

*Leave of Absence**Tuesday, March 08, 2005***SENATE***Tuesday, March 08, 2005*

The Senate met at 1.30 p.m.

PRAYERS[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. Vice-President: Hon. Senators, I wish to advise that the President of the Senate, Sen. The Hon. Dr. Linda Savitri Baboolal is out of the country attending the Fifty-fourth Westminster Parliamentary Seminar in the United Kingdom, from March 02 to March 19, 2005. During the absence of the President, the Vice-President will preside over the sittings and Mrs. Joan Hackshaw-Marslin will act temporarily.

Hon. Senators, I have also granted leave of absence to Sen. Basharat Ali from today's sitting of the Senate.

SENATOR'S APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Dr. Savitri Baboolal is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the

Senator's Appointment
[MR. VICE-PRESIDENT]

Tuesday, March 08, 2005

Republic of Trinidad and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a Member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Linda Savitri Baboolal.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 8th day of March, 2005."

OATH OF ALLEGIANCE

Sen. Joan Hackshaw-Marslin took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Penal/Debe Regional Corporation for the period October 2003 to September 2004. [*The Minister of Local Government (Sen. The Hon. Rennie Dumas)*]
2. Report of the Sangre Grande Regional Corporation for the period October 2002 to September 2003. [*Sen. The Hon. R. Dumas*]
3. Report of the Sangre Grande Regional Corporation for the period October 2003 to September 2004. [*Sen. The Hon. R. Dumas*]
4. Report of the San Juan/Laventille Corporation for the period January 01, 2002 to September 30, 2003. [*Sen. The Hon. R. Dumas*]
5. Report of the Statutory Authorities' Service Commission for the period October 01, 2003 to September 30, 2004. [*The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith)*]

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Wade Mark:

Community-based Environmental Protection and Enhancement Programme

28. A. Could the hon. Prime Minister and Minister of Finance inform the Senate from which ministry vote/head is the CEPEP programme funded?

- B. Could the Minister provide the Senate with details of the allocation of expenditure made to the CEPEP programme on a yearly basis from its inception to May 31, 2004?
- C. Could the Minister indicate what plans, if any, have been put in place to conduct an efficiency and forensic audit of the CEPEP programme from its inception to May 31, 2004?
- D. Could the Minister inform this House whether the Auditor General's Department is responsible for the audit of financial accounts of the CEPEP programme? And if not, why not?

Sen. Wade Mark: Mr. Vice-President, I have been informed by the Minister in the Ministry of Finance, Sen. The Hon. Conrad Enill, that he has the answer, but I would prefer to have the Minister present because sometimes when answers are given by persons who are not in charge of ministries, it is a bit difficult for them to answer supplementals.

With your leave, Sir, I would like a deferral of one week, until the Minister could be present to answer this particular question.

Question, by leave, deferred.

**Piarco International Airport
(Details of paving of runway)**

- 34. Sen. Wade Mark** asked the hon. Minister of Works and Transport:
- A. Could the Minister provide the Senate with the recommendations of the engineers of the Ministry of Works and Transport in respect of the paving of the runway at Piarco International Airport?
 - B. Could the Minister state the total value of the work certified to date by the consultant engineers?
 - C. Could the Minister further inform the Senate whether the consultant engineers provided any performance bond for the project?
 - D. If the answer to (c) is in the affirmative, could the Minister indicate what steps the Government intends to take to recover moneys for work that the engineers certified that did not meet the qualified standard specified in the contract?

The Minister of Works and Transport (Hon. Franklin Khan): Thank you very much, Mr. Vice-President. I guess the Minister is here to answer.

I rise to respond to question No. 34 as posed by Sen. Wade Mark. Two engineers of the Ministry of Works and Transport were members of the evaluation team appointed by the Central Tenders Board for the Piarco International Airport runway overlay project. They recommended that the contract be awarded to Jusamco Pavers Limited, the lowest tenderer.

The total value of work certified to date by the consultant engineer is \$16,524,270.22.

