Official Report

PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2006-2010) OF THE NINTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA HELD IN THE PARLIAMENT CHAMBER, PUBLIC BUILDINGS, BRICKDAM, GEORGETOWN

132ND Sitting	Thursday, 21ST October, 2010

The Assembly convened at 2.11 p.m.

Prayers

[Mr. Speaker in the Chair]

PRESENTATION OF PAPERS AND REPORTS

The following papers were laid:

(1) Compendium of Document on Guyana before the First Universal Periodic Review of the United Nations Human Rights Council, 8th Session, May 11, 2010 and the UNHRC 15TH Session, September 23, 2010. [*Minister of Foreign Affairs*]

(2) The National Agricultural Research Institute Annual Report. [*The Prime Minister*]

(3) The Minutes of the Proceedings of the 21st Meeting of the Committee of Selection held on Thursday, 14th October, 2010. [*Speaker of the National Assembly (Chairman of the Committee of Selection)*]

(4) The Excise Tax (Amendment) Regulations 2010 – No.5 of 2010.

(5) The Motor Vehicles and Road Traffic Regulations 2010 – No.6 of 2010.

[*Minister of Finance*]

STATEMENTS BY MINISTERS, INCLUDING POLICY STATEMENTS

COMPENDIUM OF DOCUMENTS ON GUYANA BEFORE THE FIRST UNIVERSAL PERIODIC REVIEW OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL

Mrs. Rodrigues-Birkett: Mr. Speaker, I just laid the Compendium of Documents relating to Guyana's first universal periodic review before the United Nation's Human Rights Council. These include our National Report, the statement I presented during the 8th Session of the Working Group on the U.P.R on May 11, 2010 when our report was considered; the Report of the Working Group, the opening remarks to the Human Rights Council which was presented by the Hon. Member Gail Teixeira on September 23, 2010 and the report of the Human Right's Council on its 15th Session which amongst other countries included Guyana.

As you are aware, the Universal Periodic Review was adopted by the United Nations General Assembly in 2006, and involves a review and assessment of the individual UN member countries Human Rights record based on their obligations and commitments in the UN charter, the Universal Declaration on Human Rights and other Human Rights instruments to which the country subscribes. The U.P.R is conducted every four years and this year was Guyana's turn.

Ever since Guyana submitted its report to the United Nation's Commissioner on Human Rights there has been widespread media coverage, albeit on selected aspects of the process and the recommendations which emanated there from. However, it is necessary that for a process as important as this one that a formal statement be made to this august body.

I wish to indicate, from the onset, that the Government of Guyana is guided by its unequivocal national commitment to promoting and protecting the inalienable principals of Human Rights and as such has taken the Universal Periodic Review process very seriously. This was demonstrated, not only by the level of attendance during the 8th Session of the U.P.R working group in May, 2010 and the 15th Session of the Human Rights Council which was convened in September, 2010, but more so by our immediate acceptance of 57 of the 112 recommendations which were made by Member States during the Working Group session. Indeed, many of these recommendations were already being implemented at the time they were made. In addition, by September 23, when the Report of the Working Group was adopted and where Hon. Member Ms. Teixeira represented Guyana; an additional 15

recommendations were accepted. A commitment was also made to consider several others subject to consultations. Guyana, therefore, accepted 75 of the112 recommendations.

It is worthy of mention, that the Government of Guyana was able to report to the Human Rights Council, in September, on the actions taken in response to several recommendations that were made during the May Session. Among these were the following:

1. Guyana's accession to the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. This was done on July 30, 2010.

2. Accession to the optional protocol to the Convention of the Rights of the Child for children in arms conflict. This was done in August, 2010.

3. Ratification of the United Nation's Convention on the protection of the Rights of all migrant workers and members of their families. This was done in July, 2010. This Convention is one that the Human Rights Council attaches particular importance to in addressing the Human Rights of migrants.

4. Amendments tabled by Government to the Training School Act and the Juvenile Offenders Act to remove the use of corporal punishment in juvenile detention centres. This House has now considered those two Amendments.

5. Public assent in May, 2010 of the Sexual Offences Bill which was passed in this Assembly in April, 2009 and which amongst other things represents a general condemnation by the Government and people of Guyana of sexual violence in all its forms.

The Government of Guyana is cognizant of the fact that these measures, which were all included in the recommendations from Member States, speaks volumes for what our country stands for. However, they can only be totally successful if they are enforced and observed. This we must all, as a Nation, commit to do. It is important that I also reiterate that contained in the list of recommendations which we agreed to further consider subject to consultations are 26 relating to the following three areas:

1. Abolishing or establishing a moratorium on the death penalty.

2. De-criminalizing sexual activity between consenting adults of the same sex and protecting lesbian, gay, bi-sexual and transsexual persons, commonly known as LGBT from discrimination.

3. Abolishing corporal punishment.

These are issues that go to the core of the Guyanese people traditions, beliefs and realities. Decisions on making fundamental alterations to the status quo on issues such as these cannot be made without widespread consultation and, of course, consideration of the consequences. This House is not bereft of such experiences, at least on one of these issues. The Government of Guyana has, nevertheless, made a commitment to have consultations on these matters and report back to the Council within two years.

The Universal Periodic Review process is not flawless; in fact I would consider it a work in progress. However, it provides a useful opportunity for countries to not only report on their successes and challenges but share experiences with each other and to some extent recognise the peculiarities and context of our various societies. It is therefore, not unusual that many of the developing countries focused on issues relating to poverty alleviation, education, health and the like. Guyana was commended by many countries for the visibly progressive steps made in several areas critical to socio-economic and political development including Indigenous People's Rights, poverty reduction, agriculture and food security, the establishment of the Rights Commissions and the Low Carbon Development Strategy among others.

We live in a turmoil filled world as is evident in those suffering from the effects of the global financial and economic crisis, the impacts of climate change, food shortages and less than good governance to name a few areas. But in all of this it is important for us as Guyanese to take a step back at look at how far we have come as a Country. Sure we have challenges, some which require much more than the resources we have to address them in a meaningful way. Participating in the U.P.R process with several other countries and actually going through one by one, both, the challenges and the achievements of Guyana and hearing other member states outlining some of the initiatives we have taken and commending us for it, I could not help but feel a sense of national pride. These initiatives are in place despite the many challenges associated with being an emerging democracy and a developing country. For this we must all be proud.

With the adoption of this U.P.R report and the serious fashion with which it was treated by the Government of Guyana and, indeed, many others, Guyana has, I am confident, reaffirmed it rightful place among the diverse functioning democracies of the international community. By this token we should feel reassured that Guyana is doing its part to contribute to the realisation of the universal vision to support human development by remaining faithful to the promotion and protection of the fundamental human rights of its own citizenry and for all human kind. Even as we continue to witness disturbances around the world which threaten people's basic rights, we as Guyanese in appreciation for the road we have so far travelled towards human development should be inspired to play our respectful, meaningful roles in the further promotion and protection of our fundamental Human Rights and freedoms. I thank you.

PUBLIC BUSINESS

GOVERMENT BUSINESS

BILLS – Second Readings

1. **JUDICIAL REVIEW BILL 2010 – Bill No. 17/2010**

A Bill Intituled:

> "An Act to provide for an application to the High Court of Supreme Court of Judicature for relief review and for related matters. *[The Attorney General and Minister of Legal Affairs]*

Mr. Ramson: Cde Speaker, I thank you for inviting me to take this Bill, at least, one step further along its legislative path. I can assure you that this, as I said when it was read the first time, is really a ground breaking piece of legislation. Ground breaking in the sense that we have chosen to bring the judicial process into the 21st century and I must confess rather belatedly we are so doing today. If you would permit me, because many Members of this august House are not quite familiar with the ramifications of this legislative attempt to modernise the process by which challenges to executive and other administrative authority. Those challenges have in the past been done by way of prerogative writ. It is because we have been following slavishly the English common law that this prerogative writ procedure, which we are now attempting to change, has caused us immense anxieties, uncertainties... and sometimes with the lengthy procedure that is visited by the judicial arm of the State many of

the putative rounds turn out not to be put right until a very long time in the course of the resolution of the differences between the parties concerned.

You will forgive me, Cde Speaker, if I seek your leave as is required by the Standing Orders for me to refer to any text on the matter. The reason I find it necessary to differentiate between the two procedures is that they are only some of us who have had the benefit of the training that would confer upon us some familiarity with the systems or the procedures which we are about to debate. I wish to refer to you a book, the text of Judicial Review by the Right Hon. Lord Clyde and Dennis J Edwards, which I found to be very helpful in the course of my latter private practice days. It says here:

> "The development of the Judicial Review system was for a long time restrained by the technicalities of procedure relating in particular to the use of prerogative writs later called prerogative orders or certiorari prohibition and mandamus."

You will readily agree that unless some of us are educated in Latin we would really not be familiar with what is being said there. This Bill that is being debated today is going to be only in English.

I wish to also point out that there are reasons why we need to have this bit of legislation put on the statute books, if only for the purpose of good governance which is embraced by the Administration and which is grounded in the *rule of law*. The essential purpose of Judicial Review is to ensure that the law is observed. It in effect confers a kind of supervisory jurisdiction as a fundamental element of the Constitution which is based on respect for the *rule of law*. Those are not my words. Those are words extracted from the very book to which I referred. I wish to crave your indulgence because I need to have the record reflect why it is that this Bill which is really concerned only with the legal profession, is being promulgated at this time.

> "In particular..."so says the author "...Judicial Review is a power inherent in and unique to a Supreme Court. It emphasises the essential character of Judicial Review as being supervisory. This consideration leads directly to the central limitation upon Judicial Review to the effect that, while the Court may express a conclusion about the legal validity of a challenged Act or decision. It will not take on itself the task of making the correct decision or assume the power of the person whose conduct is under review. This limitation on the scope of Judicial Review is often drawn in terms

> of distinctions between review and appeal, legality or validity in merits or procedure and substance."

The Court itself, because it is supposed to be independent of the Executive, needs to pay close attention to the exercise of the power and that is why it has that supervisory jurisdiction which this Bill will embed in the legislative and the judicial process. It also has its own limitations. I quote again:

> "The court cannot when exercising its power of Judicial Review simply substitute its own decision in the merits because it prefers a different construction of the facts."

As Lord Brightman said in a particular case, decided some 25 or 30 years ago "Judicial Review is concerned not with the decision but with the decision making process." Unless that restriction on the power of the court is observed the court will, in my view, under the guise of preventing the abuse of power be, itself guilty of usurping that power.

Essentially what this Bill is attempting to do as is expressed in the explanatory memorandum, it provide for an application to the High Court for a relief by way of a Judicial Review. It states that an application to the Court for a relief, in Clause Three, against an administrative act shall be made by way of a Judicial Review and against which relief is sought must have a public element. To compliment this bit of legislation we intend to lay over the new High Court rules very shortly. Those rules will set out how the process is initiated and how it comes to an end. Clause 3 of this Bill says, quite clearly, an application to the Court for relief against an Administrative Act or omission shall be made by way of an application for Judicial Review in accordance with this Act... - I will identify what the grounds for the application are- ... and will Rules of Court.

I wish, also, to draw to your attention that there are parallel provisions in England that were set out as far back as 1881, and I believe there are similar provisions in the Caribbean. The Supreme Court Act of 1981 in England gave legislative authority to what is called the new Order 53 procedure in the Supreme Court. I believe it would not be arguable that our current approach which is embodied in both this Act and the new Rules of Court will not be *imparimaterio* with those rules and statutory legislative provisions in the United Kingdom. Because we are governed by a written Constitution there is a school of thought that there is going to be some difficulty between Judicial Review and democratic legitimacy. I need to read to you, quite briefly, another extract from this text which may help to bring some clarity

to the purpose of the legislation which we hope to pass under the name of the Judicial Review Act.

> "The *rule of law* and the principal of Constitutionalism demand that the Courts should not retreat in the face of political power."

It would appear that when Ministers or public officials are conferred with powers which would need to be exercised in a fair and equitable manner the Courts are designed because of its independence or its acclaimed independence to have that supervisory authority to intervene and consider whether things were done in a fair and equable manner.

2.41 p.m.

I read again:

> "T.R.S Allan has captured the conflict that is a descent of the debate of the legitimacy of Judicial Review. According to one constitutional model which may be termed the *majoritarian* tradition, legislation should always be immune from Judicial Review because it carries the authority of the majority of elected representatives..."

as we are. I paused there just to insert: "as we are".

> "...and by the same token, Judges should be wary of substituting their own judgements of morality or political wisdom for those of Ministers or officials who enjoy discretionary powers conferred by the elected majority to whom such officials are ultimately accountable."

And these are important words Sir.

> "Obedience to Parliamentary sovereignty benignly construed exhausts the requirements of the *rule of law*."

I repeat that:

> "Obedience to the Parliamentary Sovereignty..."

Which is not quite the same here, "...benignly construed exhausts the requirements of the *rule of law*."

The contrasting constitutional model which is that, which we are obliged to consider widely known as the counter *majoritarian* model puts respect for the individual as the highest value for the law to protect. It follows that in terms of this model it falls to the Courts to ensure that all exercises of public power stays within these firm limitations and respects them both in form and substance. This is what I wish to emphasize,

> "The legitimacy of Judicial Review rests on the recognition that the preservation of the *rule of law* requires an independent judiciary capable of securing the legality of decision making."

Cde Speaker, I believe that it is important in order to give expression to what is called '*the duty to act fairly*' – everyone puts the compendious term "natural justice" on that – that no wrong or an evil goes without a remedy. In our language *Ubicumque est juris remedio*, that is, wherever there is a right there must be a remedy. So, we have before us this paradox of Judicial Review where there are imbued with a supervisory power, but yet they are limited. It is paradoxical that a review will not allow for a complete comprehensive solution to the problem which is confronting the Court. I believe in Lawyers terms that it is the difference between the two terms "Review" and "Appeal". An Appeal Court is entitled to substitute a final decision in the case because the statute gives it that power. The Statute which creates the Appeal Court procedure allows for a complete resolution of the problem that faces the tribunal; not so with the Judicial Review. So, we have that paradox which we are faced with. The review is limited to merely considering the judicial decision making process. The review tribunal, which is the Supreme Court, is not in a position to substitute as I earlier said reading from that text.

If you permit me, I would not want be extremely long to open the Bill for further debate. If I may say this, in Clause 2,

> " 'Act' includes any decision, determination, advice or recommendation made in accordance with a power or duty conferred or imposed by the Constitution..."

Unlike in Britain, there is no such written Constitution.

> "...any written law, instrument of incorporation, rules or bylaws of any corporate or incorporate body or under a non-statutory scheme that is funded out of monies appropriated by Parliament;"

That is what is called the public element aspect of Judicial Review, or which brings a dispute within the review amplitude. The 'Act's' also refers to acts or omissions of a Minister, a public body, public authority, tribunal, board, committee, or any person or body, exercising, purporting to exercise a failing to exercise any public power or duty conferred or imposed by the Constitution et cetera. So, you see, there is a great emphasis placed on the public element aspect. In other words, if two Members of this august Assembly being equal Members of Parliament, and they have a difficulty, albeit that they are public officials, anything done by them interlay (between themselves), their acts or omissions will not be subject to Judicial Review, because it has no public element.

> "In considering whether an act or omission has a public element, the Court shall have regard to the following matters.
>
> The source of the power or duty exercised..."

This is in Clause 3(3)

> "...The nature of the power or duty exercised
> The object or purpose of the act or omission
> The consequences of the act or omission not being amenable to Judicial Review
> Any other matter the Court sees fit to consider"

Clause 4 makes provision for the kind of relief to persons whose interests are adversely affected by an administrative act or omission, or to a person or group of persons if the Court is satisfied that the application is justified in the public interest in the circumstances of that case. There is a special provision which seeks to allow or permit a Court to intervene where a person is adversely affected by any administrative act or omission, but is unable to file an application on account of poverty, disability, or socially or economically disadvantaged position or any other person or group of persons acting *bona-fide* for relief.

There is a special provision allowing for the Court to permit the application by persons who are somewhat disadvantaged, but because of those disabilities would not be able to, according to some people in this country, get justice.

The grounds for relief are set out and include: -an administrative act or omission which was in anyway unauthorised or contrary to law. You will see that there is a pattern developing in

the various grounds, things that are against the conscience of man, grounds that would obviously attract some kind of sympathy for the person who alleges that he/she is aggrieved:

"(b) excess of jurisdiction;

(c) failure to satisfy or observe conditions or procedures required by law;

(d) breach of the principles of natural justice;

(e) unreasonable, irregular or improper exercise of discretion;

(f) abuse of power;

(g) fraud;

(h) bad faith, improper purposes or irrelevant considerations;

(i) acting on instructions from an unauthorised person.

In other words, were a Minister seeks to foist his will on a public officer who is named as the person with the authority and power to make a decision affecting persons in public life:

(j) Conflict with the policy of an Act;

(k) error of law, whether or not apparent on the face of the record;

(l) absence of evidence on which a finding or inference of fact could reasonably be based;

(m) breach of or omission to perform a duty;

(n) failure to satisfy or observe conditions or procedures required by the Constitution;

(o) breach of the principle of proportionality;

(p) error of fact;

(q) deprivation of a legitimate expectation;

And (r), which is the final itemised ground, and is one which a certain Senior Council has a proclivity for challenging many acts of the Government; one of the first grounds he uses is,

(r) misfeasance in public office.

I have been a victim of that kind of activity, but I am defending the matter. What has surprised them is that I have filed a counter claim against them for malfeasance in public office also, which they did not expect. I think in addition to my counter-claim on malfeasance I had claim conspiracy to corrupt public morals. So "*what is good for the goose is good for the gander*" as well.

An applicant is not limited to the grounds set out. You will see that there is an omnibus provision which allows for other grounds to be used, but it must satisfy what is deemed on such terms as it thinks fit, and will allow for an amendment to specify any other ground which the Court believes or view to be in keeping with the legislation.

In Clause 6 there is a provision for the Court to suspend the hearing of the application and appoint a person or a number of persons possessing such training or qualifications as the Court considers just and as the circumstances warrant, to investigate the complaint or matter and submit a report on its finding to the Court. The remedies that are available to the aggrieved party consists of an order of certiorari for quashing unlawful acts; an order of prohibition for prohibiting unlawful acts; an order of mandamus for requiring performance of a public duty including a duty to make a decision or determination or to hear or determine any case, and such other orders, directions or writs as it considers just for the circumstances or as warranted.

In addition, the Court may grant a declarant judgement or an advisory declaration, an injunction, and because of the peculiar nature or our legislation, a conservatory order in the case of the state, restitution or damages in money, or an order for the return of property immovable or movable.

Unlike the current state of the law, any application to the Court could not be met with a rejoinder that the Court shall refuse Judicial Review where any other written law provides an alternative procedure to the question review or appeal that decision.

Interim injunctions are also open to be sought. Interim conservatory orders, and there is a somewhat novel remedy which is available in the modern thinking, but has never, as far as I know, been granted, an interim declaration. Even if the Court is of the view that Judicial Review is really not available to the applicant, it may make the necessary amendments to the proceedings as if those proceedings were not governed by this act and subject to such terms and conditions that the Court thinks fit. In other words, the provision is to allow the Court not

to shut the applicant out completely. In other words, not to dismiss his case if there is any real reason for the complaint.

At Clause 15 it says that it is duty of any person or body making an administrative decision, if requested in accordance with this section by any person adversely affected by the decision, to supply that person with a statement setting out the findings on material questions of fact, referring to the evidence or other materials on which those findings were based and giving the reasons for the decision. And, there is a time limit for making such a request. That statement must be in writing, supplied within a reasonable time and deemed to be part of the decision and to be incorporated in the record, but shall not provide or include any confidential information regarding the personal or business affairs of anyone other than the person seeking the statement. It is my view that this too is sufficiently innovative to ensure that people, and is in keeping with the accountability, that this administration is held to by all and sundry.

There is a provision to restrain persons who are in public office, or office created by any written law, or an office in which public has an interest and any other office as the Court considers is in the public interest to grant relief. There is provision for interim relief, and to prevent persons who are not entitled to act in that office. The Court has a right to grant injunctions or conservatory orders, and if the case warrants, declare the office to be vacant. As I said earlier, reading from the text, you will recall that the question of the principles of natural justice or fairness are pivotal to the exercise of the power given to persons, and Clause 19 addresses that specifically.

The expansive powers of the Court are contained in Clause 20 and 21 to the point where the Court may remit the matter to the Minister or public body et cetera, with a direction to reconsider and determine either generally or in respect of any specified matter as a whole or any part of it in accordance with the Court's order.

Unlike what is being obtained today in respect of matters which have caused some injustice to the State, you will recall the case of some extradition proceedings which had to be stalled because there is a special *rule of law* which allowed for a person who alleges that he is aggrieved, or the applicant in prerogative writ applications, or him to escape the justice of the situation by pleading a provision in the Court of Appeal Act which says:

"that any matter arising out of a criminal cause or matter was not subject to an appeal".

That is why, if I may take the liberty of explaining, why the man *Dattadin* is still on the road.

Mr. Nandlall: Dataram Sir, Dattadin is a lawyer.

Mr. Ramson: I am corrected by learned junior there, and I stand corrected. [*laughter*] I do not think that that is offensive. I am certain that Mr. DeSanto who is a senior, I would not have said so about him, because in our parlance I am entitled to address any person who has not taken silk as my junior. I do not make an apology for that, but if it is offensive to my leaned junior I will withdraw it. I know this interplay of political forces want to cause a little bit of tension, more attention to themselves. I know some of them are making an attempt to join our company, Cde Speaker. I hope it is not in my lifetime.

More seriously, I come to Clause 22, and I inserted it particularly because I felt very aggrieved that Dataram, that in dealing with the decision of Dataram when it came before me in the Court or Appeal I wrote a long decision hoping that I can find a way out, because he was able to escape the noose. I say so publicly. The security forces are somewhat aggrieved. So, I have put in clause 22 myself specifically to meet that kind of lacuna that existed in the law,

> "Notwithstanding anything in any other written law, there shall be a right of appeal from a Judge of the Court in any application..."

That includes the full court; that is the offending Court in the Dataram matter.

> "...there shall be a right of appeal from a Judge of the Court in any application, including one arising from a criminal cause or matter, to the Court of Appeal."

With those few remarks I wish to say that this Act also binds the State. Clause 23 says so. I am grateful to my colleague Minister here. This Act binds the State. I just want to make sure that there is some kind of equanimity when one is dealing with the kind of review that is expected.

I wish to finally say that in any legal system committed to the *rule of law*, it is a fundamental principle that legal powers which affect the individual are defined, limited, and their exercise reviewable. These are the important words, "to ensure consistency with the law which includes Constitutional Law". With that, I take my seat. I thank you.

Mrs. Riehl: Thank you Mr. Speaker. The late great Lord Denning, one of the most revered judges of our times once described the advent of Judicial Review into the English legal system as a breath of fresh air. In the case of O'Reilly v Mackman [1983] 2 AC 237 (HL), three weekly Law Reports, page 604 at page 619 Lord Denim said:

> "In modern times we have come to recognize two separate fields of law, one of private law and the other of public law. Private law regulates the affairs of subjects as between themselves. Public law regulates the affairs of subjects vis-à-vis public authorities."

