complex.
2. The old jetty, an open window on Jemmotts Lane, Bay Street.
3. The old Eye Clinic, recently the offices of the Welfare Department and also a picturesque building in its own right.
4. Fort Willoughby, currently occupied by the Barbados Coast Guard. Sir, as we all know, they are now in the process of seeking relocation to the old Flour Mills site.
5. The old Town Hall, Cumberland Street.
6. The Savoy Building, Bay Street, another once exquisite building opposite the Barbados Family Planning offices.
7. The old Spirit Bond, Bridgetown, which itself is currently undergoing renovation and refurbishment and will house offices, shops and restaurants as a private sector enterprise.
8. The old Post Office, Speightstown.

I think that project is virtually completed and has already brought tremendous changes to the ambience and

surroundings of Speightstown and has given further impetus to the redevelopment of Speightstown as a serious Town in Barbados' history.

5.10 p.m.

This land really forms part of the site on which there was previously located the Fisheries Department and the Natural Gas Corporation. I think it is a very well known sight. Virtually every day you pass, you can see several cars parked there on what is now a car park which is on to part of the magnificent street and stretch of beach that runs from the old Hilton Hotel site to the Pierhead. It is considered by many as one of the best beaches in Barbados. It is heavily used by persons from all over Barbados and also by visitors to Barbados.

This is now being vested in the Barbados Tourism Inc. for means of further development. This is all part of the Government's policy to bring a change and a rejuvenation to that part of Bay Street, stretching from the Hilton site down into the heart of Barbados as far down as Trevor's Way. This will also be a part of a series of projects that will see restaurants, shops and businesses of various types, over the years, coming to fruition. We have already seen it begun with the old Harbour Police station and there is very much more of that type of improvement and investment on the cards. We look forward to using these developments as part of a general improvement in Bridgetown to revive Bridgetown as a Centre, not only during the day but at night and to provide a means whereby the City does not literally seem to die and go to sleep at night, but that it is a thriving scenery which can hold its own.

Aside.

SENATOR THE HON. G. S. H. MURRAY: You do not have to be big to be a metropolis, it is the characteristics and the diversity of what you offer. It is the sophistication of what you are able to provide that makes you a metropolis and you can have a big city in a desert.

Sir, this is all part of the Government's intention, as I said, to bring Bridgetown further in line with development all over the country. As you know, there are plans to pedestrianise Broad Street. We all appreciate what has been done to Swan Street and there are lots of other works in the offing for the old Town Hall, et cetera and all in all, Bridgetown is no longer considered as a town that is on the decline but is certainly a town which is on the rebound and on the way up.

With those words, Sir, I beg to move that this Resolution do now pass.

SENATOR C. A. MASCOLL: Mr. President, again this is not necessarily a contentious matter, but there are a

few things which I would like to draw to the attention of the Government.

The first is that when we are looking at the redevelopment of Bridgetown, which this Resolution is dealing with, it is generally accepted that we will try to maintain as much of the character of the buildings around the city as we could manage. I am particularly concerned with what is happening to the former child care board building on Bay Street, which is not too far away from where this land is located which is to be acquired.

Sir, that building is being allowed to totally disintegrate and it has some very interesting Barbadian architecture which should be preserved. In addition, the old eye ward – I do not know what could be done in terms of preserving any of that building, but I hope that you will find a way to at least maintain some of the character of the buildings in that area.

The other point I would need to deal with, Sir, is the fact that I hear reference being made to the lovely beach that is along that stretch. I hope, however, that when development is taking place in this area, that those persons who are carrying out the development are mindful of the fact that that beach was not always there and it is a relatively new beach.

In fact, there was a photograph in the Prime Minister's office – I do not know if it is still there – but there was an aerial photograph hanging in the Prime Minister's office which I believe was taken in the 1950s. I do not know if it is still there but if Senator Murray should take a look at it, he would notice that there was no beach at the Crane at the time when that photograph was taken. So that when a few years ago we heard of the concern about beach erosion at the Crane, I was not surprised because that was only part of a cycle. I am afraid I might be seeing what is happening now along that stretch between the Hilton and Bay Street, that also is a phase in the cycle now where beaches are being created.

Sir, one will recall that only a few years ago, waves crashed against the walls of the Esplanade and also against the old BICO building that was situated on Bay Street. Now there is an extensive beach between the Esplanade and where BICO used to be, so if we are not mindful of this, and we carry out development too near to that beach, we will find that in a few years' time that development may be threatened by what will be then considered to be beach erosion, when in fact it is only part of the tidal cycle where beaches are created and removed. I do not remember the exact scientific term for it now but I know that this is a common practice and it is lost by aeration.