Consultants are not required to provide performance bonds. This is a requirement of the contractor. Consultants are required to acquire professional liability insurance.

The Government is currently pursuing all legal and contractual remedies under the contract with both contractor and consultant to obtain remedies for any substandard work or professional negligence that may be so deemed.

I thank you, Mr. Vice-President.

Sen. Mark: Could the hon. Minister indicate the overall cost of this project?

Hon. F. Khan: Do you mean the contracted price?

Sen. Mark: Yes.

Hon. F. Khan: The contracted price was \$20,240,567.60 plus Vat.

Sen. Mark: Could the hon. Minister indicate to us what was the cost overrun, having regard to the contractual price that he just provided to us?

Hon. F. Khan: Mr. Vice-President, it would be difficult to determine that at this point in time. I have given the total value of work certified to date by the consultant engineer, which is work we are authorized to pay for and of which we have paid a substantial portion. Non-certified work, because of what has happened with the project, is left to be seen. We have admitted publicly that some of the work was not up to specifics and certain aspects of the matter would be ultimately subjected to litigation and the seeking of remedies under the terms of the contract. As I said, we have already certified \$16.5 million of work to date.

There is another question that answers how much we have paid to date and you will hear that today.

**Piarco International Airport
(Criterion used in paving runway)**

35. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- A. Could the Minister inform the Senate what was the criterion used in awarding the contract for the paving of the runway at the Piarco International Airport?
- B. Could the Minister also indicate:
 - (i) what evidence was used to determine the capacity and experience of the contractor prior to the contract being awarded; and
 - (ii) whether the contractor was the lowest bidder?

The Minister of Works and Transport (Hon. Franklin Khan): Mr. Vice-President, in response to question No. 35, the criteria used in awarding the contract for paving the runway at the Piarco International Airport were as follows:

First stage technical evaluation

Assignment of points

Tenderers were assessed according to the criteria given in the following table. These are the categories in which the tenderers were evaluated in the first stage of the evaluation.

Technical

Background	5 points
Financial capacity	15 points
Available manpower and resources	25 points
Similar work experience	25 points
Implementation strategy	30 points
Total	100 points

Acceptability was to be determined by the following necessary and sufficient conditions, as follows:

- (1) Tenderer scoring less than 50 per cent of the points under Financial Capacity shall be rejected.
- (2) Tenderer scoring less than 50 per cent of the points under Implementation Strategy shall be rejected.
- (3) Tenderer scoring less than 60 per cent overall shall be rejected.

Second Stage Evaluation

All firms found to be acceptable in the first stage technical evaluation were assessed in the second stage price evaluation. The price envelopes of the contractors found to be acceptable were opened and tenders evaluated, considering price. The contractor with the lowest evaluated price from the second stage price evaluation was recommended to the Central Tenders Board for the award of the contract.

A determination of the capacity and experience of all tenderers was based on information requested in the bid documents and provided by the tenderers. In addition, site visits were undertaken by the evaluation team, in conjunction with the consultant engineer to the plant and equipment of all tenderers found to be acceptable in the first phase technical evaluations stage. Further, the consultant engineer prepared a report identifying the capability of each tenderer in keeping with the requirements of the design.

The contractor was the lowest bidder.

Sen. Mark: Could the hon. Minister indicate to this Senate what kind of experience this particular contractor had in similar projects; or would he say that this was a new experience on the part of this contractor, Jusamco Pavers Limited.

Hon. F. Khan: Mr. Vice-President, if I look at the first stage technical evaluation assessment, 25 points were awarded for similar work experience. When I read how one qualifies or is disqualified, it says that if one scored less than 50 per cent on implementation or financial, one would be disqualified and if one scored less than 60 overall, one would be disqualified.

Under similar work experience, we have to understand that we do not pave a runway every day. We pave and there are some similarities between paving highways and runways. I guess the evaluation team took all that into consideration. While I do not want to bat for any contractor, some of the larger contracting firms in Trinidad—Jusamco, Seereeram Brothers, Coosal are the three bigger ones—so I guess once you fall in that category, the chances of being

rejected on technical grounds are minimal. They went to the lowest bid. We have some issues to face and we will be facing them directly.