Lord Denim in his book, "*The Closing Chapter*" – I think he wrote a trilogy or four books – at page 120, referring to the very case of O'Reilly and Mackman in which he sat, and another case of Cox v Thanet District Council [1983] 2 AC 286, had this to say as he was summarising the Judicial Review in the English system. He said:

> "In order to understand the significance of those two decisions I have just mentioned, you should know that for 100 years before 1950, the only remedies in public law known to the English Courts were the old prerogative writs of certiorari, mandamus and prohibition. These were of very limited scope and suffered from many procedural disadvantages....

3.11 p.m.

> After 1950 there were advances on two fronts, one advance was to extend the remedy by prerogative writs, so as to cover many more mis-doings by public authorities such as errors of law on the face of the record, going outside their jurisdiction and so forth – excessive jurisdiction. The other advance was to develop the remedy by ordinary action so as to make the equitable remedies of declaration and injunction available against public authorities for breach of public law.
>
> The procedures became so diverse that in December, 1969 the Law Commission (of England) was formally requested by the Chancellor of England "to review the existing remedies for judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure."

The Law Commission made their report in March, 1976. It was implemented by the English Rules of Court in 1977 and was given statutory force in 1981 as Section 29 of the Supreme Court Act, 1981. That is the English situation.

It combined all the former remedies into one proceeding called Judicial Review. At one stroke the Court could grant whatever relief was appropriate – not only certiorari and mandamus but also declarations and injunctions, even damages the English Courts could grant. The procedure was much more simple and expeditious - just a summons, not a writ, nor formal pleadings. The evidence was given by affidavit. As a rule, with affidavit evidence there is no cross examination, no discovery and so forth. But there were important safeguards. In particular, to qualify, the applicant had to get the leave of a Judge.

Sir, I have briefly outlined or traced the outline of Judicial Review into the English Legal System which is in fact a large measure still our own system. Although we are making changes and the law is moving, still, essentially we have a lot of the English legal system as part of our Guyanese Legal system.

Today, Judicial Review has come to Guyana's legal system and it is a watershed moment. My only question is what took the Government so long. For years upon years the citizenry of this country has suffered without relief against the acts and omissions and decisions of Ministers of Government, Regional Chairmen, National Democratic Councils, Boards and Commissions, and all manner and sorts of public authorities purporting to exercise, or failing to exercise, public power or duty conferred or imposed on them by our Constitution, by written law, instrument of incorporation, rules or by-laws of any corporate or incorporate body, or under a non-statutory body that is funded out of monies appropriated by Parliament. In other words all bodies that are funded from the public purse and has that designation as public authorities are answerable to the people of this country. Just like in the English system the rules of court have been softened or relaxed, or will be because we have heard the Hon. Attorney General say they are soon going to lay these new rules of the High Court which were in gestation period for several years. We are going to have new *rules of court*. Just like the English system the *rules of court* have been relaxed to accommodate Judicial Review. All that is needed is an application to the court - and applications are usually made by summonses just like the English system. The remedies have also been combined under this new law. No longer must one file a motion for the prerogative writs of Certiorari, Mandamus or Prohibition and then file a separate writ seeking equitable remedies, injunctions,

declarations or prohibitions. All that is now needed under this Act is to file for Judicial Review and the Court will grant the necessary relief that the interest of justice demands.

The Hon. Attorney General has gone through, laboriously, all the Clauses of this Bill. But Clause 5 gives the list of grounds upon which the court may grant relief by way of remedies mentioned in this Bill. Those grounds are, for a quick run through:

> "(a) …an administrative act or omission in any way unauthorised or contrary to law;
>
> (b) excess of jurisdiction; (by public officials)
>
> (c) failure to satisfy or observe conditions or procedures required by law;
>
> (d) breach of the principles of natural justice;
>
> (e) unreasonable, irregular or improper exercise of discretion." And so on.

There is a list right down to (r) of the alphabet with "misfeasance in public office". What is important is that this list of grounds is not exhaustive. And an application is not limited to the grounds set out therein. If the applicant wishes to rely on any other ground not so set out the court may, on such terms it thinks fit, direct that the application be amended to specify such other ground after giving the other party an opportunity to be heard in respect of the amendment.

The rules according to how I read this Bill are really very relaxed. And the Judge has a wide discretion to convert even private matters, matters that do not have that public element, which the Attorney General spoke of earlier; the Judge has the right. Let me read it. Clause 12 says:

> "Where the court is of the opinion that an action commenced by way of writ of summons should be by way of application for Judicial Review, the Court may give such directions and make such orders as it considers just allowing the proceedings to continue as proceedings governed by this Act."

That is the Judicial Review. So all along in the clauses of this Bill, we see laws and rules are being relaxed to accommodate Judicial Review of administrative acts done by public bodies and public functionaries.

Mr. Speaker, what I find really exciting about this Bill is the Justice Bhagwattie type provisions contained in Clause 4, where an impecunious or disadvantaged person whose interest has been affected may apply to the Court for Judicial Review in any written or recorded form or manner and by any means. Many Members of this August Assembly would know of Justice Bhagwattie. Many of the lawyers would certainly know the famous Indian judge who decided that in order to give the poor in India redress he would sweep away many of the rules of court and allow people to approach the court by writing letters and things like that, rather than finding a lawyer and going by summons and writs and motions and what have you; a simple letter to activate the legal process in order to give redress. I find Clause 4 of this Bill very, very interesting because that is the clause which gives a similar kind of right for persons to approach the court for Judicial Review in any written or recorded form or manner or by any means. These are the words of the Bill.

What I find, Sir, and I wish the Attorney General - I do not see the Chief Parliamentary Counsel - may look at that very Clause 4 to see if there isn't an error in it because it begins… Sorry, it is clause 4, Sub-clause 3. It says:

> "Subject to section 3(1) a person is entitled, when making an application for Judicial Review under subsection (1)(b) or (2), to make the application in any written or recorded form or manner and by any means.

Where it says "subject to section 3(1)", section 3 (1) is the formal position where you have to apply by summons supported by an affidavit. So I wish the Hon Attorney General looks at that sub-clause carefully with an eye to the language "subject to section 3(1)". In my view it should be "notwithstanding section 3 (1)"; "notwithstanding the strict position in Section 3(1)" rather than subject to the strict position. I don't know if I am making sense but the lawyers here, who have the Bill before them and can interpret as I go along, will hopefully understand what I am saying.

One can envisage then in our system a person or group of persons writing a simple letter to the Chief Justice to move or activate the court on a matter of Judicial Review of the action or inaction or decision of some public body or functionary who receives taxpayer's money. There will be no court costs in such applications, even if the application is unsuccessful; unless the court finds that the application itself was frivolous and vexatious.

Clause 19 reaffirms the idea that administrative acts shall be performed in accordance with the principles of natural justice. The principles of natural justice, as we know, are two-pronged. One is that a person whose interest is affected or is going to be affected must be given a right to a fair hearing. The other prong is that a person may not be a judge in his own cause. This is the standard to which administrative bodies and functionaries are called upon to adhere to.

I do not have a lot more to say; I need not go into the Act in the way the Hon. Attorney General, who is piloting the Bill, has gone into it. But I think, Sir, that this is good legislation. I do not know who has wrung the Government's arm for bringing it but we welcome it none the same, however late in coming. And I commend them for it. Thank you, Sir. *(Applause)*

Mr. Nandlall: Mr. Speaker, it is with a great sense of pride that I rise to speak on what clearly is, in my humble opinion, one of the most progressive pieces of legislation ever tendered in this National Assembly.

In 2006 when we were campaigning for elections we promised the people of this country as part of our Manifesto that we will improve the justice sector and modernise the laws of this country so that they can receive at the end of the day a better quality of justice and have at their disposal an administration of justice that is modern and in keeping with that which exists all over the world.

Last week we revamped a law in relation to death penalty that was some 100 years old. We have a Contempt Bill that will come subsequently here today. That again is an example of us revamping an old law. And today, in relation to the Judicial Review Bill, we are tabling in the National Assembly and introducing in the mainstream of Guyanese jurisprudence, for the first time, a statutory framework in relation to Judicial Review.

Judicial Review is a most important area of law and that is why there is no coincidence that it is the area of law that has seen the most development in recent times. It is that area of law that makes a government accountable to its people. It is that area of law that allows the people to question the government, question state agencies and challenge the actions of public officials. It is that area of law that advances a society that improves a democracy. So on every front Judicial Review is important. Particularly it is fundamental to the context of Guyana because oftentimes we hear a call for good governance, for transparent governance, for accountable governance. Well, here the Government is demonstrating to this National

Assembly, to the people of this country and the world at large, that it is committed to accountability, that it is committed to transparency and that it is baring its breast to the people of this country to suffer their scrutiny and their examination. The Government here is presenting to the people all the mechanisms available to subject their actions to scrutiny and review, and the Government must be commended for this initiative.

Mr. Speaker, Judicial Review, as the learned Attorney General explained, is an intricate legal concept. But it is important, as I said, for the good administration of all public sectors. The leading academic in the region in this area is Professor Albert Fiadjoe, a Nigerian, lecturing at Cave Hill Campus in Barbados. He has written the leading text in this area of law. His book '*Commonwealth Caribbean Public Law'* is a most respected publication in relation to public law and Judicial Review. He defines Judicial Review as follows, and I quote from Chapter 2, *Introduction*:

> "What is Judicial Review? The power of Judicial Review may be defined as the jurisdiction of the superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they act within their given powers. Broadly speaking, it is the power of the courts to keep public authorities within proper bounds and legality. To the extent that it is employed as a fetter on State power, it is a most important constitutional tool. For example, a public authority must direct itself properly on the law and it must not use its powers for improper purposes. It must be noted that the court has no jurisdiction *suo moto* to apply Judicial Review. Its jurisdiction is always invoked at the instance of a person who is prejudiced or aggrieved by an act or omission of a public authority. It is partially for this reason that questions of standing to bring proceedings for Judicial Review have been quite controversial in this area of the law. Nevertheless, Caribbean courts have been able to apply the power of Judicial Review deftly in several critical areas of public law.
>
> Additionally, the court has power, in a Judicial Review application, to declare as unconstitutional, law or governmental action which is inconsistent with the Constitution
>
> This involves reviewing governmental action in the form of laws or acts of Executives for consistency with the constitution."

Mr. Speaker, in those passages the learned author has captured the essence of that which is Judicial Review. And those passages exemplify and illustrate the importance of Judicial Review to us as a country, to our people, to our Government and to our fledgling democracy.

All modern countries of the world recognise that Judicial Review is important. I have looked particularly at the jurisdiction of India where Judicial Review perhaps has gained the most momentum. More than any other country in the world Judicial Review has made tremendous advances in India to such an extent that it is now a Constitutional Right in India. We are only at a stage where we are making it part of our ordinary law but Indian jurisprudence has so advanced the concept that it forms part of their Constitution and they issue Judicial Review remedies as constitutional remedies.

The leading text from the jurisdiction of India on this matter is: 'The *Law of Writs* by V. G. Ramchandan. At page 401 the author explains the rational and importance of this area of law, speaking particularly about the importance of fettering and controlling the exercise of power and jurisdiction when it is vested in the hands of public officials, public authorities and state agencies. This is what the learned author said at page 401. I quote:

> "There is nothing like unfettered discretion immune from Judicial Reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. The entire development of administrative law is characterised as controlling and structuring the discretion conferred on the state and its officers. The law always frowns on…unfettered discretion conferred on any instrumentality of the State and it is the glory of administrative law that such discretion has been through judicial decisions structured and regulated. It is true that abuse of power is not to be assumed lightly but, experience belies the expectation that discretionary powers are always exercised fairly and objectively."

And, the law has advanced the concept to such an extent that it embraces the thinking and theory that the higher the official the greater the need for scrutiny; the higher the public officer the greater the need for scrutiny. That principle was explained in an English case very elegantly, and I wish to share it with this House. The name of the case is *"Delhi Transport Corporation against Mazdoor Congress"* and is reported in 1991 Supreme Court of India Report at page 600. Here is what the learned Judge Sawant had to say, I quote:

> "There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is true to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to have any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

Mr. Speaker, this Bill today is covering areas of discretion. This Bill today is providing in statutory form, in an expansive and elaborate fashion, a mechanism to regulate and control powers. I think one of this Bill's most fundamental objective, fundamental rational, is that it is conferring on the people of this country a power to criticise their Government. And importantly, it is an initiative of the Government itself.

It is not that we have not had some degree of Judicial Review in this country prior to this Bill. Currently, of course, we have Judicial Review but, as was explained by the speakers who preceded me, we inherited the old form of prerogative remedies. And, Mr. Speaker, the remedies offered under that system, that dispensation, was very limited.

First of all they were conceived and established sometime in the 16th century by the King of England when the King provided an opportunity for the citizens to go to the King directly and complain that one of the King's officers or one of the agencies of the crown was not complying with the crowns instructions or was abusing the powers which the crown has invested in that officer or agency, or that officer or agency was not acting in good faith, or was not observing the rules of natural justice, or was abusing its powers. The King in those times had given that power to the citizenry to go directly to the King and make a complaint. The king would have issued one of those remedies and that is why it is called prerogative remedies. They were issued at the prerogative of the crown. Those offending officers were called before the king to explain why their decision should not be overturned. It evolved as a jurisdiction which the king delegated to the King's Bench of the High Court; that used to be

called the King's Court. It is essentially that jurisdiction which we inherited as a Colony in 1893 when our Supreme Court of British Guyana Act was passed in the Legislative Council.

3.41 p.m.

When our British Guiana Supreme Court was established, it was established receiving all the powers which were exercised, at that time, by the High Court of Justice in England, and part of those powers included the jurisdiction to grant the King's writs - the prerogative writs and remedies. In 1906, England formalised the process with the passing of what was called the Crown Office Rules. The Crown Office Rules regulated how that jurisdiction was going to be exercised. It is that jurisdiction that we in Guyana enjoy up to today. England has long abolished the Crown Office Rules and revamped its entire system. It has what we are now promulgating and has had that since 1938. We are now doing it.

I say all of that to give the National Assembly a backdrop from where we have come, and to explain the deficiency which existed then and what we are bringing. So what we are bringing to the National Assembly can be understood from a historical perspective as well as it can be appreciated in its present form.

As I said, the writs, which existed, and which now exist in our system, are limited. First of all, there is a requirement that the applicant has to satisfy. He must establish standing. This Bill, as I will later explain, has liberalised that concept, so much so that it is now abolished, because now a stranger can apply.

Another deficiency of the system is the limitations of the remedies themselves. No damages and injunctions were available, so one had to file a multiplicity of legal proceedings to get adequate remedy in respect of a wrong for which one is complaining. That, this Bill addresses. So the time has long come for a statutory formulation, and a modern one, to be promulgated in this area of the law. It has been called for, repeatedly, by member of the legal profession, and the lawyers here will know that, because these advances have already been made in Barbados, Trinidad and the Eastern Caribbean, as well as in Jamaica. As a result, the calls for the establishment of this type of Bill have been a constant one.

In 1999, Justice Carl Singh, as he then was, presiding over an application by the Guyana Telephone and Telegraph Company for a writ of prohibition - and that is one of the prerogative writs - dealing with the question of the inadequacy of the procedure, he had this to say, at page 10 of his judgement:

> "Of course, I will not let this opportunity pass by without seizing upon it to make what I consider to be a timely call with the ever increasing importance of judicial review in public law, the time is long passed due for the introduction of a statutory framework regulating those proceedings and such considerations should be given priority in any revision of our rules of Court. I hope that this appeal is not made in vain. I believe we may be the only jurisdiction in the Commonwealth Caribbean without statutory provisions regulating judicial review proceedings."

Justice Carl Singh is now the Chancellor of the Judiciary... [**Mr. Ramson:** He is the acting Chancellor.] He is the acting Chancellor of the Judiciary. Thank you, Mr. Attorney General. It took us ten years to arrive at this position, but we are here, and that is the important thing.

There are a few aspects of the Bill that I would like to comment on. [***Interruption***] I hear the mutterings from the other side, but it important that when we pass Bills in this National Assembly, I consider it our unconditional duty, to explain the nature of these Bills. Explain them in sufficient details that our constituents will understand the laws which we are passing, and they must understand them because they have to obey them. If the other side wishes to resile from that responsibility that is a matter for it, but I will not fall into that error. Unless His Honour stops me, I will continue to speak.

As I said, the Bill - Judicial Review Bill - deals with the controlling of the exercise of power by public officers, and public officials and authorities. The gamut of the Bill can be gleaned from clause 2, the definition section, where it defines what an "act" is and what an "administrative act or an omission" is. It also specifies who the officers are who are subject to the review or the purview of this Bill. Mr. Speaker, when you go through it you would see that the entire spectrum of Government is captured, the entire spectrum of State agency is captured, and the entire spectrum of the public office holders is captured by this Bill.

Clause 4 is another very important clause, because clause 4, in particular clause 4 (2) is the section to which I wish to direct my attention. Here it reads this:

> "Where a person or group of persons adversely affected by an administrative act or omission is unable to file an application for judicial review under this Act on account of poverty, disability, or socially or economically disadvantaged position, any other person or group of persons acting bona fide may apply under this section for relief under this Act.

Here, this Bill, for the first time, is introducing into the mainstream of Guyanese jurisprudence the concept of public interest litigation. This, again, shows the commitment of this Government and the commitment of this administration to deal with the concerns of the disadvantaged in our society. Recall, Mr. Speaker, that it is this administration, in its drive to make justice accessible to all the people of this country, established Legal Aid Clinics in Regions 2, 3, 5, 6 and 10, and it intends to cover Regions 7 and 8, shortly. Here, in the form of legislation, the administration is allowing poor people an opportunity to go to the Court and question the Government, even if they cannot afford to do so. This is a demonstration of the working class ideology of this Government - a concept that we have embraced from the inception of our party and now we are putting it in the laws of this country.

Clause 5 outlines the grounds which a person can challenge a decision, and there are eighteen listed, but each of them, by itself, can be subdivided into many more. What is even more important is that subsection 2 of clause 5 allows the Court to permit additional grounds to be canvassed. The Bill is so expansive that it not only lists for the litigant eighteen clauses, but it gives the Court the power to expand those eighteen grounds and to add additional grounds.

Clause 7 is another important clause, because it allows for the Registrar to publish in the *Official Gazette* all public interest litigation. So that whenever a poor person has filed an application or someone has filed one on his behalf, the Registrar is required to publish a notice in the newspapers, so that if there is a person who is more aggrieved that person can come forward and join the process. If, for whatever reason, to encourage litigation for and on behalf of the disadvantaged people the Bill provides that no costs will be awarded in the event that one of those applications failed.

Clause 8 is the remedial clause and it outlines all of the remedies. The old remedies are there. They are the *certiorari*, prohibition and the *mandamus* orders, and it adds the new ones - the declaration, the injunction, the conservatory order, the damages and the return of property order.

Clause 9 is a very important clause as well, because under our old system there is a principle – fortunately, not widely accepted by our Courts - in relation to the prerogative remedies and it is this: that an applicant must first resort to his other remedies before he goes to the Court for prerogative remedies. That used to be a stricture against the challenge of public officials. With this Bill we have abolished that, because clause 9 reads: "The Court shall not refuse judicial review of a decision where any other written law provides an alternative procedure to

question, review or appeal that decision." So that judicial review now is an original remedy and it is quite apart from any other which exists. There is no longer a rule to exhaust other remedies before going to the judicial review remedies.

Clause 10 allows for the grant of an interlocutory injunction and other types of *preservatory* orders whilst the judicial review application is heard and determined. That again is an innovation.

Clauses 11 and 12 give the Court a power, which it never had before, that if there is a private law action filed and it raises elements of public law the judge can order that it be converted into a judicial review application. And *vice versa*, if it is a judicial review application and, in the view of the judge, it should have been a private law action, currently a judge would have dismissed it and the litigant would have had to start all over again, but this Bill allows the judge a power to convert the private litigation into a public law matter. That is a new jurisdiction all together being given by a Court dealing with judicial review applications. [**Mr. Ramotar:** Mr. Williams will lose a lot of cases now.] Mr. Williams never used to win.

Clause 14: We often hear about public officers, about state agencies, and about governmental agencies failing to render decisions which they are required to make on time. We often hear complaints about non-making of decisions: either non-making of them at all or non-making of them within the time prescribed for the making of decisions. Well, clause 14 specifically addresses that and it imposes a duty to make the decision in a timely manner. If the decision is not made in a timely manner, or if it is not made at all, it allows a litigant to go to the Court to compel that person to make the decision.

Clause 15 is a clause of fundamental importance to public administration, because it mandates all persons to whom this Act applies and to all agencies to which this Act applies to, whenever they make a decision they must give a reason for that decision so that the population will know why their application was refused; why their gun licence was not granted; why their mining licence was refused. They are entitled to know those. In fact, in the law of natural justice this is now a requirement. There is a requirement, now, mandated by the rules of natural justice that a decision maker must give the reason for his decisions. Last year we passed the time limited for Judicial Decision Act in this National Assembly. Here, we are not making only the judges of our country - making it an obligation for them - to give

reasons. We are now making that obligation upon ourselves - the Government - that we must give reasons when we make a decision. So this is a refreshing clause of this Bill.

Then clause 19 is another clause of fundamental importance. Clause 19 codifies the common law rule of natural justice, and it makes it mandatory for every official to observe natural justice. They have, of course, a duty to do that at common law, but here we are making it a statutory duty.

Of course, the Bill gives a right of appeal which never existed, as the Hon. Attorney General explained. It gives a right of appeal that is two-fold. One, in relation to judicial review applications proper, and for that right to be all-embracing, the crafter of this Bill had to confront that provision in the Court of Appeal Act which states that no appeal arises from any criminal cause or matter, so that *habeas corpus* applications which are a prerogative remedy used to have a free rein without any review. Whatever decision arose out of a *habeas corpus* application it was not reviewable, because a *habeas corpus* application invariably emanated out of a criminal cause or matter. Well, this Bill has changed that. It is important for good governance and the judiciary must also... [**Ms. Selman:** And it is for transparency.] And it is for transparency. I agree with you. The judiciary must remain transparent, just as the Government is transparent, and just as the Parliament is transparent. The judiciary, as the other arm of Government, must be transparent, so that every one of its decisions must suffer the review of a superior tribunal.

In conclusion, I wish to say that with this Bill everyone wins; no one loses. I cannot find a single criticism of this Bill. The Government is ascertaining and demonstrating its commitment to subject itself to review; the population is given a right to review; the Courts is given a power to review, and the entire process of the litigation is one that is simple; it is straightforward, and it is not costly. So I have no hesitation, whatsoever, in commending this Bill to this House. Thank you very much. *[Applause]*

Mr. Ramjattan: I want to commend the Attorney General for bringing such an excellent Bill to the National Assembly - a Bill which was long in the oven, and I understand it was there simply because they had to make certain finalities about it. What are the finalities, I really do not know. But for sometime now there has been need in Guyana for such a Bill to bring to the citizenry more armoury and powerful weapons against the fight for an improper and unauthorised administrative action, and it must be something that parties across the line, here, must commend. The Alliance For Change supports this Bill and supports it in its entirety.