There is a cycle by which the beaches are created and when you lose from one area, you build back in another.

Aside.

Mr. PRESIDENT: Order please.

SENATOR LeR. H. McCLEAN: Mr. President, we do not want to get into the details but what we are saying is that we must be mindful that the beach could at some point in time be eroded, and therefore we must be mindful of this when we are carrying out development in this area.

I thank you, Mr. President.

SENATOR Miss J. C. ODLE: Mr. President, just to add a few words to this because I am fully supportive of any initiative to vest in the BTII for the advancement of the tourism product of Barbados, and certainly by experience so far, they have been doing an able job in the beautification of Barbados.

Senator McClean spoke to being careful that we do not build an area where there may soon be, or in times not too far off, a change because of the shifts of the beach and so on. I think we should recall, Sir, that it is this administration that ensures that one has to build, I think it is, as far back as 100 yards from the high water mark. I do not think that our Town Planning Department would be so irresponsible as to approve any construction that may in anyway impinge on this particular law.

Sir, that beach is particularly delightful and while it may not have been there years ago, it is certainly there now and many Barbadians use that beach daily to swim and exercise. One call that they continuously make, Sir, is for the provision of changing facilities in that area, because at this point persons have to either change in their cars or come ready dressed. We recognise that many sometimes take their sea bath and then would want to move on and go straight to work. And so, my call would be for a structure in keeping with the general ambiance and taking into consideration the security of a facility to facilitate persons changing in that area.

5.20 p.m.

I want to commend the Barbados Tourism Investment Incorporated for the continuation of the works that they are doing to enhance not only the landscape for the tourists but for those of us Barbadians who appreciate good sites.

In addition to that, I would hope that the design would be in keeping with something that will make provision for a window to the sea – I only use that as the old phrase – so that we can still see some of that delightful seascape as we drive along what is largely becoming an industrialized area in Barbados.

I thank you, Sir.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, I am supporting this Resolution. I am so happy to see that Government has taken the opportunity to use this parcel of land in Bay Street because it has significant meaning for me. We have been losing our windows and access to the sea and I think this is a positive step by Government to preserve what is really ours, that the natives of Barbados would have constant access to the sea and in so doing they will have facilities which are commensurate with our lifestyle.

Now, this area has special interest for me. I heard Senator McClean pontificating on things which certainly he does not understand and in particular this area. You see we have had a lot of movement of sand, the build up of beaches and the destruction of beaches in Barbados for a number of years. We have to face the fact and the reality that these movements have occurred because private property owners, particularly hotel owners, started putting groynes all around the island without any consultation with the beach authorities. If you take the whole of St. James, I can name a hotel that put in groynes and were forced to remove them because when you put groynes in ...

SENATOR LeR. H. McCLEAN: On a point of order. Mr. President, the Honourable Senator commenced his speech by making reference to a point I made and said that I was speaking of something I know nothing of. I certainly did not refer to any beach area which was affected by groynes and, therefore, I do not know how he has associated my comments with that area, Sir.

HIS HONOUR SENATOR C. L. BOLDEN: These groynes were put in which build beaches some places and it has been found out that when you put a groyne in it pulls sand from one place to the next. I will give you a typical example of this. The Democratic Labour Party went to Christ Church and openly said they will affect Mr. Harris St. John's property and build what was the first coast guard place up there despite all the warnings and within the first six months every weekend they had to employ the Barbados Defence Force lorries to dig the sand from...

Mr. PRESIDENT: Senator Bolden, what has that to do with this debate?

HIS HONOUR SENATOR C. L. BOLDEN: I am coming down to Bay Street, Sir. We are talking about the sea and the sea involves the sand, Sir.

Mr. PRESIDENT: Yes, but that can go on and on. It could even be extra territorial.

HIS HONOUR SENATOR C. L. BOLDEN: I can assure the Senate this will not be...

Asides.

HIS HONOUR SENATOR C. L. BOLDEN: One weekend was a long weekend and the Defence Force did not go to move the sand and when they went back the Monday, all the boats were covered up to the top with sand.

Asides.

HIS HONOUR SENATOR C. L. BOLDEN: Everything is still up there.

But coming back to Bay Street, Mr. President, I know about Bay Street very well because I had a client years ago who came here and we had what they call a gentleman's agreement with the BICO people to build a hotel on the old BICO site and one of the stipulations of Town and Country Planning was that you must still be able to see the sea. But that fell through, Mr. President, because they wanted us to buy over 2.2 acres of land and when you looked at the plan, their original plan was for one acre of land. It was the accretion of sand along that same beach that they wanted to sell us. I raised the argument with the Town Planner and with other government departments in those years that we must have some regulation as to whom the accretion belongs because the question of building would take this into consideration and the Government should at this point in time determine the lands on the sea coast, how we are going to deal with the accretion and preserve it for the people of Barbados.