**Piarco International Airport
(Repaving of runway by public tender)**

36. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- A. Could the Minister inform the Senate:
- (i) if the contract to repave the car park at Piarco International Airport was awarded by way of public tender;
 - (ii) of the name of the contractor who was awarded the contract; and
 - (iii) who supervised the contract for the repaving of the car park?
- B. Could the Minister also state:
- (i) whether the engineers from the Ministry of Works were consulted prior to the award of the contract;
 - (ii) if they were, what were their recommendations; and
 - (iii) were the engineers satisfied with the quality of work done on the car park?

The Minister of Works and Transport (Hon. Franklin Khan): Mr. Vice-President, again I stand to reply to question No. 36 as posed by Sen. Mark.

There was no contract to repave the car park at the Piarco International Airport. Just to be technically correct, there was a contract awarded by the National Insurance Property Development Company (NIPDEC) to expand the car park at the Piarco International Airport. NIPDEC invited tenders in 2003 for the works in accordance with its tendering procedures.

Jusamco Pavers Limited was awarded a contract to expand the car park.

NIPDEC engineers on the project certified the work undertaken, indicating their satisfaction with the work done.

The contract was administered by the Airports Authority of Trinidad and Tobago and, as such, there was no input from engineers of the Ministry of Works and Transport on this project.

**Piarco International Airport Runway Project
(Repair of Botched Work)**

37. Sen. Wade Mark asked the hon. Minister of Works and Transport:

- A. Could the Minister inform the Senate how much public funds has been expended to date on the Piarco International Airport Runway Project; and
- B. Could the Minister also state the amount of money that will be required to repair the botched work on the runway?

The Minister of Works and Transport (Hon. Franklin Khan): Thank you very much, Mr. Vice-President. I guess you could get a name plate for me now. *[Laughter]* I again rise to respond to question No. 37. Just for the record, a whole pile has already been approved for next Tuesday.

Expenditure on the Piarco runway rehabilitation project, to date, as I said in an earlier question, is \$16,531,899.82, comprising advanced payment to contractors in the sum of \$2,431,952.40. This advanced payment was to be recovered from the interim payment. Payment to contractors on certificate was \$12,782,139.81—*[Interruption]* \$16 million is the sum total and this is the breakdown. Payment to consultants is \$1,317,807.61.

The design work to remedy the defects was 90 per cent complete at the end of December 2004. Additional field work was required leading to an expected completion date by mid-February 2005. Accordingly, an estimate is not yet available as to the full extent of the remedial work and is at present being evaluated by a specialist engineer in airport paving design hired by the Airports Authority of Trinidad and Tobago.

This question was done and approved by the Cabinet around mid-February—two to three weeks ago. For the record of the Parliament, since then we have received the full technical report from the consultants who are Roy D. Mc Queen & Associates. The engineers are making some final calculations before we get the new cost as to what the remedial work would be. Sen. Mark has the option to ask another question or to call me any time and the figures would be made available to him. He can give me about a week and a half.

Sen. Mark: Mr. Vice-President, could the Minister indicate what has been his assessment of the estimated cost overrun of this project, seeing that the original cost was \$20 million? Could he share with us what has been his estimation on the cost overrun to date on this particular project?

Hon. F. Khan: Mr. Vice-President, with a document like this, for which we paid a tidy sum, I would not want to estimate. I would say to wait a week and a half and he would get the official figure as to what the remedial work would cost. We add on what we have already spent. We know the contract sum and, whether we like it or not, the difference between what we have to spend, what we have already spent and the original contract sum will mathematically be cost overrun. As to what the reasons were, we are willing to debate that. Patience is virtue.

Sen. Mark: Could the Minister clear the air for me? Is he saying that the botched job on this airport runway has been completed? It was supposed to be completed at the end of February 2005. Is that what he just told us there?