It cures the defects of the prerogative writ procedures which we had, as was just mentioned by my good friend, Mr. Nandlall. It also cures the defects not only of the procedures that the prerogative writs had, but also the orders which could have been made under them, and that is something that was always frustrating to lawyers, like myself, who practise Administrative Law. It also has this added benefit, this Bill, of bringing to the fore an allowance of interrogatories and discovery in the process of finally determining an application.

Prior to now, there could not have been an interlocutory process whereby the other side could have been asked for certain information and all of that. The prerogative writ never provided for that. The Crown Office Rules and all those High Court Rules which allowed us to utilise the prerogative writ procedure did not, in any way, provide for that. This now is going to help plenty, because sometimes information is wanted from the other side in a Court of law. A public official is hiding, let us say, certain documents, certain material bits and pieces of evidence, that person could not have been under prerogative writ procedure measures. We now have that here.

I want to commend again the Attorney General, because this is advancement far superior to anything in the Caribbean, as far as my knowledge of Administrative Law procedure goes. Barbados passed a similar legislation, but the Barbadian legislation has certain defects which have been cured here. Professor Fiadjoe in his latest book - I think it was quoted by my good friend, Albert Fiadjoe, *Commonwealth Caribbean Public Law*, the third edition - in giving a commentary on the Administrative of Justice Act of Barbados, which is of the same ilk, indicated, as much, "That, indeed, the Administrative of Justice Act, Barbados is a huge advancement for the rule of law, good administration and largely allowing the citizens to scrutinise public officials." To that extent, then, he did an analysis, and in that analysis, however, found ..., and of course, some may regard this as academic critique, but it has practical merits - that critique which he made. He indicated that although the Barbados Act is that fundamental for justice, it is still not a bed of roses. I am doing this just for comparative purposes to extend congratulations for what has come before us, because, indeed, unlike the Barbados' Act, we have, now, where we can transform this public law action into a private law action. That is a huge development.

Also, where there is an omission for interrogatories and discovery we now have that here. So, indeed, it is about going a step further.

What is brought here, however, must be utilised to shape public officials education on administering. Very many times there are public officials being told of a certain case law, not understanding the case law because the prerogative mix is in it and they get confused. What this Bill does, and in very simple terms, I must say, is to state to a public official how he must conduct his business. And to that extent of stating, I want to say, is not enough reason for glorifying the Bill. We have to now ensure, as Mr. Nandlall indicated, that each and every regional officer, education officer and public servant must understand that they must not act *ultra vires;* they must not act with an abuse of power; they must not act with a fraudulent intent; they must not breach the principle of proportionality; they must not deprive a citizen of his legitimate expectation. No!

So the next step, then, is to ensure that the gems of this Bill be guaranteed. First of all, to the public officials it has been directed to and, secondly, the citizens also understanding it, so that they will know their rights, that they will bring in accordance with that knowledge their applications for remedy when those rights are violated.

But I want to also - before we take the break - mention a very important aspect of the matter, and, that is, that when our judges are going to make rulings based on the principles enunciated in this Bill, we must not have this Parliament and this executive branch of Government overruling those decisions. What happened? This is where I have this tremendous passion, and very oftentimes I am critical of the Government when it has, as will come soon,... Applications will come. Application just like what happened with *Franklin and David Patterson vs. GECOM and Boodoo.*

4.11 p.m.

The Court of Appeal of Guyana ruling that indeed there must be proportionality in relation to scrutineers' moneys, and stating, that as a constitutional principle, that is fairness; that is reasonableness under Wednesbury's Principles. Then, what did we see happening? There was not an adherence to the Judicial Review ruling of Justice Carl Singh, Chancellor, and the rest of the Court of Appeal, but we came to this Parliament and overruled it by Amendment No. 10 of 2009 Elections Law Amendment. So, it is one thing to say we are going to give this Bill to the people and the public officials of our country, but when decisions are made by bright judges and then affirmed by the Court of Appeal of the land we can have the Hon. Attorney General coming and *negativing,* diluting, and degutting those rulings. That is not going to give this Bill any meaning. It is going to do a degutting job, and that is the attitude

that we find happening. That is the case which I argued before Justice Jainarine Singh and then the Court of Appeal. Again, I had to argue it here by saying, "Please do not overrule the principles of that decision." But it was overruled by statute.

Then there was another - the Orealla Elections case. It was another judicial review proceeding in relation to the Minister's order. Then the Honourable Chief Justice made a ruling that the Minister must have an investigative team within a certain timeline - make a decision! He even put that it should be within a couple of months in his decision. What did Minister Pauline Sukhai do? Up to now we are waiting. What it is that you gave to one hand you could take away by not enforcing, and that is not justice. Do not tell me that you are going to give me all that which is nice, classy and glossy, and then when it is the enforcement aspect of it, when you have to abide by it, and, notwithstanding, the Hon. Attorney General will come here and say that the Act binds the State...If they want to come here and say that that has meaning, it will necessarily mean that when the Court of Appeal or the Caribbean Court of Justice (CCJ) gives a decision they cannot come here and change it. But we have seen them do that in the *Franklin and Patterson vs. GECOM and Boodoo* matter. I am urging that if it is the new trend now that you want to open up for more justice, allow that justice to prevail. If this is but a pattern that we are going to see where there is going to be a modernisation of our legislation..., because only last week we saw the death penalty now not being made mandatory. Although it is a halfway house, as I mentioned, we are going there. If corporal punishment is going to be taken away from training schools, we are modernising. Let, also, the enforcement happen. Let the adherence to the provisions happen. That now is the next step and we must ensure that this thing comes.

I want to make this final point that all of these things were talked about a long time ago, even in the early part of the 1990s, but they were not happening. I am glad to see them happening now, and I want to see a continuation of these happenings to include the Broadcasting and Freedom of Information Bill. There was a promise here that it will come in October, as soon as the session comes. I am surprised that we are not seeing it. I hope that it is going to come, because I have a good reason to believe that it will come. [**Ms. Shadick** Yes, it will.] That is right. It is the donor community. My good friend, the learned Attorney General, indicated that the corporal punishment and the mandatory nature of the death penalty came from studies which were sociological and penological. Well, I want to say it was *donological*. I wish even if the donors can then pressure for us to have freedom of expression it will be consistent with what the country needs – even if the Government needs a push. But more

than that, all now rests on an adherence by the Government so that it does not come here and dilute the effects of it with statutory overruling. Thank you very much Mr. Speaker. *[Applause]*

Mr. B. Williams: I was wondering Mr. Speaker if we are at break now.

Mr. Speaker: Let us finish this Bill.

Mr. B. Williams: As it pleases you, Mr. Speaker.

Mr. Speaker: We only have ten minutes. You are not a long speaker. You are punchy and you make your point.

Mr. B. Williams: I would not be long.

Mr. Speaker, my junior on the other side who preceded me in this debate, Hon. Member Mr. Nandlall, my junior for several, started quite nicely and then we lost him. But, there are a couple of points which he made that I will address.

Let me say from the outset, *ab initio,* that I wish to congratulate the Hon. Attorney General for bringing this Bill to this Hon. House. It is not normal that we, on this side, find that we are in a position to say so with such candour, because we have experienced a slew of Bills which were laid in this Hon. House and were of such a draconian nature that we could not find anything to agree about. But this Bill suggests to me, quite honestly, that the Government appears to be preparing to demit office, Mr. Speaker, and so the Members are trying to put legislation in place that would make their lives easier in Opposition.

As a practitioner of long-standing, I wish to posit that this Bill is a practitioner-friendly Bill. It is, because, for example, when mistakes are made by young practitioners in bringing proceedings in serious matters, oftentimes there is a situation where they would have made some mistake in approaching the Court, and as a result their application failed. I have had that experience with my young junior, Mr. Nandlall, in a recent case, and I allowed him to withdraw his application so that he could put himself in order. The point, in fact, is that the honourable Court will have that discretion.

Mr. Nandlall: Mr. Speaker, I rise to correct a blemish to my professional integrity and reputation. There is no factual basis for that statement made by the learned Member. I do not want to say that he is lying because he is vying for high office. But there is no factual

foundation to that statement. Mr. Speaker, I take it very seriously when people cast aspersions on my professional reputation, and I ask that it be withdrawn.

Mr. B. Williams: Mr. Speaker, I undertake to lay over the relevant documents which would substantiate what I just said. I thought my honourable friend would have just allowed it to pass.

Mr. Nandlall: Mr. Speaker, well, then, until my friend brings that document, I ask that the record reflect that that statement be withdrawn.

Mr. B. Williams: I am not withdrawing the statement. I can tell you what the case was if you wish. Because you have arrived in the Court, in indecent haste, before Justice Insanally and went with a wrong procedure, even though you ran to the newspaper and released it, you had to withdraw the next day and filed against, because your motion was bad. You know that it was bad. So do not waste the Court's time. If I may proceed, Mr. Speaker...

Mr. Speaker: Hon. Members, let me settle this issue. The Hon. Member is making an objection to what you said. I have to make a ruling. What are you objecting to the Member saying?

Mr. Nandlall: I am objecting to Mr. Basil Williams saying, in this National Assembly, that I had to withdraw some case because of some deficiency that I committed – procedural deficiency. I am saying that that is a blatant lie!

Mr. Speaker: Hon. Member, you are defeating your own argument by using improper language in the Assembly.

Mr. Nandlall: I withdraw the word "lie" and I say it is without any factual foundation and absolutely misleading.

Mr. Speaker: Hon. Member, did Mr. Williams refer to a specific case?

Mr. Nandlall: I heard him make some reference.

Mr. Speaker: Do you have a case with you, Mr. Williams, where that...?

Mr. B. Williams: I do not know if my learned friend wishes to endure this. He knows what I am talking about. That was an application...

Mr. Speaker: Hon. Member, Mr. Williams, do you have, at hand, a case where that allegation is...?

Mr. B. Williams: I have that case, Sir, but I do not have it with me. I will undertake to lay it over.

Mr. Speaker: Okay. Well, I will ask you to withdraw that statement and at any future time you can lay over the document with the case, and from there we will proceed.

Mr. B. Williams: As it pleases you, Mr. Speaker, but can I name the matter?

Mr. Speaker: Sorry.

Mr. B. Williams: I am referring to the matter of an application involving Justice Bovell-Drakes, an order that he made, and my learned friend went before Justice Insanally to quash that order.

Mr. Speaker: Well, when you lay over the proceedings, Hon. Member, that will clarify it. Until such time the allegation is withdrawn.

Mr. B. Williams: As it pleases you, Mr. Speaker.

Mr. Speaker: Proceed Mr. Williams.

Mr. B. Williams: Much obliged. Experienced practitioners, in dealing with these matters, would be happy, and, in fact, we are happy that the Hon. Attorney General has seen it fit to help out young practitioners who would be prone to fall into error of that nature, and I applaud him for that. It also goes the other way: not only if you file and what you file is seeking a private law remedy and it is upgraded, and *vice versa,* when you file for public law and it is downgraded to the private law situation depending on what in here is *ex facie* on the documents.

This is such a good Bill. If the political will is there to go along with this Bill, public servants, Government officers, and other functionaries will be more disciplined and correct in their approach in dealing with citizens of this country. What we have found from practising is that the prerogative remedies were all we had to deal with errant government officials. Those were all we had, but they were limited. Oftentimes, one looked to prerogative remedies because of the swiftness of the procedure that it attracted to bring a matter to conclusion earlier than in the normal way. But in doing so, one could not seek damages in such an

application. So that a decision causes damage to the citizen, one needs to remedy it quickly so as to prevent greater damages occurring because of length of time and one goes for the prerogative writ procedure. If it is protracted, one cannot get damages, and so we have to be very careful with it. As a result, sometimes three years elapsed and the limitation period kicked in so the remedy could be lost unless it could be grounded, as an experienced practitioner, in a constitutional motion.

We, practitioners, are very happy with the passage of this Bill. If I could pinpoint and highlight certain aspects that we have encountered in the practice that will make life easier, not only for us, but for our clients, please permit me to do so. My learned and honourable friend, Mr. Nandlall, referred to the issue where this Act is now overruling the situation of the stricture of alternative remedies. In other words, when we approach the Court for prerogative writ we were often met by the State Chambers that we had alternative remedies. Once there were alternative remedies we could not have pursued. But I could recall, in the Court of Appeal, the former Chancellor Bernard, as she then was, in a matter in that Court, attempted, and did so, to get around the alternative remedies stricture by saying that once you adopt the approach of a prerogative procedure and it was because you required the procedures to proceed swiftly, and felt that was sufficient ground for a Court not to insist on the alternative remedy being followed. I thought my learned friend would have addressed this Hon. House on that point. In other words, the Hon. Chancellor devised a methodology to ease the stricture, as is the want of judges in many jurisdictions of the common law. This here is a clear provision which tells that when you file or bring judicial proceedings against state actors you could not be met with that artificial barrier of an alternative remedy being available to you, so you must exhaust that alternative remedy before you could come by way of prerogative writ.

What is also noted here is that clause 3 (3) is the *claritory* of the common law. We found that, for example, if there was a body which appears to be government-like but it was not a government department, say the Guyana Geology and Mines Commission (GGMC), and a determination had to be made as to what approaches to use to seek redress, and since it was not clearly a government department, the judges resorted to look for certain *indicio* to determine whether that would be a public law body or it should attract a private law remedy.

Clause 3 (3), for example, indicates some of the considerations or factors that the Courts look for. One, in subparagraph (a), was the source of the power, for example. The common

law position is that if the source of the entity's power comes from an Act of Parliament, then that body could be viewed as a body affecting public law rights, obligations or expectations. In addition to that, the nature of the power that that body exercises. That is, if it is in exercise of its functions it impacted on the public and it affected the public, then that is also another factor in determining that it was an entity which was subjected to judicial review. If that test is applied..., because of the fact that a lot of state departments were reorganised. For example Telecoms - GT&T - which might have been incorporated laterally under the Companies Act or it could have become by Act of Parliament. The question is: Is that an entity which performs a public function? That is a question which has been answered in the affirmative, and so it does seem to be a company dealing with commercial matters, the Court has held that it affects public rights, obligations and expectations. And so, as practitioners, we need to deal with issues like that. I remember my honourable friend, Mr. Ramjattan, himself had to confront that issue as to whether it was a public law matter or private law matter. There is a host of these entities, for example, Mahaica, Mahaicony and Abary/Agriculture Development Authority (MMA/ADA) which affects public rights also. So this is the *claritory* of the common law and, as I said, this is a very good thing because it is written here, now, in pure writing for all of us to appreciate.

I am not going to touch clause 4, but what I see here also in clause 5 is an entire list which is not exhaustive of remedies. As practitioners, we are very happy about this, because if we went for prerogative remedy we could not get a declaration, an injunction and the like. That affected us greatly. There are some peculiar cases which come up where we would like an injunction – an injunction would help – but then we are restricted to a prerogative remedy. We are happy that we even have these things outline, also with clause 2 which states that this is not exhaustive we could add more.

As I said earlier, in subparagraph (d) of clause 8, there also could be damages now in everything that...So this is an entirely revolutionary approach. Students of law would remember - when we studied English law - *the Roll up Plea*. This is akin to the *Roll up Plea*. It has everything in it, so one really cannot go wrong. That is why it is easy for the bench to be able to say, "Look, this thing might have come in this form but it, in fact, is in the other form so let us go that way and *vice versa*."

It is also laudable that the Bill puts a stricture on the decision makers to come up with the decisions without undue delay. In our jurisdiction, this question of undue delay in rendering

decisions is a problem. As it was said earlier, in terms of the judges, legislation was passed to deal with that. We really need this kind of legislation. Even though I have gone constitutionally... These provisions are relevant and welcomed. When there is the DPP – the DPP with power - to bring prosecutions against citizens, but cannot find the time to do it before five, six, seven or eight years elapsed, there is a problem. That is why when we talk about laws we have to be able to apply these laws in context. Why should any citizen be made to stay five, six or seven years in prison when he or she has a presumption of innocence in his or her favour? And that is why, with judicial review, these provisions make it even easier to reach to that mischief and force the DPP to address those issues quickly. I would wish that with the passage of this Bill that we would not hear of citizens languishing in our jails for years awaiting trial despite having a presumption of innocence in their favour.

I do not know if it is excessive, but in clause 19 it is spelt out that natural justice must be uppermost in the minds of adjudicators involved in administrative Acts. Whether this Act was silent or not, the law has evolved to such a large extent that the common law...even if any Act is silent, once property is involved, once a person's liberty is involved, the justice of the common law would read into any provision the requirements of natural justice. But, knowing my honourable friend, the Attorney General, he prefers to put it in bold, black and white, and I suppose we cannot go wrong when it is like that.

But what I think is a good power is the power to remit in clause 20. This is very good, because there might be situations where the Court might feel that it does not want to go so far as to make the order. Perhaps, it should give the body, the tribunal or the authority another chance to look at the matter and that was never there before. I have never had a situation where I made an application for prerogative writ and the Court said, "Let this go back to the body and let it look at it again." This power which has been provided here is laudable, and I think it should be utilised effectively in order to make this Bill more efficacious.

In terms of the delay, this provision says that if one is going to come for judicial review one should come within a decent time. But if one comes within an unreasonable time, the Court will refuse one's relief. If we are going to do that, it is very important that we determine what would amount to an unreasonable time to disqualify a citizen from applying for judicial review.

Clause 22 is good. What we did, as practitioners, was to create a legal fiction in order to be able to appeal on, for example, a *habeas corpus* application in the High Court which was

refused. We know we could not go if we had it intituled as a criminal matter, so we would intituled it in a civil matter and, as a result of that fiction, we were allowed to go to the Court of Appeal and deal with matters, especially in cases like extradition. We were able to get extradition matters to go straight to the Court of Appeal once they were intituled in a civil jurisdiction of the Court.

In closing, I am sure that I speak for all practitioners when I say that it is a very welcomed Bill and we hope that, in its application, the Government will have the political will to respect decisions made pursuant to this Act and not to ignore those decisions and have them bringing the Courts into disrepute and the rule of law also into disrepute.

The People National Congress Reform – One Guyana (PNC/R-1G) has no difficulty in supporting this Bill to finality. Thank you very much. *[Applause]*

Mr. Ramson (replying): Cde. Speaker, I am extremely happy to be suffering from the kind of pigmentation my parents brought me into the world with. If not, it would have been evident, that from the amount of praise that was heaped on me today, that I would have been visibly flushed. I thank those who have condescended to do the just thing and it is a good index that the parliamentary inclusiveness is on the mend.

4.41 p.m.

Given the contributions, on either side of the House, I believe it may be fair to declare that this Bill unexpectedly meets a degree of comprehensiveness, not only catholic, but all-embracing and self-fulfilling and suffers from few, if any, inefficiencies. Apart from the transitory contretemps had *impeccant* verbal fracas which we experience today, and I am sure that it is going to be reconsidered as we leave this House, I can assure you the unanimous concurrence is a clear index that the Government is not always the victim of criticism.

There is just one small other point I wish to address which was raised by my learned friend and Hon. Member, and I can say my junior, clause 4(3), the prefatory words "Subject to section 3 (1)". There was some anxiety about its actual meaning. I believe it would be erroneous to alter the parliamentary drafting of this particular clause because it sets out to meet a situation which is particularly, or peculiarly, one adumbrated by clause 4.

Clause 3 is for the general kinds of applications. Clause 4 speaks of something outside of, not intended by clause 3, so it has to be subject to it, if not it might open the doors or the

floodgates to misconceptions as to the form of the application and the requirements for that application. Regrettably, I do not believe it would be even manly to allow for the perceived error to be corrected. Apart from that, I wish to thank all of those contributors on this issue, and we have now reach the stage where I ask that the Bill be read a second time. [*Applause*]

Question put and carried.

Bill read a second time.

Assembly in Committee.

Bill considered and approved Bill.

Assembly resumed.

Bill reported without amendments, read a third time and passed.

Sitting suspended at 4.47 p.m.

Sitting resumed at 5.55 p.m.

Mr. Speaker: Hon. Members, I would have thought that the passage of this one piece of legislation, which I had been advocating since 1992, with great passion and vehement, in certain quarters, is so significant, and for which the Attorney General and his Chambers must be complemented, as he was being complemented by the Opposition, notwithstanding the long time it took, it is here, would have been enough. We have done enough having passed that Bill for today when of the National Assembly could have closed shop and go home and say we have made a significant achievement for the citizens of Guyana to bring them the right to obtain justice from the administration, and that is - the administration of the Government.

The Government has brought to the citizens, or rather formalised for the citizens, the rights to take steps against its own administration when citizen's rights are jeopardised. This is an important right for the citizens of Guyana and all other citizens. We have had it before as the Attorney General and the members of the legal profession are aware, but it has been codified, made more effective, and expanded, and it happened that this Attorney General has brought it. So it has the stamp of his name.

Unfortunately, there is no rest for the devil so we have more work to complete, and very important work as well so. I will now call upon the Hon. Attorney General to move a motion seeking the second reading of the Alternative Dispute Bill.

ALTERNATIVE DISPUTE BILL 2010 – Bill No. 18/2010

A Bill intituled:

"An Act to provide for the mediation of disputes as an alternative to litigation." [*Attorney General and Minister of Legal Affairs*]

Mr. Ramson: I thank you Cde. Speaker. I am taking mental notes of all the laudatory remarks that have been conferred upon me by way of vicarious responsibility. I really think that the Government of Guyana, for which I am the legal adviser, ought to be given the kudos. I am merely a transitory mouthpiece. It is not what I feel that is essential, but whatever the Government of Guyana feels is essential that I must articulate. I wish to put that in some perspective, Sir, in that, if we decide to be in some kind of self-censorship we may not have to delay our departure from this August House, today. I signalled to my colleagues that I shall not be very long with respect to this next Bill –The Alternative Dispute Bill – which I urge needs very little expatiation, having regard to the fact that the explanatory memorandum is copiously descriptive of all the various clauses, and had it not been for the protocol that is required, I would have just read the explanatory memorandum and sat down. But I believe that it would not be doing justice to the office that I hold.

This Bill seeks to provide some measure of mediation for disputes as an alternative to litigation. Guyana has been said to be a very litigious society and I think the judges would be most appreciative when this Bill is passed because it relieves them by way of statutory *imprimatur* of having to decide disputes that would have otherwise gone to them. This Bill seeks to address disputes not of a criminal kind, once it has a civil characteristic and one which would normally engage the attention of a Magistrates' Court or the High Court as is indicated in the definition or in the interpretation section.