I thank you, Sir.

SENATOR Mrs. P. E. RICKINSON: Mr. President, I rise to support this Resolution but Senator Odle in her contribution mentioned something about Town and Country Planning and building 100 yards from high water mark. Mr. President, that is observed. Government is wasting their money acquiring all these properties because very few of these properties are 100 yards from high water mark; some of them are basically about 10 to 12 yards from high water mark so Town and Country Planning will have to make special arrangements regarding the building and the renovation of these properties. I am in agreement with renovating these properties but what I am saying is that they cannot stick to the 100 yards to high water mark if they want to do these renovations on these various buildings.

SENATOR Miss J. C. ODLE: On a point of elucidation. The requirement, if you are constructing new buildings near the sea, is that they be built 100 yards from high water mark. I believe that is as it is.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, I beg to move that this Resolution do now pass.

The question that the Resolution do now pass was put to the Senate and agreed to.

ADJOURNMENT

SENATOR THE HON. G. S. H. MURRAY: Mr. President, that concludes Government Business for the day and I want to thank everyone for their contribution, as well as the staff of Parliament.

I beg to move that the Senate do now adjourn *sine die*.

The question that the Senate do now adjourn sine die was put to the Senate and agreed to and Mr. PRESIDENT adjourned the Senate accordingly.
5.30 p.m.

CONTENTS

MINUTES

The Senate met in the Senate Chamber, Parliament Buildings on Wednesday, 5th December, 2001 at 11.15 a.m.

ANNOUNCEMENTS BY HIS HONOUR
THE PRESIDENT

Mr. PRESIDENT 1

PUBLIC BUSINESS

ORDER NO. 1 – THE BANKRUPTCY AND
INSOLVENCY BILL, 2001 1

Senator the Hon. G. S. H. Murray, 1, 31; Senator Mrs. V. E. Newton, 7; Senator J. E. D. Williams, 8; Senator Sir John Stanley Goddard, 10; Senator K. D. Symmonds, 12; Senator the Hon. Dame Patricia Symmonds, 13; Senator D. D. Marshall, 14; Senator LeR. H. McClean, 17; Senator D. L. Haynes, 22; Senator Miss J. C. Odle, 23; His Honour Senator C. L. Bolden, 26, 30; Senator C. A. Mascoll, 28, 30.

ORDER NO. 2 – RESOLUTION TO APPROVE THE
COMPULSORY ACQUISITION BY THE
CROWN OF THE PARCEL OF LAND SITUATE
AT ST. PATRICKS IN THE PARISH OF CHRIST
CHURCH IN THIS ISLAND AND MORE
PARTICULARLY DESCRIBED IN THE
SCHEDULE TO THIS RESOLUTION FOR
ROAD IMPROVEMENT 32

Senator the Hon. G. S. H. Murray, 32, 36; Senator LeR. H. McClean, 33; Senator K. D. Symmonds, 35; Senator Mrs. P. E. Rickinson, 35.

ORDER NO. 3 – RESOLUTION TO APPROVE THE
VESTING IN THE BARBADOS TOURISM
INVESTMENT INC. OF THE PARCEL OF LAND
SITUATE AT BAY STREET IN THE PARISH OF
SAINT MICHAEL IN THIS ISLAND AND
MORE PARTICULARLY DESCRIBED IN THE
SCHEDULE HERETO 36

Senator the Hon. G. S. H. Murray, 36; Senator C. A. Mascoll, 37; Senator LeR. H. McClean, 38; Senator Miss J. C. Odle, 38; His Honour Senator C. L. Bolden, 38; Senator Mrs. P. E. Rickinson, 39.

SUSPENSION 13

ADJOURNMENT 39

Senator the Hon. G. S. H. Murray, 39.

SPEAKERS IN THIS ISSUE

BOLDEN, His Honour Senator C. L.
GODDARD, Senator Sir John Stanley
GOLLOP, His Honour Senator Sir Fred
HAYNES, Senator D. L.
MARSHALL, Senator D. D.
MASCOLL, Senator C. A.
MCCLEAN, Senator LeR. H.
MURRAY, Senator the Hon. G. S. H.
NEWTON, Senator Mrs. V. E.
ODLE, Senator Miss J. C.
SYMMONDS, Senator K. D.
SYMMONDS, Senator the Hon. Dame Patricia
WILLIAMS, Senator J. E. D.