Hon. F. Khan: The technical evaluation by the consultants, Mc Queen & Associates, has been completed. This is the report here. They have indicated what went wrong; what, technically speaking, is the remedy, and we are just finalizing what this solution would cost. When we get the figures in a week and a half, we would determine the cost overrun.

Sen. Mark: From that report, will you determine the kinds of repairs required to bring the airport runway up to international standards, consistent with the international regulations?

Hon. F. Khan: The answer is yes. All the drawings are here.

Sen. Seepersad-Bachan: Mr. Vice-President, could the Minister indicate if it is the Government's intention to reclaim any liquidated damages on this contract?

Hon. F. Khan: In an earlier answer, I indicated that we are looking at every possible remedy as we speak. Just to be technically correct, we have already terminated the contract of the consultant engineers, which is Geotech & Associates, and have replaced them.

BREACH OF PRIVILEGES

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, with your permission and in accordance with Standing Order 26(2) and (3), I raise a matter directly concerning the privileges of this Senate. This matter concerns correspondence dated January 05, 2005, received on January 12, 2005 by me from Dr. Phillip

Breach of Privileges
[SEN. PROF. DEOSARAN]

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Ayoung-Chee, in which, in addition to several insults, my physical safety was directly threatened and further, with his warning that should I visit the San Fernando General Hospital while he was on the premises, “I would suffer his wrath”.

He warned that if ever I decided to visit the hospital, I should do so only when he is not present, otherwise I would meet up with his “full wrath and rot” and further, that he would embarrass me in public. Obscene language was also used by this doctor, whose name and address were stated in his correspondence.

For the benefit of distinguished Members of this Senate, I wish to very briefly elaborate. These threats were related to my Senate contribution on November 30, 2004, when I spoke on the Bill to decentralize one of the regional health authorities. On that occasion, I commented on the need for better care for the sick and the poor amongst us, especially those who visit our public health institutions for such care. I then noted that some doctors should show more compassion for such patients and make money less of a consideration.

During that Senate contribution, I called no names; neither did I single out any particular medical association for criticism or mention. However, Mr. Vice-President, by correspondence sent through my fax machine and dated January 05, 2005, Dr. Ayoung-Chee issued his very disturbing threats. On several previous occasions, he had sent me faxes, but not of this nature. Some of those letters he sent to me were published in the newspapers under his name.

It is well established in the law of Parliament that it is a breach of privilege and contempt of either House to obstruct, insult or molest a Member while in the execution of his or her duties. In fact, May’s *Parliamentary Practice, Twenty-Second Edition*, page 121, states:

“It is a contempt to molest a Member of either House while attending the House...”

Further both Houses roundly condemn assaulting, insulting or menacing Members of both Houses.

Mr. Vice-President, my freedom of movement, my constitutional right to security of the person and, more particularly, my duties as a Senator, have all been put at risk by this doctor’s letter. One is expected to be robust in politics, in public affairs, of course, but a physical threat against a Senator in carrying out his duties cannot be seen as a simple matter. Criticism is one thing, a physical threat is another and this House should draw the line. This, of course, Mr. Vice-President, has nothing to do with any current dispute with the health authorities over any doctor’s salary.

Parliamentary privileges are certain rights and amenities enjoyed by both Houses and their committees collectively, as well as by Members of this Senate individually. This is so that we as Senators can perform our duties freely and without hindrance as we are constitutionally expected to do.

One such privilege or right is the freedom from intimidation and molestation as we speak here or go about our parliamentary business. Should such threats be left alone, who knows how many other Senators, if not now, but in the future, may be less willing to speak freely and fearlessly on important subjects before them?

Further, should this threat be passed over easily, who knows how many others may be tempted to dispatch similar threats unto other Members of this Senate?

I, therefore, view this doctor's letter, not only as a threat upon my personal safety, but as an assault on this entire Senate. I, therefore submit, with respect, that it be referred to the Committee of Privileges forthwith for urgent and immediate action. The relevant documents will be appropriately submitted. I so wish to move, Mr. Vice-President.