Clause 2: '"court" means

(a) the Supreme Court of Judicature;

(b) the Magistrates' Court;

(c) a tribunal prescribed by regulations'

I suppose that would mean the things like the Public Service Appellate Tribunal or some tribunal which one of the constitutional commissions would be caught. It deals specifically with two types of processes: the mediatory process, which is the first process and, according to the interpretation, it means that with the dispute, whatever might be the law relating to the dispute, the mediator may create the atmosphere in which the parties would come to some sort of arrangement with his or her influence without regard to the law not so the evaluator. The evaluator would have to take into account and identify, and reduce the issue of fact and law, and one will see from clause 4 that the Court may order or refer a matter arising in proceedings before it, either for mediation or neutral evaluation, even if the parties do not agree. But that does not prevent the parties as is set out in clause 3, even after proceedings have been commenced for them to agree to mediation or evaluation, otherwise in accordance with the Act. This clause also allows for the same process to be adopted, even before proceedings are commenced. After the filing, but before the case gets before the judge, the parties may, in clause 4 subsection (3) "...agree as to who is to be the mediator or evaluator..." That is before it reaches the stage where the judge intervenes. They may agree among themselves as to who is the mediator or the evaluator, and in default, either the Registrar shall take over or the Registrar may nominate someone for that purpose, and "A party to a mediation session or neutral evaluation session, may withdraw from that session at any time." That is clause 5.

Clause 7 allows for giving effect, by the Court, to any agreement or arrangement arising out of a mediation session, but the Act itself, the provisions in the Act, would not affect the enforceability of any other agreement or arrangement made whether or not, as well, that agreement or arrangement arises out of the mediation session. You will see, Cde. Speaker, that the Chancellor has the responsibility to compile a list of persons suitable to be mediators and evaluators – there are two separate lists. As I indicated earlier, the work of an evaluator is different from the work of a mediator, and that is why the lists are two rather than one. The list, as compiled by the Chancellor, must meet with the approval of the individual mediator or evaluator. In other words, he cannot compel a man to be a mediator or an evaluator without him agreeing so to be. Of course, parties to the proceedings may choose someone to act in that capacity, or those capacities, even if that person is not on the Chancellor's list. In order to lend some comfort to persons who are tasked with the responsibility there is a:

"...privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to –

(a) the mediation session or a neutral evaluation session;"

That privilege that is conferred by subsection (2) only extends the document or other material produced at the mediation or neutral evaluation session, as provided by subsection (2) (b), is another instance, or for disclosure information as provide by clause 10.

Clause 10 refers to the disclosure of information only in one or more circumstances. That is, the parties may consent to it, or with respect to the administration and execution of the Act, or where there is "...reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property...", "If the disclosure is reasonably required for the purpose of referring any party or parties to mediation session or neutral evaluation session, to any person, agency, organisation or body and the disclosure is made with the consent of those parties for the purpose..."

Of course, the Bill also deals with the admissible of evidence which may be garnered in the course of evaluation session, and it is sufficiently well guarded in what circumstances evidence is admissible, whether it is a document or a copy of that document. That is a requirement which allows for some comfort in the mediation process or the evaluation process so that persons who can, with some amount of frankness, make whatever, or submit to any kind of resolution of the matter and not be fearful that it would lead to the admissibility of certain concessions made with respect to the dispute in question.

Of course, where these subsections (4) and (5) would not apply to any evidence or a document where there is a consent, or where there is some disclosure make under clause 10, as I indicated earlier, or where there is the "...proceedings instituted in respect to the commission of a fraud or an offence or the commission of an act that renders a person liable to civil penalty..." And of course, the restricted provisions, as set out earlier, would not apply "...where all parties involved in the relevant mediation or neutral evaluation session agree to the waiver or the privilege..." At the appropriate I would invite you, on page 10 instead of the word "or" between the words "waiver" and "the privilege", to insert the word "of".

Finally, the question of secrecy, obviously, the Act will have to ensure that mediator or the evaluator would not be able to disclose certain information except in certain circumstances set out in clause 10. In order to facilitate the work of the mediator or the evaluator it would be

obvious and reasonable that no liability or claim can be attached to him or her in any matter or thing that was done in good faith, and for the purposes of the mediator and the neutral evaluation sessions. Of course, rules of Court will have to be made, and regulations for the purposes of this Act will have to be made by the incumbent Attorney General whenever the Act is promulgated.

As can be seen, the way the Bill is designed is to render the dispute between the parties less adversarial – not every dispute is taken ultimate as is required in a Court of law. This Bill is really adding a second or third tier to the resolution facility that is provided in our laws and it does not required the commencement of litigation before the process of mediation or evaluation takes place.

With those few observations, I wish to take my seat. [*Applause*]

Mrs. Riehl: Mr. Speaker, I will be very brief on this one.

The short title of this Bill, Sir, appears to be at variance with the content of the legislation, and again I invite the Hon. Attorney General and the Chief Parliamentary Counsel - whom I note is not here also – to examine whether the word "resolution" is not missing from the title of this Bill. I do not believe that the Government intends to foster the creation of alternative disputes in this country more than those we already have. I think that is missing, because the term that we know it "Alternative Dispute Resolution" or ADR, which is the acronym, is most used in the place of the whole term. So I ask the Hon. Attorney General to look again at the short title and the naming of this Bill.

Alternative Dispute Resolution, more familiarly known by the acronym ADR, is gaining ground in many common law countries as a means of reducing litigation in Courts. ADR is taught at many law schools, at many universities, not only in our region, but in North America and in other common law countries. At present, it is offered as an optional course at both the University of Guyana and at the Hugh Wooding Law School in Trinidad for our budding lawyers. ADR includes not only mediation to which this Bill speaks but arbitration and other forms of conciliation. This Bill speaks essentially though to mediation, and Court connected mediation, although clause 3(1) seems to state that this does not…Nothing in this Act is stated to prevent parties to proceedings from agreeing to and for arranging for mediation or neutral evaluation of any matter otherwise than in accordance to this Act." So

this Bill speaks essentially to mediation, and Court connected mediation, which means, in fact, that mediation after Court proceedings have been filed.

Mediation is premise, Sir, on the reasoning that parties to a dispute or persons with grievances against a relative, neighbour, a landlord or whomsoever may rush to the Court in the heat of the disagreement or dispute but upon reason reflection may decide to settle their grievances or dispute and this is where the mediator comes in. The mediator is a trained person who would sit with those parties and assist them to mediate their problems.

6.20 p.m.

In mediation there are no winners or losers as there is in a court case. It is often referred to as a win-win situation because all sides win. Mediation, we are told, saves relationships because people could then resume their lives without the acrimony that often results from court proceedings. As I have said that at the end of the day one person will win and one will go home as the loser.

Mediation is widely used in Canada and in the U.S.A and we are told that over 90% of civil cases filed in the U.S.A. are settled through mediation. That means a mere 10% or thereabout reaches the court to be tried. Many lawyers, we are told, also are leaving their practices and becoming fulltime mediators in those countries. As such, it is a concept that is gaining much ground and it is being widely used to preserve relationships and wellbeing of parties which have disputes.

In Jamaica, there is a Dispute Resolution Institute with a board of directors and a Chief Executive Officer (C.E.O.) and over 80% of civil matters are settled by mediation in Jamaica, as in the O.E.C.S. islands – this is just in our neighbourhood.

In Guyana there is a roll of 70 trained mediators, about 50% of whom are lawyers. There is a mediation centre with a director, but the process of mediation remains a voluntary process. After several sessions of Mediation Training, Advanced Mediation Training, Trainer Of Trainers Mediation Training the Chancellor of our judiciary was so enthusiastic about mediation that he had promised that the new Rules of Court would have made court-connected mediation a mandatory step before trial process so that all civil cases, before they are tried by a judge, will first be subjected to the mediation process. There are some exceptions, ad morality matters and other such kind of matters.

I believe that the Rules of Court which we heard about this afternoon are soon to be launched and that, indeed, this step is there in placed as a mandatory step. I have not within recent times looked at those rules, but in checking with my colleagues I believe that it is slated there to be a mandatory step.

Unfortunately, this Bill does not give the impression that mediation here is mandatory because clause 4 says: "The court may by order refer a matter arising in proceedings before it…" other than criminal proceedings "…for mediation or neutral evaluation if the court considers the circumstance appropriate and whether or not the parties to the proceedings consent to the referral." "…whether or not the… consent" seems to be a mandatory thing, but the "may" at the head of the paragraph seems to indicate otherwise, so I am a little bit confused.

Considering that Rules of Court would be subsidiary legislation, of course, and when we pass this Act it would have greater force than the subsidiary legislation. I am a little nonplus, but my colleague, Mrs. Backer, will speak more on these issues about the Act.

I said that I would be very short, but there are just a few things that stick out that I would like to state before I take my seat. To us trained mediators, the terms "evaluator" and "neutral evaluation session" are alien to the concept of the process of mediation as we were thought. Mrs. Backer and I as well as Mr. Williams, and I do not know who else in this forum here … and it seems as though all of us on the Opposition side are trained mediators, I happened to have gone through all of the stages of mediation training up to the Trainer or Trainers. I even assisted in training Mr. Ramotar's wife.

We are well *au fait* with the process of mediation, but the concept of "neutral evaluation session" and "evaluator" is what we do not know. It seems to be another tier that this Bill is putting in the mediation process. Mrs. Backer will deal more with matters of that nature. I would like to plug for not only court-connected mediation, but mediation as a process in the country because our country appears to have taken on coarseness and crudeness; people are so ruction and always willing to just rush to the court or to fighting or killing and so on that we can well do with mediation training.

I once visited a mediation centre in North Carolina, an extensive place where mediation takes place from the level of school children who have disputes go there and are taught very early to settle their disputes, policemen go, workers from offices and so on go. This mediation

centre has nothing to do with court, but is just a centre for people to go to be assisted by trained mediators. This type of training that one gets is to help persons and it is client driven. One sits with the person and one allows them to air their grievances because even in the airing of the grievances some of it comes out, and there are no rules to mediation. There are no rules of evidence, like "hearsay" and sometimes the whole dispute or grievance is premised on hearing somebody say something and that sort of thing. Whereas, in a court of law those cannot come out, but would be "hearsay", but in mediation sessions they are allowed to talk freely and get it off of their chest, so to speak, and one tries to disarm them. At the end of the process some of them go away smiling, shaking hands and forgetting. That is the whole idea. It is an art and a skill that you are imbued with after the training.

I would like to advocate it as a general concept to be introduced for the wellbeing of our society. Our country has taken on a quality of coarseness and crudeness that we should try to do something about, generally, rather than just passing laws here. I feel that, to use the words of a former American president: "We should opt and move towards a kindlier and gentler society". Thank you, Sir. [*Applause*]

Mr. Nagamootoo: Mr. Speaker, beside me, on my right is the Hon. Member Mr. Anil Nandlall, described as a junior, and I probably am a junior to a junior and probably a puny one at that. I am very happy to note that in the text of this Bill before us, the words "Attorney-at-Law" or "lawyer" does not appear once and that seems to me to be a welcome opportunity for me to speak as a layman to this Bill.

This Bill is a process by which people are assisted to help themselves. It has invariably been described that Justice is blind but it is not so. From experience, justice is what you can buy invariably. Justice is what you can access if you have enough money. Justice is what you can get by way of compromise. There is no ideal perfect justice. It reflects the nature of the society, it reflects the class division of the society and it reflects the privileges that endear in a particular historic moment in society.

When a piece of legislation is brought to Parliament that seeks to bring justice to the ordinary people, to the common folk, who cannot access or afford high-priced lawyers to buy and to seek the justice that we all wish to have at the end of the day then, of course, I would use a phrase that has not been used but that I thought might have been used in the previous Bill. It is a revolutionary Act that which you are trying to refashion and redo the way society

conducts its business, particularly that which has to do with accessibility to justice, affordability to justice. These are important things in a country's development.

The Alternative Dispute Bill, in all my reading, I have seen referred to as "Alternative Dispute Resolution" (A.D.R.). I undertook a course at the University of the West Indies in A.D.R. and I have had the privilege and honour to sit at sessions headed by Mediator, the Hon. Clarissa Riehl, Ms. Jamela Ali and some others in practical session and for me, this Bill is not an academic exercise because it has come after an incubation period. It is no guess work. We have had Alternative Dispute Resolution session for a number of years.

I personally, and I wish to place this on record, had communicated to the then Chief Justice, the Hon. Carl Singh, now Chancellor Ag., that perhaps one of the hallmarks of his tenure would be his steadfast commitment to the purpose of alternative dispute resolution. I want to put that on the record because although he is acting, I think actors need to be applauded when they act well and so the Chancellor Ag deserves to be recognised because I am aware that when the U.S.A.I.D. came here with the programme, it was the umbrella of the Supreme Court under which the training sessions were conducted. I have not been long enough in the profession to know what the Supreme Court will do but I have seen the then Chief Justice take a leadership role which marks part of the justice reform programme, as it was later crystallised, that we are about to change things in the way justice was being administered and the approach to it. Of course that does not mean that the Hon. Attorney General in bringing this Bill here has not fulfilled the expectations of the reform and modernisation of this branch of the administration of justice. He ought to be recognised as well and I also want to make these short comments in relation to the Lay Magistrates Act that was passed that was also a revolutionary attempt at trying to decentralise and in a sense control the way justice is administered and allowing people to be judged or advised in the ways they can resolve some of their conflicts by their own peers – people who live in their communities, people they know, people they have trust in, people they believe in and not just people who wear robes or fancy clothes or carry high sounding appellation of Senior and Junior, etc. This is the way a culture had to develop, a tradition has to be developed that people have to learn to trust their immediate peers in order to bring about comfort levels for the resolution of conflicts.

The whole world is moving in this direction from confrontation to conflict resolution by peaceful means, by mediation, by arbitration, negotiation, conciliations. These are all facets of Alternative Dispute Resolution that have seized the attention of the world because if we

were to resort to the bullets every time there is a conflict or to take an eye for an eye, as Gandhi as once said, the whole world would be in darkness. There are more humane ways in which justice is approached, and though we are saying that justice is supposed to be impartial and outlandish, justice is in fact people if it is meant to be justice at all.

When we look at the Alternative Dispute Bill before us it is really an emphasis on the word "alternative". What was the method that was extant so that we seek for an alternative? It was to have litigation by way of access to legal representatives. It was by way of adversarial and confrontational disputation in court. It seems to me at times the person with the bigger mouth, not necessarily the smarter disposition, would prevail. People go for lawyers who seem to be better endowed to prosecute the case rather than exploring an avenue where they, themselves, can prosecute a case and bring it to finality with the minimum of cost. When mediation is introduced in Guyana or has been introduced as a mechanism of our justice system it was welcomed particularly by people who could not afford lawyers or could not afford the protracted. We all know the length of time it takes to bring a case to conclusion. For years cases are on the roster, shifted from session to session and the person who suffers the most is the person who could not afford to suffer any financial loss – the poor person – who is seeking this illusive justice and being thrown hither and thither in the court system.

Having a law that says that parties can decide to have an evaluator… in fact, the Hon. Clarissa Riehl referred to the word "evaluator" as that which not seems to be what we have practiced so far, but I have seen in Australia and in other jurisdictions, such as the United States, the evaluator's role is limited to tendering an opinion as to the strength and weakness of the respective party's position, whether in fact that could be done by the mediator and one could have "evaluator/mediator" which is a different issue. I have seen in other jurisdictions the two terms are used interchangeably but for some of them it is clearly defined that the evaluator is to assess the case.

I want to reduce this into a session in my contribution of a practical way of how this is done. I have been to mediation sessions where, and I gave as an example, without calling names, three sisters are fighting over a property **[Mrs. Backer:** Call names, man.] That is not part of my culture, Madam. I was one of the lawyers involved and the case was sent by a wise judge and I suppose that they are all wise, to mediation. In the session, I have never seen so many tears shed by persons who in the court were prepared to tear each other's clothes off. At the mediation session, when asked to tell their story about this property and their mother who

was crippled and what contribution they made, they all started to cry and we realised that if allowed for the emotion to dissipate and for them to come down to the level of reality without having to be plodded by lawyers and being told who has a better advantage in the case, who will take the property in the end, they came down to a reality check and realised that they could resolve this without having to fight in the court and to pay lawyers to go through a protracted trial. In the end, the matter was resolved. The mediator did an excellent job. **[Mr. Franklin:** Were you paid?] In most cases if a lawyer goes through mediation and the process ends quickly there should be a mitigation and fees. I suppose that goes without saying. We are happy in the end that the sisters have come back to a level where they can at least speak to each other. The Hon. Member, Mrs. Clarissa Riehl, said that at the end of the day the alternative dispute process, the mediation process, assists to maintain relationships. At least if not maintain, it saves the destruction of relationship because you are able in a friendly, perhaps non-adversarial, non-aggressive way to resolve a dispute that would have gone on for a lengthy time.

The issue is whether or not mediation is suitable in all cases. The Bill speaks to the fact that it is not. There are certain cases that would be referred to mediation. The parties may request or the judge may order that it go to mediation, but what is important here is that at the end of the day the parties consent to the resolution. They are players in determining their own cause. [**Mrs. Backer:** They are like Sarwan!] I do not know what you mean by that but I suppose they are players and that makes them important. That includes them in the process and that is part of participatory democracy that we talk about. It is not only about electioneering democracy, it is when people participate in their own lives, in fearing their own lives and resolving their own conflicts and being helped to do so. This Bill helps in that way so after a period of time we will develop a culture of people trying to resolve their problems rather than seeking recourses to the High Court.

I am also, for the first time, pleased to see that "courts", as defined in legislation, includes the Magistrates Court because as from my experience, I have not known that mediation takes place as the level of the Magistrates Court. That is where, when one works in the country courts as I do, in the small village courts, you know how much of judicial time is lost by people, for local parlance, "busing up" each other; neighbours across the fence, disrespect shown by young people towards elders and the court is littered with a plethora of petty matters that ought not to have occupied judicial time and the expense that it takes to pay to maintain the magistracy and to maintain the judiciary. That is another area of how the state

can save people's money if judicious application is made of mechanism such as mediation in the villages and in the Magistrates Court.

How the rules will decide how mediators are appointed, the evaluators, we are yet to see. I am hoping that the rules will spell out who can become a mediator or an evaluator in the Magistrates Courts or attached there to. In the rural areas, we have a good probation service. There may be need to explore how the probation services can in fact incorporate functions such as mediation and evaluation in petty civil matters in court where people do not have to take people to court for things like threatening behaviour or stealing their cows or something.

Another feature of this Alternative Dispute Resolution has to do with the confidentiality. As was said before, many of these cases involve families that require mediation and much of what can come out in open court families would not wish that it be stated and the mediation process guarantees confidentiality. One could discuss there and go upon pains of being penalized if you were to leak what is said in these sessions. As such, the confidentiality also helps to protect the integrity of our people who, when they go to court, come out bruised and battered. They feel dehumanised by the system itself of being examined and cross examined and all the drama that you see that takes place daily in the court system that help to add to the dehumanising process. One wants people to go in with a dispute, a problem, and walk out with dignity and feel that they have not done something that lowered their esteem; either in the eye of the party or in the eyes of the public.

In the end, if they consent to a decision then they do not have to appeal. I may be wrong, but I think I read in the Bill that the recourse to appeal, once the decision is made by consent then that is excluded and that is how I understand the court system to be. Once there is a consent order entered by the court then that judgment cannot be appealed by either of the parties because they themselves are part of it so one saves another type of expense and time by not engaging another tier of the judicial systems to appeal a decision that has been made by a court system because in this case one makes it oneself.

I want to close by recognising two aspects of this Bill. I said it excludes the words "lawyer" or "Attorney-at-Law" but it does not have the work volunteers. This is what it is. Mrs. Riehl and all the other goodly persons and characters who have aligned themselves to the process of mediation are volunteers and this is what we need to breed in our country, a spirit of volunteerism, a spirit that people can render assistance to other people without looking first and foremost for the rewards and that spirit of volunteerism is what is good for Guyana so

that we can return to a time when we were concerned about humanity, we are concerned about the plight of people rather than profits, rather than pockets, rather than privileges; we are concerned with what is hurting our society and we would wish that this bill, when it becomes law, would bring on board many more than the 180 or 80 or 200 volunteers as you have it and there would be a replication of volunteers throughout the country who are prepared to render assistance to their fellow human being.

Finally, we have a Mediation Centre in Georgetown and I have a feeling that it is underutilised many times. We try to hold arbitration session in the centre, but it is a resource that we need to studiously examine how to utilise it, before we replicate it, beneficially so that we have sessions going on.

6.50 p.m.

I have read recently that in India they have the *Lok Adalat* - People's Court where a place like the mediation centre can become like a people's court. People can be advised to go there if they have simple disputes. The Registrar or an appointee of the registrar could be the evaluator to test the nature of the dispute and, to see whether the dispute cannot be resolved without having to file litigation or commence legal proceedings. It is a resource utilisation that I am asking, through the Attorney General, for attention to be paid where we could experiment in these new, radical and revolutionary forms of people's democracy and justice. We can build our new Guyana based on these new foundations and start a new tradition of a people-centred justice system rather than a money-centred system. I Thank You, Sir. [*Applause*]

Mr. Ramjattan: Sir, I do not think I was booked to speak, but I will make …

Mr. Speaker: I have the Alliance For Change (A.F.C.) on the list of speakers. Maybe it is your colleague Mr. Patterson who is supposed to speak.

Mr. Ramjattan: No, it is not.

Mr. Speaker: You do not have to speak.

Mr. Ramjattan: I will pass on this one and yield onto my next Comrade.

Mr. Speaker: Thank you Hon. Member. That is very noble of you.

Mr. Seeraj: Alternative Dispute Resolution, in my experience, is not new to this country. The Bill that is being presented here today, by the Hon. Attorney General might be new, but in my day to day life a lot of my time is engaged in dealing with disputes. Right now, on my desk, I have a matter which deals with a young man and others as it relates to problems of a family nature. Whilst I have not received any formal training in mediation, as some of the speakers before me mentioned that they have. I think that given the experience that I have garnered over the last two decades in my area of work, I would have been fairly successful in addressing a number of these matters.

I recall in 1989 the former General Secretary of the Rice Producers' Association, Mr. Periat Sukhai, taking a young couple from Black Bush Polder to the Guyana Post Office (G.P.O.) building to get them to tie the knot. They were children of rice farmers whose parents did not want to agree to their union and the children threatened suicide. Both of them were over 18 years old at that time and Periat Sukhai said: "let us go and settle this matter." The late General Secretary, Mr. Faizal Alli, went as one of the witnesses to the signing of the necessary documents to facilitate the marriage of this young couple and avoid them taking the drastic step to prove a point to their parents who were stubborn in not recognising their true feelings for one another.

In day to day life there are numerous people out there who have little recourse to settle small disputes other than by going to the courts. I think that with the passing of this piece of legislation – Bill No. 18 of 2010 – Alternative Dispute- I suspect that at the appropriate time the Hon. Attorney General will move an amendment to include the word "Resolution" because I agree with that also, Bill 2010 is not new to this country.

In doing a little bit of research, I came across an article that was written on 5th November, 2009 in the Daily Guide. The writer was no other than the Deputy Director of Public Affairs of the Parliament of Ghana. What was written in the article is of relevance also to our situation here in Guyana.

In part the article states:

> "One of the Bills before Parliament is the Alternative Dispute Resolution Bill. This Bill has generated a lot of interesting conversations because of the opportunities it present to citizens who, due to various reasons, are reluctant to appear before the Courts. The main aim of this Bill is to replace the Arbitration Act 1961, Act 38.

> Further, it is also to bring the law governing arbitration into harmony with international conventions, rules and practices in arbitration, provide the legal and institutional framework that will facilitate and encourage the settlement of disputes through alternative dispute resolution procedures and provide, by legislation, for the subject of customary arbitration which we, as a country, have been practicing for years."

The article went on to further state:

> "It is expected that when this Bill comes into force it will ease congestion in the courts by reducing the number of cases."

I chose to quote the parts aforementioned because of its relevance to Guyana and our situation here.

It further states:

> "Considering that one of the aims of arbitration is avoiding the formality, frustration and the protracted nature of the court process, the purpose of arbitration would appear to be defeated if that line is pursued. This led to the realisation that what was needed was not just a new law on arbitration but one that will establish the institutional framework for arbitration, provide for forms of voluntary dispute settlement procedures in addition to arbitration, permit the use of modern electronic communication media to speed up the proceedings and to incorporate customary arbitration without unduly changing its nature."

In Ghana itself, one would have expected that because of the backlog of cases in the court, the legislators of that country would have moved to address this issue of Alternative Dispute Resolution. Similarly, here in Guyana, I think that the administration of the People's Progressive Party Civic (P.P.P/C) has recognised that there is need for us to push forward this piece of legislation to address the concerns of the ordinary people so that we can have amicable settlements of minor disputes. The Bill clearly states that disputes of a criminal nature will have to be addressed in the criminal courts. I suspect that this will go a far way towards addressing the disputes that are arising on a day to day basis in our various communities.

In the Agriculture sector itself there is on a daily basis disputes arising out of irrigation, drainage, price for paddy, farm to market roads, little land dispute, irrigation schedule, non-payment, late payments and all of these issues. We have been dealing with these matters at a level that can be considered to be non-formal and can be considered Alternative Dispute Resolution. Hence, by formalising this arrangement by passing this piece of legislation, Guyana, at all levels, would recognise how important it is that we address this matter of Alternative Dispute Resolution.

It is not only confined to developing countries. Again, in my little research, I saw that in the United States of America Mr. Coble from North Carolina, and I think the Hon. Member Mrs. Clarissa Riehl mentioned North Carolina, at the level of the Senate asked:

> "Move to suspend the rules and concur in the senate amendments to the Bill…"

The Bill in question at that time was HR 3528.

> "…to amend title 28 United States Code with respect to the use of Alternative Dispute Resolution processes in the United States District Courts and for other purposes."

Even in the developed world, there is movement towards addressing matters of disputes using alternative resolution. I quote further the findings of what Mr. Coble mentioned at the level of the Congress:

1. "Alternative Dispute Resolution, when supported by the bench and Bar Association and utilising properly trained neutrals in a programme adequately administered by the court, has the potential to provide a variety of benefits including greater satisfaction of the parties, innovative methods of resolving disputes and greater efficiency in achieving settlements.

2. Certain forms of Alternative Dispute Resolutions including mediation, early neutral evaluation, mini-trials and voluntary arbitration may have potential to reduce the large back log of cases now pending in some federal courts throughout the United States, thereby, allowing the courts to process the remaining cases more efficiently."

It is a case whereby in countries that can be considered both young and developing, may have these difficulties and also, in the developed world they are also faced with a similar situation. Having recognised that Alternative Dispute Resolution will go a far way in addressing, to the

satisfaction of aggrieved parties, their disputes, I have no reservation in recommending and commending this Bill to the National Assembly. [*Applause*]

Mrs. Backer: Mr. Speaker, I have at the privilege of being trained as a Mediator and as a show of good faith and to show my support for this Bill, I am prepared to take on the hazardous mediation of Williams vs. Nandlall, free of charge. Mr. Williams is an agreement. [**Mr. Nandlall:** I agree too.] There is mutual agreement so we just have to agree on the fees now.

The intent of this Bill is undoubtedly a good one. However, unlike the Judicial Review Bill which preceded this one and which I think could be considered a paradigm shift and seminal Bill, unfortunately all that this Bill does, with one or two exceptions that I will touch on, is to really cause mediation to remain stationary. This is not a paradigm shift at all; it is paradigm inertia, if that is possible. Before I develop the point as to why we agree with mediation, I want to say that this Bill does not take mediation further than where it is currently. That is the point that I am making. We subscribe to mediation. Mrs. Riehl said that she, Mr. Williams and I from this side of the House are trained Mediators. We are trainer of trainers, so we believe in mediation. However, we do not believe that this Bill is going to cause a paradigm shift in the whole concept of mediation and I will get to that shortly.

Some kudos were given to the now Chancellor (ag) and I do not want to take away any of those kudos because in the same way we may want to bear down on people when we feel that they do not do well, we should "lift them up" – to use a biblical kind of phrase – when they do well. However, a short review of mediation in Guyana would show that a broad based committee chaired by the now deceased Professor Peter Britton was commissioned by her Hon. Madam Justice Desiree Bernard, who was then Chancellor, with the mandate:-

> "… to explore all forms of Alternative Dispute Resolution and to make recommendations for implementation"

That committee had a very wide cross section of persons on it. I do agree that the Hon. Chancellor (ag) Mr. Carl Singh was very, and I am sure still is, passionate about mediation. However, the reality is that since mediation started, it has been voluntary. Why I am a bit disappointed in this Bill is because it really maintains the status quo. The Bill continues to make mediation voluntary. It is not mandatory. If it is going to just be voluntary, then there needs to be aggressive Public Relations, the training of lawyers needs to be very aggressive

or it should, initially, be mandatory, obviously, with an option to come. If persons do not have an option to come out, that goes against the whole nature of mediation.

Let us have a brief look at this Bill. I think that one of the forward looking aspects of this Bill is that it includes the magistrates' courts whereas the voluntary mediation that we have now does not extend to magistrates courts. Immediately, one can think of disputes between landlords and tenants as an area that people should really try to settle. Then there are small claims and maintenance matters. Of course, we are talking about non-criminal matters. I think that extending it to include actions commenced in the magistrate courts is a step in the right direction and that is one of the positives**.** **[Mr. Ramson:** That is not inertia]. No, there is a little movement, but then there is a backward movement that we will come to. The two neutralises each other.

In clause 4.1 of the Bill it says:

> "A court may by order refer a matter arising and proceedings before it, other than criminal proceedings, for mediation, whether or not the parties consent."

There is the impression that it is mandatory. But immediately Clause 5 says:-

> "A party to a mediation session or neutral evaluation session may withdraw from the session at any time."

It means that if Judge A says: "I think that this matter should go to mediation" and it goes there whether the parties agree or not. But at the very first session, without even an effort being made, one party can decide that he/she does not like the matter and that is the end of it. In fact, that is what happens right now. Sometimes lawyers would try to persuade their clients and at the very first sitting, even without hearing what mediation is about and not being properly advised by their lawyers, parties indicate that they want to withdraw. It is giving and taking away, more or less, in the same hand.

What strikes me about this Bill is the fact that Clause 12 says:-

> "…for the purpose of this Act, rules of court may be made…"

The learned Attorney General made mention of the fact that new rules of the Supreme Court are coming soon. In fact, Part LX of those proposed rules deals exclusively with mediation and in Part LX, mediation is made mandatory. Part LX (1) says:-

"This part establishes automatic referral to mediation in the civil jurisdiction of the court for the following purposes" and they are laid out.

There is a window out because you cannot be locked in. This is the window:-

"The court may postpone or dispense with a reference to mediation if it is satisfied that:

(a) Good faith efforts to settle have been made and were not successful."

When it is worded like this, parties cannot just go and sit down, as the Bill allows them to do now, and then get up because they do not like the proceedings. Under Part LX of the proposed rules, parties can only leave if good faith efforts to settle were not successful. Then, of course, parties can have their day in court. This rule is stronger, we respectfully submit, than the proposed legislation and this is the way we feel that the country should go.

We have had voluntary mediation in this country since 2003 and our record has not been very good in terms of what we have settled. Statistics up to December last year are as follows:

Number of matters referred: 509

Number of matters settled successfully: 101

In about six years, we have only had 509 cases referred and 101 settlements. Mediation, whether we like it or not and I suspect that the Government sees wisdom in it, or this Bill would not be here, is the modern way in which the world is going. Someone read statistics from North American which said that over 90 percent of cases are settled before litigation. I think that person was my colleague Mrs. Riehl. It is the modern way to go and Guyana would do well, and is doing well, by falling in line. But as I said, our reservation is about the fact that persons should not be able to come out so easily. They must make good faith efforts and if they do not do it then, the court would see that good faith efforts have been made and the parties can then come out of the mediation.

The other issue that is of some concern is the approved list that the Chancellor may compile, which is good because mediation is a skill just as driving a minibus, planting a rice field, being a lawyer and being an engineer. In fact, it is a skill that more and more persons are acquiring and it is not just confined to lawyers. Most people who are mediators around the world are not lawyers because it is an independent profession.

This Bill contemplates people who have no training that can become mediators because they do not have to be on an approved list. In other jurisdictions, they have to be on an approved list. If community based mediation is being dealt with then persons like priests, head teachers, who may not have formal mediation training, can be used. But if there will be court connected mediation, it is our strong view that the mediator must come from a list of approved mediators, which would mean people, not only lawyers, who have gone through training as mediators. Right now the list in Guyana has about 70 – 90 persons, of which more than half are non lawyers but they have all gone through various levels, as Mrs. Riehl had said, of training. We see that as a weakness in the Bill. In that, it contemplates that in court related mediation people who may not have any formal training as allowed to mediate.

What my Hon. Friend Mr. Nagamootoo mentioned is true. I am a mediator and I have seen some interesting things. Mediators have to have some amount of training. He spoke about an easy case. I had a case where persons actually wanted to get up and fight. Mediators have to know how to deal with it. It is not very heavy training. Persons do not have to go to the University and spend long times, but they have to be trained. We feel very strongly about it. To allow people who are not properly trained to be mediators will not move the process forward. We see that as a weakness.

I would like to come back to the rules. Clause 12 speaks about rules of court and in the rules of court, which I already indicated would be part LX of the proposed new rules, mediation shall be conducted by persons on the approved roster of mediators referred to in rule 60 (7). This part speaks about their training and how they would be controlled. Mrs. Riehl spoke about the A.D.R. centre in Jamaica. There are A.D.R. centres in Barbados and other parts of the Commonwealth also and all mediators that I have found, from a court related mediator system, comes from an approved roster of mediators. I would urge the Attorney General in his response to indicate to us if mediators can just be pulled from here, there and everywhere, how he sees us being able to have some control over them. We have to have some kind of minimum standards. We cannot all be going off our separate ways. There must be some uniformity. Although it is informal, it does not mean that it should be chaotic. The intention to formalise what is there already is good. But we feel that, as I said, it should be made mandatory, obviously, with that window of opportunity to withdraw once good faith is satisfied. We feel that there should be an approved roster of mediators to be made up of anyone who is interested once they go through the necessary training which must be made available at either free or a very nominal cost. We do believe that the rules of court which are

about to come into place and which have benefited from extensive consultations at Ocean View with lawyers, members of the Bar Association, members of the Association of Women Lawyers, there is the Rules Committee established under the High Court Act. I know the Rules Committee has been looking at our new rules of Court and a lot of thought has gone into part LX which deals with mediation, exclusively. I feel that we should ensure that there is no conflict between the Act and the proposed new laws.

7.20 p.m.

My colleague, who spoke immediately before me, mentioned the benefits of mediation. I think once anybody goes on line the benefits are there for all to see. But I just want to refer to one, Sir, tranquillity versus stress; tranquillity, of course, being the mediation way. It says:

> "Stress is a major factor in the litigation process (and I don't think anybody would deny that) whereas mediation avoids prolonged trauma, tension and anxieties, since the disputants themselves are engaged in the process and the creative development of their solutions. You can be very creative in mediation, you cannot be creative when you are before the court and you are locked and tied in, to very formal, archaic and sometimes unnecessary rules."

So, mediation, yes, we believe in it, but let us have an act that can propel mediation forward so, like the Judicial Review, we have a paradigm shift rather than a Bill which seems to just restate the status quo, and basically after 5 or six years does not seek to transition mediation into the forefront where we feel it should be. Thank you very much. *[Applause]*

Rev. Gilbert: Mr. Speaker, Hon. Members. This Bill that we are considering here this evening, I consider to be a very progressive one. While it is not fortuitous that it has come at this time, in consideration of the unabated escalation of domestic violence and some of the other social evils that we see in our society today, this Bill I believe provides for a devolution in part of judicial proceedings which facilitates mediation of disputes as an alternative through litigation is a very welcome one. It is also indicative of Government's continued commitment through the empowerment of people at the community level.

Alternative Dispute Resolution or A.D.R. is not an abdication of the judicial process. I am sure that this is not an education to the Members of this House who are acquainted with jurisprudential matters. But in the context of an overburdened justice system, it has become an absolute imperative for the improved efficiency of our justice system here in Guyana.

Clause 4, which was alluded to by Mrs. Backer and I think some others, indicates that:

> "A court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if the court considers the circumstances appropriate and whether or not the parties to the proceedings consent to the referral."

I can assume, Sir, and I suspect my assumption is accurate, that the intent of this proposed order is to facilitate a peaceful, amicable resolution regardless of if the parties fail to see this intervention as being in their individual or collective interest.

While this discourse may be new to some, the advocacy for introduction of A.D.R. has been on the legislative agenda of the Government of Guyana for a while. I think earlier or last week the point was made by the Hon. Minister of Home Affairs that there are some issues that maybe of great importance, but it can be a matter of great ideas for which time has not yet come. So we believe this is an opportune time.

Alternative Dispute Resolution is widely gaining use and acceptance in many developed and developing countries around the world. This also has been alluded to by some of our earlier speakers. In India, for example, due to the extremely slow judicial process there is a big thrust on alternate dispute resolution mechanisms. To streamline the Indian legal system the traditional civil law known as the Court of Civil Procedure (C.P.C) 1908, has also been amended and Section 89 (1) and was introduced, which provides:

> "That where it appears to the court that there exist elements which may be acceptable to the parties the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement."

But the question, Sir, which I want to turn my attention to in the time that I have, and answer, for those of us who have very little knowledge or interest in legal matters, of what benefit is not just this legislation but this judicial initiative of mediation as an alternative form of dispute resolution. What does it mean for us as a people?

I want to borrow, from a publication of the Guyana Bar Association of May 2008 where it is propounded that one:

> "A.D.R. improves the administration of justice by reducing the huge backlog of court cases and the lengthy delays in hearing and conclusion of court matters."

It also says that:

> "Mediation is cheaper because it is expected that since mediation does not incur the kind of costs relating to court procedures it can be less expensive for litigants. It saves time, it is fair and neutral and it is also informal."

All of these benefits have been earlier alluded to.

Mediation also empowers parties to create their own solutions. It allows parties to develop creative solutions to all issues that are important to them, and not just those underlying the legal dispute.

So, in an environment where our human relationships seem to be plagued at becoming more acrimonious, this is very instructive. The Hon. Member Mrs. Riehl alluded to the adversarial kind of culture that characterises our human relationships. We live in a culture where people say: "mind your own business", "it is not your own problem, stay out of it". This kind of approach has contributed in a large way to a lot of the acrimony that characterises our relationships on matters that can be easily discussed and resolved by just getting involved. People take the approach of staying out because it is not their business. So, the reference was made to the fact that there needs to be distinction between – and I think that is the purpose for this discourse – the court related proceedings, in terms of mediation, and developing a community based culture of mediation. And while we are focusing on the court related aspect, I want to also add my support for the introduction and encouragement of a community kind of mediatory process, which I believe in a lot of ways is happening but in an informal way. I believe as it gains momentum in the judicial system it allows for a greater proliferation of this kind of culture in our society which encourages people to get involved in resolving conflicts in our communities. So mediation also avoids the uncertainty of judicial decisions. It eliminates the uncertainty of what the Judge or the court system will decide. It preserves relationships.

There are a number of other legislations passed and yet to come that seeks to bring about some order in terms of family justice and how relationships… because domestic violence and some of the other conflicts we deal with stresses on the fact that there is something wrong with our relationships; the way we relate with each other. This piece of legislation, I think, is another step in formalizing, and bringing into focus, the justice system's involvement in

ensuring that we develop and encourage, and even enforce to some degree, the culture of mediation outside of litigation, or before it gets to litigation.

So mediation agreements have a high compliance rate; so we have been told in this article to which I alluded. Since people are more satisfied with solutions that have been mutually and voluntarily agreed by them, than those imposed upon them by a judge or a third party, they tend to comply with the terms and conditions of the agreement, because it is something they have mutually decided to and agreed upon.

Finally, mediation is – and I think the Hon. Member Mrs. Riehl mentioned this – a win, win situation. While for many of us in the House it may not be very applicable because we are more concerned about the legal ramifications. I took this opportunity to adumbrate what I believe would be some useful points for public information and education. I think our people need to know what this piece of legislation means to the average person. It is good for them to know there is an alternative process that allows for resolution of their disputes that does not involve what can sometimes be a cumbersome process in our judicial system. In successful mediation everyone wins. This Bill represents a significant advancement of the progress of our justice system and, I therefore commend this Bill and seek the support of this Hon. House for its passage.

Thank you, Sir. *[Applause]*

Mr. Ramson (replying): Cde. Speaker, I wish as a measure of amelioration to agree with Cde. Riehl that the word resolution needs… well, it does not need to be, but having it inserted between "disputes" and "Bill" would not detract from what was intended. If it means not breaking a lance on that issue I don't have a problem with inserting it as my colleague Cde. Seeraj indicated. Let us get that out of the way.

But I have to break a lance with respect to some other matters, and I mean not to give any ground. This Bill is sanitising, sanitising the compromise of the integrity of the judicial process in this country that has been taking place, or has been evident since 2003. The Alternative Dispute Resolution that was foisted upon this country by whomever, without statutory authority, I am amazed it took so long, and members of this house can proudly say they have taken part in a process that is completely without any legitimacy. I don't want to be a little more coruscating. I think when people start to make it appear that the Government is lacking in sincerity and lawfulness one only has to look at this. I have been practicing law for

years and A.D.R. has never been part of our system at an official level. It has been foisted on us. This Bill is now, as it were, giving retroactive legitimacy. They should thank the Government for seeing and putting right something that has been engineered for convenience.

I may be wrong; maybe I have lost touch. I don't know of any statutory provision which allows for a Judge to compel somebody to go to mediation. I know of none. This is what is going to give it legitimacy. ***[Interruption]*** Why are you asking me? Why you did not do it? You don't know the meaning of things. I am telling you that all what you people have been saying in relation to this matter it has no… if it was not for this Bill a man may claim that his constitutional rights were being violated. I am now giving effect and retrospective legitimacy to whatever else has been done in this country. You should say "thank you for it". ***[Interruption]*** I am not concerned about that. Let the chips fall where they lie.

Now, let me tell you something else. I don't know how trained lawyers, with every respect to them, can come and stand here and construe referral by court, specifically by order, and not to say it is a mandatory provision. If a court, never mind what is in the rules to be, the rules have to confirm with what I have written here. No serious lawyer would contend that subsidiary legislation can either surpass or exceed what the statutory foundation presents. I wish, Cde. Speaker, for my observations to be taken seriously.

I did not want to raise the issue but as the Opposition saw it fit to make unjustifiable comments, I now have to give the Government, of which I am a part, the kind of transparency and effort… You do not have to be a rocket scientist to read these words, "a Court may by Order…" You cannot disobey a Court's order and tell me that in the Act a party to mediation… and then speak about some kind of inertia. I don't believe they understand the meaning. The lexicon befuddles me. The use of the lexicon is so amazing.

Clause 5 says:

> "A party to a mediation session or neutral evaluation session may withdraw from the session at any time."

Not where there is a court order. What kind of incongruent logic is that? I would like to be the judge to see a man if I order him to go to mediation, he says he is jumping out of it. Well, he will jump very far; into Camp Street. More specifically, I was reminded, Lot 12. This thing about it being some steps backward and some steps forward, I do not go to dancing; I

am too old for that. I just read the Act and provide legitimacy for people's actions which had no statutory basis.

This question about the rules! The rules obviously will have to be tailored. Any serious lawyer will know that the rules will have to be tailored to meet whatever the statute accommodates. It cannot, cannot… I do not care what rule is being made. The persons responsible for making the rules have to get back to the drawing board quickly.

And there is some allegation that was tendered here that this question of evaluation is alien to their experience. I am not going to tailor the legislative intent to meet another person's experience. An evaluation exercise is done by somebody who is familiar with the law – anybody can be a mediator. Under the (Conversation Tree) big tree outside there you have a lot of mediators. When you are an evaluator you are expected to have certain issues of law considered and report to the court; narrow the issues. One only has to read what it says:

> '"Neutral evaluation" means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute."

Why are these provisions in the Act not being given the serious consideration that it was expected to be given?

I do not know any other issues that was raised where there was all this self adulation - who went to India and Pakistan and Bangladesh and China and India and wherever else - Carolina. I wish some of them would stay in this country and do some work. I can assure you that if the judges had been working with the assiduity and assiduousness with which their experience and profession demanded I am sure… I sat in the court of Appeal and I can tell you that work was being done. I do not know what the current state of affairs in any one of the courts is whether it is the Magistrate Court... I am not responsible for those courts. I can assure you that what has to be done – I am glad you raised the matter of the parliamentary – at the parliamentary level. However depleted the AG's Chambers are, I am satisfied that going the extra mile provides the Parliament with measures to be discussed and for Bills to be passed.

I don't know there is any need to go to Canada or America to present legislation. That is what the laptop, the personal computer is for. The netizens will know they can extract things from there. They must know they must extract relevant things. Whatever they have done with any

kind of subsidiary legislation, I trust that those pieces of subsidiary legislation would meet the requirements or limitations that that kind of legislation enjoys.

I don't believe that I need to say anything else because there is nothing else that has attracted my attention. And I need to, as I am being reminded, after saying so much, I would like to move that this Bill be read a second time. *[Applause]*

Question put and carried

Bill read a second time

Assembly in Committee

Clause 1

Mr. Ramson: Mr Speaker, as I indicated in my reply, and as requested by Cde. Riehl I am now going to invite this House to amend Part 1, Preliminary. "This Act may be cited as the Alternative Dispute", and insert "Resolution" between "Dispute and Act".

Amendment put and agreed to.

Clause 1, as amended, agreed to and ordered to stand part of the Bill.

Clauses 2 to 13

Mr. Ramson: Before you go on Sir, I think I did refer to Page 10 Clause 9 (6) (d). Between the words "waiver and the privilege…" instead of the word "or" the word "of the privilage" should be inserted.

Clauses 2 to 8

Clauses 2 to 8, as printed, agreed to and ordered to stand part of the Bill.

Clause 9

The Speaker: In relation to clause 9 (6) (d) there is an amendment that the word "or" be deleted and replaced by the word "of"

Amendment put and agreed to.