Mr. Vice-President: Hon. Senators, when I decided to permit Sen. Prof. Deosaran to raise the matter in this Senate, it was because I took it as a very serious issue. I take note of the matter. I wish, however, to reserve my decision on this for the next sitting, which will be tomorrow.

2.00 p.m.

SUBSTITUTE TEACHER SYSTEM

The Minister of Education (Sen. The Hon. Hazel Manning): Mr. Vice-President, thank you very much. I rise to make a statement on the introduction of a Substitute Teacher System in public schools in Trinidad and Tobago. I wish to apprise you and other Members of this Senate of a new initiative the Ministry of Education is embarking upon, to assure quality education is provided to our nation's children. In this regard, I refer to a Substitute Teacher System, to be introduced in secondary schools in Trinidad and Tobago in the year 2005.

Over the years, the school system, particularly at the secondary level, has denied some school children from receiving adequate contact time with teachers. To fulfil the Ministry's obligation to the provision of quality education to students, the Ministry intends to fill a gap caused by teacher absenteeism, by introducing a Substitute Teacher System in schools, starting with secondary schools.

Substitute Teacher System
[SEN. THE HON. H. MANNING]

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Recently, Cabinet agreed to the Ministry's proposal to introduce a Substitute Teacher System in public schools in Trinidad and Tobago. A Substitute Teacher System Model for secondary schools was developed by consultants procured under the Secondary Education Modernization Programme (SEMP). The model is designed using an information technology platform. The administration of the system would be decentralized to education district offices and schools. The education district offices would manage the database for the system and attend to administrative matters such as payment of salaries to substitute teachers, and keeping records of their performances.

Accessing the service of the substitute teacher on demand would be done at the schools. Action in the system would be triggered when it is known that a teacher would be absent on a very short-term basis, for example, planned absence, extended sick leave or maternity leave. On being aware of the teacher's absence, the principal accesses the database and makes a request for a substitute teacher with the relevant skill-mix, and then contacts the candidate to report for duty.

The substitute teacher would be drawn from a pool of persons seeking part-time assignment through the use of advertisements. Persons who may qualify for such assignments may include: retirees, students attending university and college or other qualified personnel. Non-academic personnel with relevant skills may also be considered.

The annual estimated cost involved in operationalizing the system is \$12,659,500 of which \$2,411,500 is a one-time cost, and \$10,248,000 will be the recurrent cost. Funding would be sourced under the Ministry's recurrent expenditure allocation.

Steps are currently being taken by the Ministry of Education to develop policy guidelines for implementation of the system. Moreover, training would be provided for all users of the system and this training would be facilitated by the consultants.

The Ministry's target for implementation of the system is within the next school academic year, which will commence in September, 2005. I thank you, Mr. Vice-President. [*Desk thumping*]

TOURISM DEVELOPMENT (AMDT.) BILL

[Second Day]

Order read for resuming adjourned debate on question [March 01, 2005]:

That the Bill be now read a second time.

Question again proposed.

Mr. Vice-President: Senators who already spoke on the Bill are: Sen. The Hon. Howard Chin Lee, the Minister of Tourism and mover of the Motion, Sen. Carolyn Seepersad-Bachan, Sen. Prof. Kenneth Ramchand, Sen. The Hon. Danny Montano, Sen. Sadiq Baksh, Sen. Bro. Noble S.A. Khan, Sen. Mary Kathleen King, Sen. The Hon. Rennie Dumas, Sen. Wade Mark, Sen. Dana S. Seetahal. Sen. The Hon. Howard Chin Lee shall start winding up the debate.