Clause 9, as amended, agreed to and ordered to stand part of the Bill.

Clauses 10 to 13

Clauses 10 to 13, as printed, agreed to and ordered to stand part of the Bill.

Assembly resumed

Bill reported with amendments read the third time and passed as amended.

CONTEMPT OF COURT BILL 2010 – Bill No. 19/2010

A Bill Intituled:

> "AN ACT to define and regulate the law with respect to Contempt of Court and related matters".

7.50 p.m.

Mr. Speaker: We can now proceed to the final item on our order paper, and that is the *Contempt of Court Bill*. Hon. Attorney General, you may move the second reading.

Mr. Ramson: Thank you very much Cde. Speaker. I wish that the reading on the passing of the second Bill will not in any way impinge on the passing of this Bill. This Bill is a very short Bill, and it seeks to remove from the statute books, the Contempt of Court Act, Chapter 5:05. You will see that is expressly stated in Clause 19. It says,

> "The Contempt of Court Act is repealed"

If this House is gracious enough to have this Bill passed, with its passage, automatically. The Contempt of Court Bill as currently on the statute books will no longer exist. This Bill really wishes to introduce for purposes of clarity, under what circumstances Contempt of Court may arise. You will find that it states at the very top of page three of this Bill, which really is an Act if passed, is to define and regulate the law with respect to Contempt of Court and related matters.

The explanatory memorandum is quite instructive. It gives examples of the kind of conduct that will constitute Contempt of Court. For the very first time it creates an Offence. In the old act the Contempt was not regarded as an offence, but this Act makes it a criminal offence. When I say criminal offence, the term offence itself without more is sufficient to confer upon it the adjective criminal. You do not have civil offences. That is why when the time comes I

will invite this House, and as it was pointed out to me after it was laid over in Parliament that Clause 6 ought to be refashioned to exclude the term un-indictment.

Specifically, this kind of offence can only be committed, unlike the act that we just passed, the Court means the High Court including the Full Court of the High Court, the Court of Appeal and the Caribbean Court of Justice. This does not provide for an offence in a Magistrates Court or in a Lay Magistrate Court or in any other tribunal prescribed by any law. The 'contempt' means any conduct whether committed in the face of the Court or not, that substantially obstructs or interferes – there is a preposition left out there, 'with' – with, or prejudices the administration of justice in any proceedings pending before the Court. That kind of misconduct includes the wilful disobedience to, or disregard for any judgement decree, direction or Order of a Court, as I was saying earlier in the other Bill. When a Judge orders you to do something and you do not do it, you have to go to Lot 12. It says so here also.

Item (b), "the wilful breach of an undertaking given in a Court" – those of us lawyers here would know that that relates to things like un-official injunctions, or if you tell a judge that you undertake not to move in a certain direction and you go out in the corridors and you say "do not worry with the judge, I am going in this direction". He will soon find out if Mr. Ramson was the judge.

Item (c), "Any insult or disrespect offered to the Court" – I see in the Magistrates Court, people talking about locking up for contempt. There is no such offence in a Magistrate Court. We had a magistrate who was *pitchfork-ed* recently. He had to run away to Trinidad. He wanted to lock some people up. Mr. DeSanto I think was my lawyer at the time. He too ran out of the Court because he did not know what to do. Remember Court 6, that sitting Magistrate got away to Trinidad and now is back fighting for a piece of land in Essequibo and someone *pitchfork-ed* him, one of his brothers. He wrote me trying to get me to intervene. I am sorry that he had the opportunity after he was *pitchfork-ed*.

Item (d), "the interruption of proceedings pending before the Court" – I have lived through all kinds of experiences. Colleague, you must think that I have come from some kind of back-water. I have not come from any back-water. I am an urban East-Indian. I was born and grew in Georgetown where there were certain rules of civility.

Item (e), "the use of abusive or threatening language.

Item (f), "the use of violence or threatening the use of violence" – you cannot go about doing that in a Court. A Court is a place where there is supposed to be calm and quietude and a kind of conduct that would commend itself to the highest of the highest. That is what a Court is. That is why we say a Judge is in charge of his Court. He is a king in his own Court, or queen if she is.

Item (g), "any act calculated to scandalise or lower the authority of the Court; or

Item (h), "any other act or conduct that disrupts the due course of any proceedings before the Court."

We have before us a complete interpretation section for the avoidance of doubt of what is really intended to be captured by this Bill. It says in Clause 5, "Any person who commits a Contempt of Court shall be guilty of an offence". If you look in the old Bill, it does not say so. It speaks of quasi criminal and criminal contempt and civil contempt. Not this Bill, this Bill is quite to the point; if you misbehave you must be treated like a criminal.

There must be some order. People are creating chaos. In the Courts there must be some civility and some order, the solemnity of the place itself. It is just like Parliament. It caters for any kind of compromising of the duties of a juror. It makes it an offence for you to go about inter-meddling with the jury system or asking questions like the Americans go about asking people. You see it on the television; as soon as the jury comes out, "why did you do this", "why did you decide in that way", you cannot do that over here. It is against the law. We are bound by the highest English traditions.

> "It shall be a Contempt of Court to obtain or attempt to obtains or disclose any statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of the deliberations in any criminal proceedings."

And, so should it be. We are not to dilute a system that has been hallowed by time. How dare you can go to the Courts of Justice in England, unless they have changed? I have not been back there for thirty five years, but I do not know that the English would water down or diluted their system to the point where they become Americanized.

We have some people who in their typical fashion will go and use tape recorders in the people's Court. You cannot do that, violating the sanctity of the Court, unless of course you get permission from the Judge. There is a specific criminal offence I see when people are

admitted to the Bar, a lot of people go on the television with the cameras and the news reporters running in the Court and flashing pictures. It is a criminal offence in the Summary Jurisdiction Offences Act. I do not believe that the judges would want to prevent the man or woman from getting a moment of glory in the news papers. In my time you could not have done that. The criminal offence is overlooked. Like the Magistrate who wants to hold lawyers or litigants in Contempt of the Magistrate Court. He is arrogating to himself a power which he does not have. They took too long to pitchfork him.

Of course recordings can be made subject to the permission of the Court, and the Court may revoke that permission at anytime base on the use of which it is put. Of course it is not a criminal offense if they update the process by which notes of evidence are taken, by the recordings that are done. Those are specifically excluded.

Clause 6 makes provisions for the kind of fines and terms of imprisonment for individuals who are guilty of the contempt. If it is a company or an association of people like the trade-unionists who run into the Court and misbehave, the penalty was seven hundred and fifty thousand dollars. Where the contemnor is a company and the contempt is proven to have been committed with the consent or connivance, where you have the Board of Directors who sit down and send their agents to commit the acts of contempt, they too are guilty of the contempt if it can be proved. They too will be deemed to be guilty of contempt. Do you see those words, "shall also be deemed". You do not have to actually be seen committing the offence. You will be deemed to have committed the offense and is liable to the punishment prescribed under subsection (1)(a). Of course there is a defence provided if the person can prove that it was committed without his knowledge and he had exercised all due diligence to prevent it's commission.

The Court, when it imposes fines, the money must be paid into the Consolidated Fund. The payment of the fine must not be imposed as some Magistrates do; they tell you that you must pay the fine immediately. That is against the Constitution. This Act recognizes it, because it gives you no less than seven days within which to pay the penalty unless, of course, the man is a foreigner. There was a man who came from Canada. His name was Mr. Adams. I do not now know if anyone here remembers him. He was caught by Justice James Patterson, as he then was. He is now a Reverent; he has a big Church by where used to be Hollywood. He caught a Canadian fellow who attempted to assault a lawyer of some worth in the corridor of the Court. There is written decision where he fined him to, I think it was $4000 in those days,

and he had to pay it immediately because he was Canadian. He was a litigant in the case. That was the end of his case and himself, because he got away to Canada. He never came back. He was fighting for a piece of land up at the Demerara River, which did not belong to him. I have a lot of experience in these areas where these people come and they impose their own uncivil behaviour on Guyanese people.

Of course the Court may issue a reprimand based on the persons obvious... Either he was contrite, or he really did not know what he was doing. There are some persons who come to the Court, some lawyers also do it; they do not know the parameters within which they must act. The come and they throw down there things on their desk, and they come to Court with their clothes all twisted up. There is a provision which allows for the Court revoking or varying any Order for the Contempt of Court. That is a special provision. This is not the kind of Court Order that when it is perfected the Judge cannot do it and has to file an appeal. He is in charge of the penalty that he is imposing. Of course the media need not be intimidated by this sudden revelation that they can be in contempt. In part three it says that certain publications are not to be in contempt.

> "A person shall not be guilty of Contempt of Court for publication that would otherwise be a Contempt of Court, if at the time of such publication he did not know, or did not have any reasonable grounds for suspecting that the relevant proceedings are pending before the Court."

We have two sets of cases currently in the Court where there were press conferences held in relation to publicised actions. There are two separate Contempt proceedings. One of the defences that I notice is being used is what is set out in paragraph 9.

> "A person shall not be guilty of or punishable for Contempt of Court for the distribution of a publication which would otherwise be a Contempt of Court...

This is for the hapless newspaper vendor or some person who is unaware that the person had been offensive to the Court and was either deemed to be guilty of the offence or had committed it in the face of the Court and had it put in publication. You know some lawyers, before the case is finished may write up a case report and send it to the newspapers. Nowadays, you can put in the e-mail, I understand, so that by next morning you see their picture in the newspapers, and the report.

"A person shall not be guilty of Contempt of Court for the publication of any fair comment on the merits of any proceedings which have been heard and finally determined by the Court."

I found it necessary to put this provision in because of a certain experience I had with a gentleman in the Court of Appeal where the Judge who is no longer sitting in the Court of Appeal. The man had lost his case, some very sensitive case. He and his wife had some dispute over some land. I think he used to sell staples and was a member of Police Service Commission. I do not know how he got there, but he used to sell staples and he got on the Police Service Commission, and when he lost his case he wrote a letter in the press chastising the judge for making the comments. The judge sent a subpoena for him. I do not know whether any practitioner knows about that case, but those are the experiences that cause us to write these things in. I would be taking us back to the dark ages when you cannot criticize a judge after the case is finished. We would not want that to be repeated. That is why clause 11 is in as it is, "when the case had been heard and finally determined by the Court".

We now come to contempt in the face of the Court, which is clause 12. You will see that there is a distinction between the two kinds of contempt; one is not appealable, and the other one is. When you commit contempt in the face of the Court it means you stand up before the Judge and you do something that is inconsistent with what is expected of you in a Court. Even when he is so charged, as I explained the one with the Canadian man, he was charged with Contempt in the face of the Court, so he could not appeal. Mr. Brotherson was his lawyer, I now remember.

" (a) Inform him of the contempt within which he is charged,

(b) afford him an opportunity to put forth a defence of the charge, and
(c) after hearing him in his defence

that is the judge or whoever is conducting the case

and the evidence of any witness he may tender, proceed to pronounce upon a final determination of the charge, either forthwith or on such date and at such time as the Court may appoint in the behalf."

I remember there was a lawyer who did that also. I do not think he is eligible to be a judge now, but he wanted so badly to be a judge. He went before the then Justice Messiah, I was

present in Court and I saw him. “The jaws of the Georgetown prison almost closed on you” those were his words. There was a film by the name of ‘Jaws” at the time. It was very popular. He went before the Court and told the judge something that he must recluse himself of some political reason. The Judge was quite right. When you sit on the bench you no longer supposed to be concerned with politics. In fact the Judges rules that are going to come out very soon, the Code of Conduct, will so articulate. You are entitled to distance yourself from any political party, and you are required to do so. When a lawyer comes before the Court, and he was sent their by a man who became an Attorney General, because he knew that it was a Contempt of Court for him to say so himself, and he used the other man as his loudspeaker. There are quite a few Judges in this Country who uses practitioners as their loudspeakers. I wrote in the newspaper about that thing recently. I am not finished with them. I shall continue.

It is time that we face the music if we want to dance. You cannot go and dance at the seawall when the music is being played at Demico House. You must come to Demico House and show your skills. Take the responsibility of being laughed at.

> “Upon a final determination of a charge for Contempt of Court under subsection (1)(c), the Court may make such order for the imposition of punishment under section 6 or the discharge of such person as it thinks fit.”
>
> “Where the Court does not determine a charge for Contempt of Court forthwith, the Court may order that the person be detained in such custody as the court may specify but the detention shall not exceed seven days before a final determination in the matter”

The famous Ramish Malraj, he was sent down although he won his case in the Privy Council. He had the nerve to tell the Judge what he did, but turned out to be right according to the Privy Council. He was not right, but the process by which the Judge did it was wrong. We have many examples that have been translated into these clauses. I give you those examples so as to lend some clarity to the reasons for bringing this Bill. Because, of course, I am going to bet told that I have another motive for bring this Bill just now. I use the vernacular “just now”; what is really meant is presently or momentarily. That is what the English means, not “just now”. Just now has passed.

> "Provided that the Court may order that the person may be released on bail or on such conditions as the Court thinks fit."

This is creating a special jurisdiction in the Courts, not leaving it up to the common law.

> "No appeal shall lie from any order of guilt for Contempt of Court, or punishment imposed thereof, made by the Court under section 12."

As I said earlier! Of course in any other case you have a right to go to the Court of appeal, the Full Court, the High Court, or the Caribbean Court of Justice. There are protective provisions made so that the liberty of the subject is not diluted. It is one of the very fundamental provisions. I remember many years ago, personal liberty became an issue that was raised, a very famous case but people used to laugh at it. I do want to give the name of the case. Those of us lawyers who know about Constitutional law will remember a certain case where a man was beaten up at the roadside, and the witness was a certain current Chief Justice Acting while he was a State Counsel in the DPP (Director of Public Prosecutions) Chambers. The Court held that there was a violation of the personal liberty of the victim. That is how important the liberty of the subject is to the state of Guyana.

Clause 17 says,

> "Nothing in this Act shall prejudice any defence available at common law to a charge of Contempt of Court"

We have lawyers who have great initiative, and what you call ingenious approaches. Whatever defences are available at common law will certainly be made part of the fabric of the Court proceedings. Those of us lawyers who have had sufficient experience will know that even if you have a client, where you have a client who does not have a case, you wait on the prosecution to fall. When they fall you burry them; you dig a whole and throw them inside and cover them up.

> "The provisions of the Act shall be in addition to and not in derogation of any other law in force, in relation to Contempt of Court."

And, the Contempt of Court Act is repealed.

8.20 p.m.

I wanted to dispose of this Act because, to me, this old piece of legislation is somewhat archaic. I think it was an Act that was passed sometime in 1919. As my colleague, Cde Nandlall rightly says, we seem to be clearing the decks of all these archaic laws. One was 1893, there was one in 1895 and now we are moving one out of 1919. This Act that is currently in place was designed in 1919. I hope by the end of the day some credit will be given to the Government for modernising the jurisprudence of the Country.

Mrs. Riehl: I will be very brief. As the Attorney General just said, he wants to be given credit for clearing the deck of these laws but we have always insisted that this is not the way to really clear the deck. We have always said that a law revision or a law reform Committee could do this work better because, we find, at the end of the day the Government is just going to claim credit. There are old laws in the books yes; all of these green volumes are full of laws from the 1890s, 1920s. 1930s et cetera and they all need revamping. What we find happening is a piece meal effort is going on. A law is picked up and revamped to suit the times. Nothing is really wrong with it but this is not the way to do it. We feel strongly about that and that is why we think that law reform is necessary.

This Bill, indeed, reforms the old Contempt of Court Act which was signed since May, 1919 by the then Colonial Government of this land. This Bill sets out to outline the various aspects of behaviour which constitutes Contempt of Court and the treatment, there for. Broadly, I think, there are two forms of contempt; the Hon. Attorney General has just outlined them. The most important and the ones which are dealt with 'condignly and summarily' are contempt in the face of the court, I will not go through it again section by section, but will just seek to go through it all together. That is basically contempt that happens in the face or in front of the judge in his courtroom or in the precinct of the court where people are brought back into the court to answer summarily that is there and then. If you insult a judge or any remarks in the courtroom about his style of judging the matter, make any remarks to scandalise the court or lower the esteem of the judge or the process it will be a Contempt of Court and will be dealt with condignly, to use a nice word. They are actions that disrupt the due course of the proceedings before the court.

Contempt in the face of the court, as the Attorney General just said, I do not have the benefit of the number of cases situations that he has brought to bare actual contempt. The only one I can remember is during prosecution a case before Justice Ivan Thurman, now deceased, and defence council, Donald Robertson also deceased, and a newspaper reporter who took the

notes from the registrar and printed it in the newspaper the following day. It was a newsman from the Chronicle. He was hauled before the Court immediately and deemed to be in contempt. That is the kind of treatment of contempt. He committed the publication form of contempt and was dealt with by the judge. But as the Attorney General said there are numerous examples. This Bill enumerates a number of these examples before us here today. Contempt is treated summarily, as I said, there and then by the judge in whose court it occurred whether the court is the High Court, in this case according to the Bill the Court of Appeal, or the Caribbean Court of Justice (C.C.J). Conviction and Sentence are dealt out summarily by the judge; there is no appeal from that.

There are new forms of contempt which the old Act does not have, although the old Act does, in fact, speak of criminal contempt as opposed to the other forms of contempt that I will come to shortly. There are new forms of criminal contempt which I feel will also be contempt in the face of the court. Those are the ones outlined. Because the Attorney General is piloting the Bill he went through it clause by clause. There is the one about obtaining or obtaining to obtain disclosed statements, opinions, arguments etc and how the jury cast their ballot. That is a Contempt of Court and I believe it will be dealt with summarily if it is brought to his attention there and then. The use of tape recording, we are told, without the leave of a court is also contempt and in addition to the fine or imprisonment, I think it is a $250,000 fine as opposed to the $400 in the old legislation or three months imprisonment, the judge can cease or forfeit the recording instrument there and then. Journalist in the Parliament should be knowledgeable and lean that publications of matters pending before the court might be contemptuous unless it is fair and accurate, and the publication of 'fair comment' of proceedings heard and finally determined non-contemptuous.

They are now all these different forms that have now been outlines where as before, as the Hon. Attorney General said, the judge was fully in control of his court. Anything that is done that does not find favour with him and seeks to bring his court or his work there into disrepute is called into question there and then and you answer for it there and then.

The other and more prevalent form of contempt in our courts today, I find, is the wilful disobedience to or the wilful disregard for judgements, decrees, directions or orders of the court. This is a sort of civil form of contempt where you have to file a Motion in the court; the wilful breach of an undertaken given by the court. This has to be done by, I think, within one year of it happening. You have to go to the court by way of Motion and plead the

contempt. That form of contempt may also be fixed with imprisonment but that is after that process has been exhausted.

This, as I said, is legislation that is laying out what, before, the judges did naturally. Even though the laws were not so well laid out in the old Act it spoke of criminal contempt and contempt happening of other similar type of behaviour which were dealt with immediately; this form of civil contempt where you have to go to the court afterwards to plead before the court. This Act gives the time limit; as I said one year. There is, in fact, very little to the Bill besides the treatment of the various forms of contempt but the Government as, I said, is taking claim for bringing these Bills to parliament. I do not find any special merit in them at all. Unless you are saying that the judges of today do not understand what contempt is. The old Bill may not have spelt it out this way but it worked very well and many of those cases that the Attorney General just outlined happened and were dealt with condignly under the old Act. However, Contempt of Court legislation is about maintaining the aura of the court and the dignity of the judges. We have no reservations in supporting the Bill as it is. Within recent times we have had a spate of legislations being brought here which appears to put a lot of constraints on our judges; taking away from their discretion and matters of that nature but this I find is assisting the judge. As I said, restoring the dignity and the aura of the court which we are told must exist there. Again, I have no reservation in supporting this Bill before the House.

Mr. DeSanto: I rise to lend my unequivocal support to this Bill. The incidence of contempt over the past years has not been many but it is necessary to maintain the awe and majesty of the law and the courts, and the integrity of their decisions that this legislation should have been enacted. The Hon. Attorney General has told us and Chapter 5:05 tells us that it has been there since 1919, we do not sweep away legislations because they are old. That is not a ground for sweeping them away. The grounds for sweeping them away is, of course, the fact that they have out served their usefulness or they are ill accord with the demands of today's society.

What has happened is that over the years the courts have failed to impose the stringent management over their proceedings which they ought to have done. I must confess that some of the lawyers have themselves contributed to this state of affairs. The fact is that they do not recognise that they are digging their own graves because the very institution from which they make a living they are detracting from its eminence and its authority. The 1919 legislation

had no bite and, as the Hon. Attorney General has said, it did not create an offence. It merely gave the judge gave the judge an authority to impose an offence. Maybe in 1919 $400 would have been a substantial sum but today even the beggars sometimes frown when you do not give them a 'five Bill' as the $500 note is now referred to. Contempt of Court can be defined; it is defined in the Act, in simple terms as any act or words or anything which done to defames the court, interferes with its process or evinces a refusal to recognise and act upon and carry out its orders.

We have been given a number of cases by the learned Attorney General. I will refer to one which is currently in essay – I am not going to call the name of the lawyer who is on the other side- we have an injunction against a certain gentleman from going onto certain lands at Tempee Village. Notwithstanding that injunction the man is going on the land openly. I have photographs of him on his tractor on the land. He sits on the tractor and tells my client that his lawyer told him to go on the land. This shows the kind of attitude which people have developed, maybe sometimes under the misguided advice of some lawyers; maybe they find some kind of bravado in giving that type of advice. The fact is we have a culture at the moment in which people feel free to disregard the orders of the court. One of the reasons this is done is because the courts are slow in punishing for contempt acts which are clearly contumacious.

I filed a motion for contempt since the month of March clearly setting out the facts, the man does not deny it, and the judge, nice lady as she is, has put my case for ruling until December. It is necessary; therefore, that recognition of the state of affairs which now obtains that this Government should take action. And take action to deal condignly with people of that ilk so that the courts which are the bastions of the rule of law; the courts which are the third part of the tripartite on which democracy stands must be respected. The only way we can do that is by legislation which sets out with clarity... I commend the Hon. Attorney General for doing the inclusive section which sets out a number of circumstances which clearly indicate to the contemnor, that is what the person who is called the word appears in the Act, would not be in doubt as to what conduct in facts this law.

I did not intend to into the sections of the law individually but I am a little concerned about one section which the Hon. Attorney General may conjugate upon and act as he sees fit, that is Section 11. It states that

"a person shall not be guilty of Contempt of Court for the publication of any fair comment on the merits of any proceedings which have been heard and finally..." that is the word that bothers me "...determined by a court."

The court means any of the four courts: the High Court, the Full court, the Court of Appeal and the Caribbean court. Finally, must then mean that the matter must reach a point in which it can go no further. That might not be an easy thing to discern because appeals are filed and nobody knows anything about them. A man is convicted for murder, an appealed is filed; the documents are filed in the registry and the newspapers prints some kind of comment on it; it may pose a problem. That is the only matter that I thought I should draw the Hon. Attorney General's attention to. The Act now makes it an offence, as he says; you are a criminal after you are convicted of it.

I would like to say a few words on the distinction in the face of the court and contempt not in the face of the court. In contempt in the face of the court there is no appeal because the judge is, judge, jury and executioner. He tells you what the contempt is; he asks you if you want to make a defence to it, you are not even entitled to a lawyer though the Privy Council had said in the Maraj case that you ought to be given an opportunity to retain counsel. You have no right to a lawyer where the contempt is committed in the face of the court. The reason is simple, the judge has heard what you said. He does not need witnesses. Where the contempt is away from the court; you go on the streets and you say something disparaging, you are brought back and evidence has to be taken because the judge does not know where the truth lies. It is not a case where he has overheard it himself.

In closing, I wish to commend this bit of legislation which appears to have no opposition whatsoever. We can only hear words of commendation. The Attorney General ought to take the kudos, I know he is trying to be modest by saying it is the Government which ought to be applauded. I think the Government ought to be applauded but these things had to come through the chambers of the Attorney General, from where they pass through the various sieves which this Government passes legislation before it finally get here. ....they are put through a process of examination and scrutiny before they get here. This is a perfect example that that process has worked so well that that it has formed legislation which is found to be faultless. Thank you.

Mr. Ramjattan: Let me emphatically state that at this stage they are tremendous difficulties that the Alliance for Change has with this Bill, as it is. Firstly, this Contempt of Court as far

as I am aware was given to this Parliament last week. What, largely, seeks to do is to give the aura, as Mr. DeSanto mentioned, concerning our court system. Giving it respect so that there can be further adherence to its Orders, whatever those Orders are, and also to be the conduct within the court itself; conduct which must be normal, conduct which must not be outrageous, not be aggressive and violent etc. Indeed, that is the way business must be conducted in the court. Since it is but a codification of a huge aspect of our court system and the administration of justice this manner and methodology of a Bill with so much importance ought not to be done this way.

I have spoken to a couple of judges who were totally unaware of a Contempt of Court Bill. I have spoken to a huge amount of lawyers in this country and I am told none of them were consulted in relation to this very important Bill which seeks a codification of our Contempt of Court laws. That alone is very troubling. Our old law of 1919 should not be disparaged to the extent that I noticed the Hon. Attorney General did to it. He was giving the impression that there is no wisdom in the distinction between civil contempt and criminal contempt. Everything is now made an offence to the extent that they have criminal penalty. There is tremendous wisdom in the English jurisprudence from which we got our contempt laws, the procedures, how they must be proven, the penalties etc for purposes of ensuring that we do not, in inventing something new, that is not going to work and is going to create injustice. Take for example, the very first one that I noticed, where contempt now that it is made an offence and criminal penalty immediately attaches a judgement is granted to a person who really does not have the ability to pay the judgement. You bring contempt proceeding because that person will now wilfully disobey because he is too poor to pay a $200, 000 judgements. What happens to him? The opposing sides bring contempt proceeding; it is now all criminal; he now serves a jail sentence of three months because he is wilfully not paying up. So now you will have a scenario where contempt is defined by the Hon. Attorney General in this Bill as the wilful disobedience or disregard of any judgement, decree, direction or order of a court, poor people do not have money. They cannot pay.

The old system was that, of course, you have a situation where the plaintiff who might have gotten the judgement will have an empty judgement because it cannot be enforced. Now our jails will have many more people because when the contempt action is brought he will have to go to jail because he does not have the money to pay.

8.50 p.m.

That is what this Bill does when it creates what is called "only criminal contempt". It makes the distinction between one in the face of the Court and the other outside of the Court. This was not well thought out. Simply because some people want to put the aura of the Court on a pedestal, which is a good thing, because indeed court orders must be respected, but we must have distinctions that will ensure justice is done. It is not justice when a poor person has to suffer the consequence of a jail term, for a civic obligation that he cannot meet. So we are now juxtaposing criminal penalties unto civil disobedience or civil violations. That was never a part of the laws of the Commonwealth countries and in Guyana.

To come here and say, that indeed this was a good Bill, will not be the position of the Alliance For Change. I want to make a point that there is a fundamental error here, again. Magistrates Courts are important Courts, they do, probably, eighty-five per cent of the disputes in this country. If we really want to bring the aura to the higher pedestal that we talked about, why do we exclude the Magistrates Court, simply because it was not so in England? If we want to modernise it, why do we hold on to the anachronism that it must not apply to the Magistrates Courts? They deal with serious cases. We have done the Administration of Justice Act (AJA) sometime in 1978 which allows now magistrates to do serious offences. They do civil matters with fines up to, I think, one hundred thousand dollars. They do maintenance claims and all manner of things.

We can go before a magistrate, and cuss the magistrate, and cannot, however, be committed for contempt, but the minute we go in front a judge, yes. What is wrong with magistrates having these powers too if we want to bring it in line, if we want to carefully construct a system where all of our Courts...? [**Mr. Ramson:** Please speak for yourself. It is not "we"...] Well, you have always spoken for yourself. I do not think that anyone...

Mr. Ramson: Mr. Speaker, I take objection to this.

Mr. Ramjattan: What?

Mr. Ramson: Would you mind if I stand and you be seated? When one uses the term "we" it includes me. I do not want to bring the magistrates in line with the judges. The Constitution requires a certain level of excellence or experience to become a judge. That is the reason why we are in the position we are in today. Bills are being debated without any thought being given.

Mr. Ramjattan: What is the objection being taking? The Hon. Attorney General is coming with a Bill... [**Mr. Ramson:** Do not include me.] Do you want to say then that I cannot criticise the fact that you are excluding magistrates? [**Mr. Ramson:** Speak for yourself.] Well I am speaking for myself and the Alliance For Change that we find the Bill defective. I am absolutely certain that other Members here... [**Mr. Ramson:** Well, I would not dignify it.] Well, you would not dignify it, but you undignified the magistrates by saying you have to reach to some esteem... [***Interruption***]

Mr. Speaker: Hon. Member, it would help if you address me as the rules require.

Mr. Ramjattan: Very well Mr. Speaker. I am critiquing the Bill, Mr. Speaker, because of that shortcoming. It is not because the Hon. Attorney General and the Government across the floor, Members thereof, do not want magistrates, necessarily means that I cannot do the critique that the majority of the Courts of the land which do eighty-five per cent of the disputes, civil and criminal, ought not to get the power also, in the face of the Court, and outside of the Court, for purposes. Now using the distinction that I have just heard that there is a need to have certain....All magistrates in this country are lawyers... [**Mr. Ramson:** You missed the point] I missed the point! You are missing the point. [**Mr. Patterson:** He never got it.] He never got it.

The other aspect of matter that exhibits another anachronism is the fact that the English system of old, because there have been Courts in England which are allowing even television cameras as in the United States of America, whereby there is technology, say in your pocket – I have gone into Courts...I might very well be jailed, now - and you use your little mechanism that can tape your cross-examination because there is not a junior lawyer to take the cross-examination, it does not in any way create any obstruction to the administration of justice. That is now prevented in a technological age where they want to give computers to everyone in this country [**Mr. Patterson:** And they want video evidence] ...And they want video evidence, and so, when a certain Bill was passed.

What is this all about - a personal view? It was not consulted with any judge or lawyer. The Hon. Attorney General brings it here and indicates that this is something good. It is not good for this country.

There are aspects of it that, yes, seeks a codification, but the common law principles... You can go into any of the text books, for example, Miller and *Contempt*...; Walker and

Contempt...", and there will be all those that are listed there. Obviously, they were taken out of those text books too - what contempt of Court is. But those books have the distinction between civil and criminal, so vital a distinction. What we are going to have now is a lot of persons going to jail, because it will be, under this Act, when it is assented to by the President, and anyone who does not have the money to pay will have to go to jail.

I want to state the fourth reason on this matter of publication. The Hon. Attorney General probably was anticipating me when he said that, "I know someone across the floor might state about certain motives behind the Bill." Well, indeed, I knew the innuendo was directed here. But I want to say that the publication aspect of this Bill is dangerous for the press - very dangerous – and there is a sinister motive behind it. As a matter of fact, our Hon. Attorney General has recently brought the *Kaieteur News* for contempt, only two weeks ago, for carrying news of a certain court matter, as if carrying news of a certain court matter could obstruct that judge from dealing with the matter fairly. This is dangerous, and we must understand the subtleties of how a Bill like this can come very wilfully on to this freedom of expression and freedom of the press, and all of that.

To that extent, when it is talked here about innocent publication, or distribution, it is never in contempt. That is what it is here. I can agree with the fact that a person shall not be guilty of contempt for publication that would otherwise be in contempt if at the time of the publication he did not know, or did not have any reasonable grounds. Also, the one in which there shall be no fair comment, clause 11, which Mr. DeSanto had mentioned. I think Mr. Bernard De Santos was inching on to the correct perspective there.

What is now going to be deemed fair comment in merit of the proceedings will be a judgement subjective call of the Hon. Attorney General, and then he can bring contempt proceedings, as he did, stating that that was not a fair meritorious set of comments made by the newspaper and that it should now be committed for contempt, the editor, the publisher - Mr. Glen Lall, Mr. Adam Harris and all of them... [**Mr. Benn:** ...brought it on the whole lot] Yes. But this is strengthening. Yes. We know that, but the whole point of it is to codify it and put it in very specific terms here. The old Act never had a Section 11, and that is what I am trying to state.

So we are having in this Bill - it is in my view and that of the Alliance For Change - a creeping kind of erosion of that which is freedom of expression. It is very dangerous. My view then is that we must not just one night wake up and feel that contempt should now be

restructured. The three hundred or four hundred lawyers in this country do not matter, because my idea of what contempt should be is for ..., and then we bring a Bill here. What the judges want to do, or what the judges ought to do, or if they ought to be consulted... No way, it is not necessary. We feel that we would like to have it this way, and because we are the Government we are going to have it this way and that is the end of the matter.

These points that I have made are very troubling. These points that I have making here have what is called, the possibility of emerging as realties later on. To that extent it is so draconian in my view and the Alliance For Change is not going to support this Bill. Thank you very much Mr. Speaker. *[Applause]*

Mr. Nandlall: Mr Speaker, I rise to support the Contempt of Court Bill which is before this House. As I indicated in my early presentation, we are enacting legislation in this country with a view of modernising the justice sector, with a view of revamping antiquated, quaint and outmoded legislation and replacing it with modern and progressive legislation. The Contempt of Court Bill is yet another one of those legislation in that exercise. It has been said already that it is a repeal of Chapter 505 of the Contempt of Court Act, an Act which has existed in this country since the year 1919. That Act consists of six sections only, spanning one page in the laws of Guyana - a single page. That Act, in my humble view, was wholly impotent, in respect of the law of contempt.

What prevails in Guyana in respect of the laws of contempt, presently, is a host of common law principles which have been codified and consolidated in this Bill. This Bill hardly introduces a new concept, but it represents a compendium and a consolidation of the present common law principles regarding the law of contempt. What is wrong with that? What is wrong with amalgamating the common law principles into one document? That is what is meant when we say that we want to modernise the justice section.

I wish to reply to an issue raised by my learned friend, the Hon. Mrs. Clarissa Riehl. It was an issue raised by Mrs. Backer last week, but I did not get an opportunity to reply to her. Tonight, again, Mrs. Riehl spoke about the Government is doing piecemeal law reform and stated the PNCR-1G's position that it would like to see the establishment of a permanent Law Reform Commission. Well, Mr. Speaker, you are aware of the Government's position on that issue was articulated in this National Assembly by the then Attorney General, and by yours truly, where we said that while we recognise the importance of a permanent Law Reform Commission we believe that we must do it in a systematic fashion. We believe that we must

first start an exercise to revise the laws of this country, because since 1977 to now they are in chaos. Thousand, perhaps, or hundreds of pieces of amendments have been passed and they are not to be found in one consolidated set of volumes. We believe that it is an important exercise before we reach the position of a Law Reform Commission, to revise our laws and have then in an orderly updated fashion. I am proud to say that under the Justice Improvement Programme, the very programme under which all these legislations are passed, with a view of modernising the justice sector, a contract has been awarded for the revising of all of our laws. The contractor is in the National Assembly this evening... [**Mr. Ramson:** It is the consultant.] It is the consultant, Mr. Bobb-Semple.

I and my learned friend, Mr. Ramjattan, visited Mr. Bobb-Semple and his team and saw them at work, revising all the laws. But while we are revising the laws, what should we do? Is it to put law reform on hold? That is not our position, the business of law reform must continue, and we are going to continue to pass laws as we promised our constituents in the last elections, so as to bring to them a modern form of administration of justice.

My learned friend Mr. Ramjattan mentioned in his speech that there was no consultation held with respect of this Bill. As my friend, Ms. Manickchand, is reminding me, he made a huge issue out of that, abusing, almost, the Attorney General and the Government for not engaging in consultation in relations to an important Bill as the Contempt of Court Bill. I wish to put on record that the Government, the Attorney General, through the coordinator of the Modernisation of the Justice Administration Programme, the Hon. Mdm. Justice Claudette Singh, the former Court of Appeal judge, engaged the Guyana Bar Association in consultations with respect of all the Bills that we have been passing here for the past few months. And I will read a letter of acknowledgment from the Guyana Bar Association to the Hon. Mdm. Justice Claudette Singh, acknowledging the fact that it has received those Bills and was requesting an extension of time for further consultations.

Let me read the letter. The letter is dated 12th June, 2008, signed by Mr. Teni Housty, on the Guyana Bar Association's letterhead. I want the press to see this. This is the Guyana Bar Association's letterhead. This letter was sent by the President of the Guyana Bar Association, Attorney- at-law Mr. Teni Housty, dated 12th June . It is addressed to the:

> "Hon. Justice Claudette Singh, CCH
> Project Coordinator,
> Modernisation of the Justice Administration Programme,

C/O Attorney General Chambers,
95 Carmichael Street, Georgetown.

Dear Justice Singh,

Re: Circulation of draft legislation

Further to your letter of 9th May, 2008 and our letter of the 28th May, 2008, we have enclosed herewith preliminary comments on the following draft legislations:

(a) The Administration of Justice Bill, 2008
(b) The Training Schools (Amendment) Bill, 2008
(c) The Criminal Law Offences (Amendment) Bill, 2008
(d) The Juvenile Offenders (Amendment) Bill, 2008

In our letter of 28th May, 2008, further time is required for consideration of and comment on the following drafts:

(a) The Arbitration Bill, 2008
(b) The Contempt of Court Bill, 2008
(c) The Criminal Law Procedure (Amendment) Bill, 2008
(d) The Legal Practitioners (Amendment) Bill, 2008..."

And listen to the bottom line, Mr. Speaker - the last line.

"The drafts are currently in circulation among members of the Guyana Bar Association and we expect comments as a result of the process of consultation. We would be grateful if further time can be permitted to allow our full participation in this important step in the modernisation of the administration of justice in Guyana."

That is from the President of the Guyana Bar Association. [**Ms. Manickchand:** Mr. Ramjattan was the Vice-President]. And Mr. Ramjattan, I am told, was the Vice-President at the time. So, here, the Hon. Member has misled this House for over five minutes, because for about five minutes he spoke of the lack of consultation on this Bill. [**Mr. B. Williams:** I am coming to say the same thing] Mr. Speaker, I cannot stop people from repeating wrong, that is Your Honour's function. Having put the history of this matter on the record of this

proceeding and alerting the House of what actually transpired based upon the actual evidence... It would be a matter for Your Honour if people are going to continue to mislead the House.

This Bill is a very important piece of legislation, because it addresses the important question of the administration of justice's ability to maintain its dignity and to control its process, and to prevent its process from being abused. The administration of justice holds a special part of any civilised society. The rule of law, which is regarded as the cornerstone of any democracy, of any modern society, has to be maintained largely by the administration of justice in that society. It is the administration of justice that the people turn to whenever they have disputes amongst or between themselves. It is the administration of justice that the people turn to when they feel that the Government has exceeded its powers. It is the administration of justice that the people turn to if they believe that this National Assembly has passed a law that encroaches upon their constitutional and fundamental rights. Therefore it is of utmost importance that the administration of justice is allowed and given the requisite facilities to maintain proper order in its process and to punish those who are offensive to its process or who impair it from functioning in an efficient manner.

Hence, the law has created, in the judiciary, meaning in the High Court and Courts of superior records, a special power, and it is the common law which has done that, not we in this National Assembly. It is the common law of contempt, developed in England over eight hundred or nine hundred years ago, which has reposed the power of contempt in the superior Court of record. So the argument advanced by Mr. Ramjattan for that power to be extended to the Magistrates Court would be an extension that is not supported by any legal history or any known legal principle. The Magistrates Court is a statutory tribunal. It can only exercise the power that the statute confers upon it and none of the statutes which regulate the conduct of the Magistrates Court invests in those Courts the power to punish for contempt. This Government is not prepared to go into those unchartered legal waters, because we may be the first country in the world to be investing in the Magistrates Court a power to punish for contempt. So my learned friend argument is one that is not supported by jurisprudence anywhere. I do not think that is a well thought out and researched argument.

I wish to make some comments on certain clauses of this Bill. I have identified only a few because time is against us. [**Mr. Carberry:** No. Talk all night, you have plenty of time.]

Whether I wish to talk all night, Mr. Speaker, is my prerogative, and I will do so with your permission, not as a result of any utterance from the other side.

At clause 3 of the Bill..., as I said this Bill codifies a number of common law principles. It has always been an offence to interfere with or tamper with jury deliberations and to make public that which transpires in a jury room. This clause gives *imprimatur* to the sanctity of trial by jury and that which transpires in a jury room must remain sacrosanct because it is an important aspect of our criminal justice system that we have trial by jury. We, on this side, have decided that it is important we maintain and protect that right to trial by jury. Here it is, this Bill is making it a contempt of Court for anyone who discloses what transpires in a jury room.

Clause 4 of the Bill speaks to the use of tape recorders in a Court, and I heard Mr. Ramjattan expressed the view that this is a prohibitive clause. Well, I see it another way: it is a classic position of seeing the glass half full or half empty. I would prefer to see the glass half full, because the way I read this provision is that for the first time we are now giving statutory recognition of a right to use tape recordings in our Courts, and that is how I wish to interpret it. Before there was an absolute prohibition against using tape recorders in a courtroom now it is being permitted. But of course, as the learned Attorney General said, the judge is the king of his own court. So you cannot walk into the judge's court and decide to tape his proceedings without his permission. What this Bill does is that it allows for the taping of court proceedings, of course, with permission of the Court. This is a commendable aspect of the Bill. It is not a negative; it is a positive. But for the pessimist they only see the negative. [**Mr. Ramson:** What has happened to the blind?] Well, I suppose for the blind... Dr. Norton is not here.

The other aspects of the Bill I wish to comment on are clauses 9, 10 and 11, and I wish to treat them together. They fall under Part III of the Bill dealing with certain publications that are not in contempt of Court. There is a concept emerging in modern jurisprudence labelled "Open and Transparent Justice", and that is the type of justice that we, in this administration, embrace. As I said last week, utilising the philosophy of Roscoe Pound, we have to always use the law to do social engineering and strike a vital balance between competing interests. People in this country have a right to know how the judiciary is functioning. The judiciary is a public institution and is funded out of the Consolidated Fund with taxpayers' money. Therefore the people of this country are entitled to see how their moneys are being spent, so

that we do not condone public institutions operating in secrecy. We believe that they should be open to scrutiny. That is one competing interest.

9.20 p.m.

Another competing interest is the right of newspapers and television outfits to publish that which is news. What transpires in the administration of justice, sometimes, is very important news and there is a corresponding constitutional right of the citizens of this country to receive this news.

There is the third competing interest that whatever they publish must not jeopardise - it must not prejudice; it must not interfere - with the administration of justice. There are three competing interests and the law must find a balance to accommodate all three of these competing interests. In my humble view clauses 9, 10 and 11 seek to do so.

Clause 9 states that anyone who distributes or publishes something that otherwise would have been contempt of Court, but does so innocently, is not guilty of contempt of Court. Here, the legislation... because contempt is always a criminal proceeding. I heard my learned friend, Mr. Ramjattan, spoke about a divide between civil and criminal contempt. That is an academic divide between civil and criminal contempt depending on how it originates. Contempt in the face of the Court, for example, is always criminal. Breach of a court order is regarded a civil contempt because it originates out of civil proceedings, but when the contempt itself occurs, it is always criminal because contempt of Court carries penal sanctions. The standard is proof beyond reasonable doubt and not the civil standard of balance of probability. So contempt is always criminal. It is referred to as civil, as I said, as a result of an academic distinction in terms of how one applies for it, in terms of remedies, and based upon how it is originated.

Because of the recognition of the fact that contempt is always criminal, this Bill creates a requirement of *mens rea* - an intention. As you know, Mr. Speaker, a crime consists of two ingredients. One is the act which is called the *actus reus.* Here the *actus reus* is committed because the person has actually published something that is that is contemptuous. But the other ingredient which is the mental element, the guilty intention, or the *mens rea* is absent. Once that is absent, a case for contempt cannot be made out. This Bill recognises, in clause 9, that very vital component of the criminal law.

Mr. Ramjattan made the point that somebody woke up one morning and decided to pass a Bill and something was concocted in some back room. Mr. Speaker, when one goes through this Bill, if one has any understanding of law, one would see that a deep amount of thought was put into this Bill before this document was produced. As I said, it received the input of the Guyana Bar Association. I will move on from that point.

Clause 10 is very important because it states that there can be accurate report of proceedings that are pending before the Court. This has always been a right available to the press and to the public. One was always free to criticise judicial proceedings and I would like to share a quotation, with this Hon. House, of Lord Atkin. One time, I can remember, Sir, I quoted Lord Denning and Your Honour expressed a preference for Lord Atkin, so I have deliberately selected, Your Honour, for your pleasure, and in recognition of your veneration for which you hold Lord Atkin, a quotation from *Ambard vs. the Attorney General of Trinidad and Tobago*. This is a case from the Privy Council of England 1936 - very old case. As I said, this Bill only seeks to codify that which exists as part of our common law. This is what Lord Atkin said:

> "The path of criticism is a public way: the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and are not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even outspoken, comments of ordinary men."

This is a statement of the common law made since 1936 and the essence of it is captured in clause 10 – the right to make fair comment.

Permit me, Mr. Speaker, I cannot quote Lord Atkin without quoting Lord Denning.

Mr. Speaker: That quotation was quite enough.

Mr. Nandlall: No Mr. Speaker. This one is even better. It is important that we recognise the approach that the Courts have taken in relation to criticism of themselves. The Courts recognise the right to criticise. Lord Denning, in the case of *Queen against Commissioner of Police, ex parte Blackburn (1968), Two All England Law Report*, at page 319, speaking of judges, said this:

> "Let me say at once that we..."

It is meaning judges.

> "...will never use this jurisdiction..."

It is referring, of course, to contempt jurisdiction.

> "...as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it, for there is something far more important at stake and it is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment on matters of public interest. Those who comment can deal faithfully with all that is done in a Court of justice they can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that from the nature of our office we cannot reply to their criticisms. We cannot enter into public controversy, still less into political controversy. We must rely on our conducted self to be its own vindication."