The Minister of Tourism (Sen. The Hon. Howard Chin Lee): Mr. Vice-President, thank you very much. Today, I rise to respond to the many issues that were raised at the last sitting relating to the Tourism Development (Amdt.) Bill. I just want to thank all the Senators who have contributed to the debate; who have made suggestions as to what we ought to do with respect to the tourism plan with regard to social implications on tourism; and all of the issues regarding the policies and directions that tourism ought to take. There were many relevant points that were made, and some points were not too relevant—normally by Sen. Mark—but there were many suggestions and considerations that we will certainly take into the Ministry and use them as we continue to develop our tourism plan.

However, I just want to remind the Parliament that the issue that we are dealing with today is the Tourism Development (Amdt.) Bill. Mr. Vice-President, the reason that we are bringing an amendment, is simply to correct the deficiencies that existed in the Tourism Development Act. This was not intended to create a paradigm shift in tourism or to bring new incentives that were not provided for but, really, to correct the deficiencies that existed in the previous Act. It is intended to make clear, and to provide the incentives that were promised under the previous Tourism Development Act.

The main amendment that we are bringing forward today is the ability to exempt from tax interest on approved loans, and to provide bridging finance for persons who have invested in tourism projects, as well as to allow for retroactivity for approved tourism projects to access loans that were done previous to final approval.

The intention of the Bill is also to reintroduce certain provisions that were provided for under the Hotel Development Act of 1963, such as accelerated depreciation on depreciable equipment and capital allowance on approved capital expenditure.

Tourism Development (Amdt.) Bill
[SEN. THE HON. H. CHIN LEE]

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The other minor changes deal with bringing clarity to the motor vehicle tax under section 4(2) where the importers of motor vehicles for use in approved tourism projects are to be exempted from the payment of motor vehicle tax, as well as to put dive operations under section 9, which is a section that is reserved for national investors. This is simply what we are attempting to do by bringing this Tourism Development (Amdt.) Bill.

Mr. Vice-President, in responding to all of the suggestions, I wish to pay attention to the issues that were raised regarding the Tourism Development (Amdt.) Bill. In Sen. Seepersad-Bachan's contribution—a lot of her suggestions can be used in the development of tourism—she said that we must pay attention to the importance of cultural diversity, and the cosmopolitan country in which we live. I could not agree with her more that the beauty of our country is the fact that we are so diverse, in terms of our ethnic backgrounds, our ethnic cuisines, our events and our cultural activities such as Carnival and Divali that are celebrated during the year. All of this is indicative of the ethnic diversity that we have in Trinidad and Tobago.

I just want to let the Senator know that very soon we will be having an international culinary event, which will take place on May 22, 23 and 24 at the Cipriani Boulevard. You will be able to experience the many ethnic cuisines that we have here. Some of the top chefs will be available. I am hoping that I will see Sen. Seepersad-Bachan at that event.

The Senator also talked about linkages with the agricultural sector. I could not agree more with her. Apart from the agricultural sector, there are many other linkages. The tourism industry has linkages to the manufacturing sector; it has linkages to the service sector; it has linkages to the entertainment sector; and it has linkages to many other sectors. This industry is not only about hotel rooms and accommodation, but it is an industry. I referred to that industry in my last presentation as: "the tourism tree" which has branches into all other areas of business. So I could not agree with her more that there are linkages to the agricultural sector.

The Senator also talked about relevant legislation impacting on tourism. That is also true. It is not only the Tourism Development Act which impacts on the tourism industry, but there are other Acts such as; the Motor Vehicles and Road Traffic Act, the Town and Country Planning Act, the Corporation Tax Act and the Tourism Development Act that we are now amending. There are many other Acts that impact on the development of business and the tourism industry.

One has to be very mindful that in order to succeed and in order to decrease the amount of red tape, one has to harmonize and make all this legislation clear, and that is what the Senator said. That is why in the new Tourism Development Corporation (TDC), we are setting up a specialized unit that will deal specifically with investors and the legislation that is needed to provide incentives for persons who want to invest in the tourism industry. So there will be a department dedicated to legislation; and there will be a department dedicated to persons who are thinking of investing in the industry.