That is from the great Lord Denning.

Clause 10 of the Bill captures those very sentiments expressed by both Lord Atkin and Lord Denning. Mr. Speaker, I come to the last of the three – clause 11. It states:

> "A person shall not be guilty of contempt of Court for the publication of any fair comment..."

Again, we hear the words "fair comment".

> "...on the merits of any proceedings which have been heard and finally determined by the Court."

Here, again, Mr. Speaker, you have heard both Lord Denning and Lord Atkin made it abundantly clear that there is a right on the part of newspapers, on the part of the people in Parliament, on the part of the people out of Parliament and on the part of the ordinary man to criticise the administration of justice once it is done fairly and, based upon what I have just read, at any stage.

There is one last statement of Lord Denning that deals specifically with the issue of criticisms after the trial has been completed. Lord Denning was not sitting as judge here. He was giving a lecture at a law conference of the Law Society, in 1970, held at Bristol, England. He was referring to a case which was just concluded in the House of Lords, a case that received much attention and coverage of the press. It involved the application by two English foster parents for an infant whose biological parents were from Spain. For whatever reason, it was the trial of that period. It received widespread coverage and criticisms in the press. Lord Denning had this to say about the criticisms:

> "Some criticism has been levelled against television authorities and the newspapers. It has even been suggested that they were guilty of contempt of Court. I beg to differ. They were bringing to the notice of the public that which appeared to them to be a crying injustice. They were quite entitled to do so. Our proceedings for contempt of Court are confined in the cases that are pending so as to secure a fair hearing, but once the case is over, anyone is entitled to criticise and comment on the decision even to dramatise it if they so please so as to expose the weakness in the law and the reform of it."

Lord Denning here is speaking directly to clause 11 – the right to criticise after the trial has concluded. The point I am making is that this is not some wishy-washy concoction coming out of the Attorney General's Chambers. This is a Bill that is well structured; that is modern; that received the consultation and input of both the Bar and, I understand, several other players outside of the Bar.

Clause 12, and so on, deals with contempt of Court. I will not dwell much on them, but the other issue I will speak on is...

Mr. Speaker: Your time is up, Hon. Member.

Prime Minister and Minister of Public Works and Communications [Mr. Hinds]: I move that the Hon. Member be given another fifteen minutes to conclude his presentation.

Question put, and agreed to.

Mr. Nandlall: Thank you Hon. Prime Minister. Thank you Mr. Speaker.

Clause 13 of the Bill, again, codifies a long standing common law rule that there is no appeal for contempt committed in the face of the Court. That has always been the common law rule.

Like the Hon. Attorney General, I will like to remind this House of the case of Ramesh Lawrence Maharaj. What was committed in that case was contempt in the face of the Court. I, however, wish to differ from my learned senior, Mr. Bernard De Santos, when he said that one does not have the right to a lawyer. This Bill gives one the right to a lawyer and a right to a lawyer, in my humble view, was always there, confirmed by the Constitution. Ramesh was able to succeed because he was not given that right and he was not given a fair opportunity to lead a defence. Hence, he could not challenge the ruling of Justice Sonny Maharaj who was the judge. He could not challenge it by way of appeal because no appeal was available. So what he did was to challenge it by way of a motion that he did not get a fair hearing before a court of competent jurisdiction, a constitutional right enshrined in the Constitution of Trinidad and Tobago. That was the only way that he was able to challenge the decision. Clause 13, again, codifies a longstanding rule. There is nothing new in that.

The other important comment that I will like to make in relation to this Bill is on clause 17. Because contempt of Court consists of a wide variety of common law principles and it is almost impossible to codify them, clause 17 recognises that. It makes available, without prejudice to anything in this Bill, that the principles of the common law which are applicable to contempt of Court remain intact and will apply to supplement this Bill.

In conclusion, this, I think, is a sound piece of legislation. It is another demonstration of the Government's commitment to modernise the justice sector as it has promised the people of this country and the comments and criticisms made of this Bill by the Hon. Mdm. Clarissa Riehl and Mr. Ramjattan are unfounded, misconceived and wrong. I wish to reject them out of hand.

I wish to commend this Bill for the passing of this Hon. Assembly.

Thank you very much Mr. Speaker. *[Applause]*

Mr. B. Williams: Thank you Mr. Speaker.

I am afraid that I am unable to share the same enthusiasm for the Bill as the last speaker, Hon. Member, Mr. Nandlall.

This Bill conforms to the usual trend of this Government when it brings several Bills together. It tends to bring a Bill that enjoys the confidence of the entire House – both sides of the House, if not all sides – and then it slips in a Bill that reasonable thinking and right

thinking members of society will always have a problem with. It has happened again in this manner because we had the beautiful Judicial Review Bill and the Alternative Dispute Resolution Bill, but then we have this. My honourable friend was right. A Bill of this nature has to have some consultation. We must have adequate time to peruse the provisions of such a Bill. Now this excuse which we keep hearing – we heard it before in another Committee – that consultation took place some other place at some other time cannot hold water in this honourable and August Chamber because we are in this highest Court of the land and we are urged to take hearsay and accept hearsay that consultations were done. I do not know anything about any consultation on this Contempt of Court Bill. I have never seen it before. I am saying that this Hon. House must have an opportunity to be able to examine a Bill of this nature within the bounds of decency and time, so you cannot come and say some quarter held consultations. That does nothing for me. The least that could be done is to produce the results of the consultation and let us have a look at them so we could assimilate and utilise them when we peruse the Bill. It is unacceptable for a Bill of this nature to come before this Hon. House in, more or less, a surreptitious manner.

Mr. Speaker, let me disabuse the mind of my honourable friend. One is that there is no contempt in the Magistrates Court. I do not know how a statement like that could be made by any practising attorney-at-law. It means the Member is suggesting that the magistrate has no power to act in a similar manner in his or her Court as the High Court judge. That is not so. There is a provision in the Magistrates Court that speaks to misconduct upon which the magistrate could act before rising. That is the limitation the magistrate has. Before the rising of the Court that day, the magistrate must act on that. I am familiar with that because I had that encounter.

Mr. Speaker: You are not the only one, Mr. Williams.

Mr. B. Williams: No. That is why I am now going to look and make my presentation based on the position of the private practitioner in our Courts.

We have heard the presentations from the Hon. Attorney General, Mdm. Clarissa Riehl and my learned friend, Senior Counsel, Mr. DeSanto. They all appear to have been supportive of the position of the bench. I agree with them that the bench must have a certain dignity and majesty, but this dignity and majesty do not operate in vacuum. This dignity depends largely on the custodian of that Court and if the custodian of that Court appreciates the importance of the role that a custodian has to play, then we would not have problems. We have to deal in a

situation, especially how we are evolving, the draconian period of the sixteenth century coming right down...We are in a different era. When one talks about, for example, contempt in the face of the Court, the judge makes a determination in his own cause. That is what it is. He is being a judge in his own cause. That is the first thing.

Secondly, [**Mr. DeSantos:** Historically, that has always happened] Historically, when the entire common law has evolved based on rules of natural justice, even we just had a Act which states that whenever a decision is made it must be made based on the rules of natural justice...Natural justice has evolved and taken over a primary place in the English common law, so the days when a judge could decide that someone is in contempt and he then acts as judge, jury and executioner have to go. That is why we needed to have proper consultations on these matters.

What we have found in the Courts, over time, is that some Courts tend to act in a way as to suggest that they have some other retainer when certain persons appear in those Courts. What is so clear about that is when one sees the provision that states one cannot have tape recording in the Court unless one has the permission of the Court. In this modern time, when everyone is updated and the IT technology is being in place in Courts throughout the world, when we are supposed to be updated in this country, how could we pass legislation that outlaws the taping in a courtroom in this country? In most countries, the entire proceeding in the courtroom is recorded. That is a very important safeguard because the practitioner must also have an interest in being able to go about representing his clients freely and fairly in a courtroom without being browbeaten by the bench, intimidated by the bench, and trampled upon by the bench. That is very important.

It is not a one-way street. We have had situations in this country where guns were allegedly pulled in the courtroom and signs had to be placed all around the Court outlawing guns in the High Court. **[Mrs. Riehl:** Who did that?] Who did that? I will have to check. The point I am making is that I cannot see that a practitioner would pull a gun unless he or she was severely unprotected by the bench and, in other words, must have been enormously provoked. We have seen all those things. The Hon. Attorney General recounted stories of other incidents. I know in the case of my honourable friend, Mr. Nandlall, I had to try to protect him from the same person who was pitch-forked only recently. I was shocked and I was in my honourable friend's corner when I saw what the man who was pitch-forked did to him. I never agreed with him accusing the Hon. Member of being in contempt of court orders. That was

something akin to what the honourable senior was just speaking to, that is, an order restraining a citizen but the citizen disobeyed the order and was sitting on a tractor saying that his lawyer told him he could do that. I do not know if his lawyer was on the tractor with him in the field. But those are the things we encounter and we have to make efforts to deal with them. In other words, I stood up for the Hon. Member, Mr. Nandlall, in that particular case. **[Mr. Nandlall:** You are lying.] Am I lying again? **[Mr. Nandlall:** Yes. You are lying again.] I have everything. I took over from you.

This question of contempt of Court is a very serious one and needs to be well thought out. It is also fallacious to say that there is no civil contempt. It is also fallacious to say that there is no civil contempt but only criminal contempt. That was just said by my honourable friend, Mr. Nandlall, that all contempt is criminal. That is very fallacious because we know that there is civil contempt and criminal contempt. **[Mr. Ramson:** Including who?] Including the Hon. Attorney General; you would not make that mistake. What he might have been confused with is that some civil contempt takes on the nature of quasi-criminal proceedings. That is distinct because one does not get jailed. There are fines and other types of punishments to deal with that type of civil breach of court orders. We need to get those things clarified.

My honourable friend, Mr. Ramjattan, was not unduly outside of the pale. If in this Bill it is stating that all contempt is criminal, that is a very serious matter, because what is actually contemplating is a radical shift in our law as we know it. As I said, there has always been this dichotomy between civil contempt and criminal contempt. If we are saying now that all contempt is criminal, it means then at the end of civil proceedings, such as the one that was spoken about earlier, if the High Court judge finds that in fact there was a contempt in that particular case, then that automatically is transformed into a criminal offence. That, obviously, cannot be. Something is wrong about that. There is something incongruous about that, because in criminal proceedings there are certain safeguards the Constitution of this country demands. Therefore when one is criminally liable for punishment he or she cannot have a willy-nilly trial or hearing. It is a different approach altogether. There is a different responsibility on the bench and the like.

It is in that context that I will like to look at some of the provisions in the Bill itself.

9.50 p.m.

As I said, there is clause 2, "Interpretation", the contempt of Court, and then it states:

"(a) the wilful disobedience to, or disregard for, any judgment, decree, direction or order of a Court;"

That is where the assimilation comes in of civil and criminal, and, of course, the juror deliberation – no one can break a lance on that. Though, I believe that the time has come in Guyana, and I have said it on previous occasions, where our approach to jury selection has to change. That is why when one talks about finding out from the jury how it made a decision... because what people might be thinking is that in highly developed systems before a juror is selected one could cross-examine the juror and find out what the juror likes and dislikes are in order to make a determination as to whether the juror is suitable to sit on that case. [**Mr. Ramotar**: I hear you had to do that the other day when it was drawn] Now, the drawee is on your side. Now, I will talk to Mr. Khan's friends just now. But, as it is now, the situation that I was addressing my mind to was in relation to having... where I recall, Mr. Speaker, that several years ago in our assize, here in Guyana, I discovered that out of a jury of twelve persons selected, eight came from one entity, and obviously some thing had to be wrong. I went by way of constitutional motion and invade against the system, and Chief Justice Bernard, as she then was, acceded to the application and as a result the entire assize had to be stopped. The entire jury list had to be revised and recompiled before it could have resumed. At that time, I proposed certain changes to the jury system to avoid what had happened there from happening, and I said that we should find something in the system which is being used in America where potential jurors are being questioned, interrogated, before selection. So to see now when we should be moving in that direction we are, here, saying, "You cannot ask a jury how it arrived at the decision after the case", when that is seen on television all the time. People wrote books on what they did in the jury room in America and made money on them. So we will have to start thinking outside of the box, Mr. Speaker, in the way we have wrote some of these matters.

Further, I think there are some pitfalls in some of these provisions, that is on the face of it, *ex facie*, appear to be decent provisions. For example, the side note says, in Clause 10 (1):

"Fair and inaccurate report of proceedings not contempt."

This sounds nice. It can be recalled that in this country the moment a matter is filed in Court and someone attempts to speak on it, even in this House, the allegation is heard of that the matter is *sub judice*. Without more, without let or without hindrance, it is *sub judice*. No one

takes the time to check and examine the content. So in other words, it is no go from the outset. Then, there is this, now, propose to be introduced:

> "**10**. (1) Subject to this section, a person shall not be guilty of contempt of Court for the publication of a fair and accurate report of any proceeding pending before the Court or any stage thereof. "

Now, this sounds nice. But then as soon as something is published which appears not to be of the liking of the Government, for example, then there is problem. This is like, in fact, the spider inviting the fly into his parlour. This here looks like a set play. It is the Hon. Attorney General though, in the first instance, who would have to direct his mind to the publication and decide whether, in fact, it is "fair and accurate." If he decides it is not "fair and accurate", then the publisher is faced with a court action. This clause 10 – my honourable friend spoke about "sinister", I do not want to go that far - I am saying, needs to be extrapolated some more so that we could have clear guidelines as to what is to be determined as "a fair and accurate report of" certain proceedings.

Now, clause 11 is of that ilk.

> "A person should not be guilty of contempt of Court for the publication of any fair comment on the merits of any proceedings which have been heard and finally determined by the Court."

People do not do that in this country. People are afraid to comment on Courts' proceedings in the country. The only person that comments on Courts' proceedings in this country and know that it can be got away with it is the Hon. President, himself. Nobody else could do that. No one could take that chance to comment on Courts' proceedings. So those lofty goals and aspirations contained in some of the quotations from my honourable friend would be a pipe dream in Guyana, because we know the sensitivities of not only the Government, but of the Government's state actors. We know that. If a decision is made where the Government has an interest in and a criticism comes that the person considered it to be a fair criticism on a matter of public interest, not even public interest, on the decision itself ...

What is fair criticism? It is where the fact is stated. There must be a substratum of fact. So there is the substratum of fact which actually comes verbatim out of the Court's proceeding and then that is followed by comment. The comment ought to be fair comment, because there cannot be fair comment that is not predicated on any substratum of the fact coming out of the

case. I do hope that you are listening, Hon. Member Mr. Nandlall, because it is all free right now. These two provisions are laudable on a mere visual apprehension, but on deeper reflection they have a lot of teeth, and these things needed to be consulted before in relation to these matters. I explore that side bar consultation. We were not part of that.

Now, in clause 16 - "Limitation of action for contempt":

> "All proceedings for contempt of Court under this Act shall be brought within one year from the date on which the contempt is alleged to have been committed."

What is this speaking to? This could only be speaking to civil contempt; it cannot be speaking to contempt in the face of the Court. That is why it cannot be said that there is no civil contempt because this can only contemplate a civil procedure. So the whole Bill is jumbled. It may be because of the speed of which it has been brought to this Hon. House. I believe that if we had consulted and spent more time on this Bill we would have been able to have a Bill where everyone would have signed on to it, and practitioners, for example, the nearly three hundred practitioners that are on the roll, would not be taken by surprise overnight by it. We do not mind the majesty of the Court is being maintained, and I am happy that the Hon. Attorney General spoke to some code of conduct that would be coming out also for the bench. He recognises that this has to be… because he is there as a practitioner. He knows how the bench would operate. He knows that. So I am happy that he is talking about a code of conduct for the bench.

But we do not want any Bill which could be used as a political weapon against hard-working practitioners in this country or persons who are forthright, upright, and righteous, and unspoken in their criticisms of the unfairness. And this speaks to the taxes too. We must have Ministers who earned a salary and have resources like the Raj and like a tsar be examined. We have documented Ministers who have accumulated vast wealth on their salaries, so we really need to deal with taxes. We really need to deal with those. I do not have a problem with taxes because I have just sold a vehicle and had to get a certificate of compliance. Anybody with brains would know as, Mr. Nandlall said so – I suspect that brain is not there – that you cannot get a certificate of compliance unless you have has paid off your taxes. I rest my case.

Thank you Mr. Speaker. We would have great difficulty in supporting this Bill at this stage. [*Applause*]

Mr. Ramson (replying): Cde. Speaker, I must say that on the next occasion I would try to be the elected Member of this House when I will be constrained by my professional duties, as a legislator, to remain so that I can be regaled by some of the wisdom that is obviously lacking in this House, tonight.

I wish to say that this question of consultation... I do not know why. This place has got so democratic that even their own concessions that they have been consulted are now being said to be false and fallacious. I do not know what more consultations more there can be from the President of the Bar Association during whose tenure one of the speakers on the Oppositions side served as the Vice-President nearly two years ago. I do not know why we have to elongate the process to the point of making the whole process vanishes into thin air. We have to move with some speed to get things done in this country if we want good governance and development to be kept apace. So it is that that particular argument, from whoever raised, has no merit. That particular argument is not only facile, it is also factious.

Now, let me say another thing. I gather that some of us do not recognised when the statute uses particular words. This statute differs from the old legislation in that it uses the word "offence". "Offence" is not civil offence, and I want people to recognise that there are bound by what the statute states. The draftsman must have a reason for using the word "offence". We are dealing with the English language used in a parliamentary sense, bound by the parameter of the interpretation that is given to legislation. I am saying that the word "offence" speaks, without equivocation, about a criminal act, whether it arose out of a civil matter or not. I plead guilty to having inserted the word myself.

I can assure you, Cde. Speaker, that this Bill has been in some incubation period that even an elephant would have delivered a baby - this particular Bill. I wish to say without any fear of contradiction that when this Bill was crafted it was the intention of the draftsman, on my direction and with my collaboration, to identify, with specificity, all those likely areas of misconduct that would attract penal consequences - penal in its true criminal sense. Do you know the word penal? In Trinidad, they said *penaal*. That is why the Trinidadians are where they are. When it rains the entire place is flooded out - five feet of water in two hours. We have a blessed country. So *do not ever curse the bridge over which you walk.*

My dear friend and colleague, the Hon. Basil Williams, I know he is trying to be nice, but when the battle lines are drawn, I can safely say that it would be out of character – some people say c(h)aracter, but the word is character – for me to assist my combatant. I can assure

my learned friend and Hon. Member of this House that I expect no quarter and I shall give none.

I would assure that this Bill has been so crafted to ensure that there is no crossing of the line, whether constitutional or otherwise, and, in order, to ensure too that there is a certain level of order, good governance and respect for the rule of law. If I am not mistaken, I heard the argument that two judges said that they have never seen it. Well, I can assure you that I have news for this House, and it is soon going to be the subject of a very hot debate ... - I know it is a little late and I do not have my usual medication. [**Mr. B. Williams:** Make it short.] No. My bed time is beckoning – and they better come prepared, because I have it at the highest level. I understand that the judges claimed not to know about the time limit for Judicial Decision Act, something that was passed one year ago. Those responsible, I hope, will bring whatever motion or Bill, or whatever it is for us to make the disclosures.

Mr. Speaker: I just approved the question.

Mr. Ramson: You did approve the question, Mr. Speaker

Mr. Speaker: I did.

Mr. Ramson: Thank you Sir. I shall remember that it is out of the graciousness and the neutrality with which you have conducted yourself in this House, if I may say so, Sir, that matters of importance, especially where they impinged upon the governance of this country..., and that was the purpose of that Bill. I can assure my learned friend and colleague, Hon. Basil Williams, that the cast net has been cast, far and wide - whether it is the lawyers, whether it is the magistrate and whether it is the judges at any level, as long as I remain a Member of this House, the code of conduct... I have it on my desk. If he talks to me properly, I will bring the code next week. [**Mr. B. Williams:** You mean, it is to the Hon. House] It is the code of conduct for judges. If you talk to me properly, as you know what that means.

So I am not intimidated by people's stature. I know some members of the legal profession are intimidated when they go to certain Courts. I am not, I have never been, and hopefully I do not have to come back to those places. I can assure that when the revelations are made the quality of reaction will be seen from the very same people who, it is alleged, have not seen or consulted. *Talk half, lef half*. [**A Hon. Member:** *Dem boys seh*] This is not *dem boys seh.* It is Ramson *seh*.

So I must concede that it was enlightening to hear some of the apprehensions; enlightening only to the extent that it is good that there are two or three sides to an argument, but I can assure that this Bill has been so thoroughly investigated that we even went to the extent of ensuring that clause 17 was added. If any other Bill was looked at concerning the Contempt of Court that will never be seen in it. This is to ensure that there is no dilution of the defences that are available to any person or alleged person in contempt. That is why it was right to say that there were allegations about some person drawing a gun in a Court. Do not think I have forgotten. Do not think that I do not know who the author of the notice was and how that author of the notice did not consult with anybody, even in the judiciary, and how that author was related to the compliant, and the judge who was sitting was consulted and he said that he never saw anything of the kind. He must have been blinded, because the courtroom is big like from here to there. But it suits the purpose of the Opposition people to raise nasty allegations, unsupported by any fact. I know the story. I told you already that thirty-eight years have taught me a lot of work, taught me a lot of thing of in and out of the Courts.

So, I ask, Cde. Speaker, that this Bill be read a second time as part of the process in its enactment. [*Applause*]

Question put and carried.

Bill read second time.

Assembly in Committee.

Clause 1

Clause 1 agreed to and ordered to stand part of the Bill

Clause 2

Mr. Ramson: Cde. Chairman, there is in clause 2 the omission of the preposition "with" in the third line, after the word "interferes" and in the fourth line…

Mr. Chairman: Clause 2, where? Is it in the definition section?

Mr. Ramson: Correct. It is in the interpretation section, Sir.

Mr. Chairman: Yes.

Mr. Ramson: It is the preposition "with" in the third line, "...obstruct or interferes with...",

and in the fourth line, "...obstruct or interfere with..."

Mr. Chairman: Yes.

Mr. Ramson: Thank you.

Amendments put and agreed to.

Clause 2, as amended, agreed to and ordered to stand part of the Bill.

Clauses 3 to 5

Clauses 3-5 agreed to and ordered to stand part of the Bill.

Clause 6

Mr. Ramson: Cde. Speaker, I rise again to indicate that the words, as I earlier did, "on indictment" in clause 6, be deleted.

Amendment put and agreed to.

Clause 6, as amended, agreed to and ordered to stand part of the Bill.

Clauses 7 to 19

Clauses 7-19 agreed to and ordered to stand part of the Bill.

Assembly resumed.

Bill reported with amendments, read the third time and passed as amended.

ADJOURNMENT

Mr. Hinds: Mr. Speaker, I move that the House be adjourned to a date to be fixed.

Mr. Speaker: The House is adjourned to a date to be fixed.

Assembly adjourned accordingly at 10.20 p.m.