The one area that I did not agree with the Senator on was the fact that the Senator said that moving from Tidco to TDC was a retrograde step. Of course, we are entitled to our opinions, but I took the liberty and did a little research. Of course, I did the research before forming the TDC. I wanted to see what models are used in other countries and what models are used in the Caribbean—what models are used in the United States of America; what models are used in Europe; and what models are basically used in Asia.

I have a document which talks about tourism promotion and marketing bodies. For example, this document talks about Barbados. Barbados has a Ministry of Tourism which provides leadership in the sustainable development of the Barbados tourist industry through the formulation of policies. So the Ministry of Tourism would be responsible for policies, through the provision of timely and quality research and the development and maintenance of the industry by standards. However, the Barbados Tourism Authority undertakes the marketing and promotion function. So there is a separate entity which deals specifically with the marketing and promotion in the industry.

In Jamaica, there is the Jamaica Tourist Board, and they deal with the marketing of tourism including advertising, public relations, event marketing and other promotional efforts. There is also an entity in Jamaica called: the Tourism Product Development Company Limited (TPDCO) and that company has the mandate of developing and improving Jamaica's tourism product.

In Singapore, there is an entity called the Singapore Tourism Board and that is also a statutory board which deals with the marketing of activities in Singapore.

In Hong Kong, there is the Hong Kong Tourism Association.

In Ireland, the Department of Tourism and Sport has the Irish Tourist Board, which is an executive agency of the department of tourism, responsible for tourism promotion and marketing activities.

In New Zealand, there is the New Zealand Tourist Board.

In all these countries there is an entity that is dedicated to marketing and promoting tourism. All that we have added to that portfolio is the ability to have tourism development as part of it, seeing that we are still in the embryonic stage, in terms of developing tourism. The new TDC will be responsible for tourism promotion, marketing, event planning, tourism development and tourism investment, specifically dealing with the needs of persons wanting to invest in the tourism industry.

The Senator also talked about the ability to approve capital expenditure at the point in time when interim approval is granted. Now that is a very good suggestion, if it were a practical solution. The problem with approving capital expenditure, after an interim approval has been granted, is the fact that upon completion, the figures that you would have used as an estimate—for example the construction of a hotel—may not necessarily be the same as what was applied for interim approval. In other words, it would be very difficult to grant capital expenditure as an interim approval, and then granting all those exemptions which include the granting of the tax free concessions in the interim stage. It is better to grant it after the fact that it has been approved, and then allow that amount to be retroactive.

With respect to the possibility of variation, as I said, the estimated and actual capital expenditure could be wide. I know many persons here may have built a house and did an estimate, and the final cost, at the end of the construction of the house, may very well vary from what you had originally perceived to be the estimated cost of construction, and the same thing applies in the industry itself.

The Senator also talked about the Tourism Master Plan. With respect to the Tourism Master Plan of 1994, I would just like to say that as a whole, the industry has changed significantly. From 1994 to today, we have seen changes in the airline industry with the amalgamation of European Airlines; we have seen consolidations in the cruise ship industry; we have seen the ability of the use of the Internet as a booking agent and e-ticketing; and we have noted with great interest, the emergence of the conference and tourism industry. We are also seeing now where Tobago is highly dependent on leisure travel. Recognizing that Tobago's source destination is out of Europe, and Trinidad's source destination is more business travel and tourism we have, therefore, borrowed some elements of the Master Plan and altered it to keep in mind our Vision 2020.

There is a tourism committee that is set up to deal with Vision 2020. I have to reassure the Parliament that we are following closely what is being done. For example, things that were borrowed from the Tourism Master Plan were: the Waterfront Project, the Central Ridge Eco-Tourism Project, certain developments in Chaguaramas and certain developments in Tobago. All those were elements of the plan, but we have varied it to deal with the many changes that we have today.

Mr. Vice-President, I wish to return to the Tourism Development Act. I also want to discuss the point that was raised with respect to the duplication of benefits, with regard to section 35A.(1), clause 16 of the Tourism Development (Amdt.) Bill and what is stated in the Tourism Development Act. Section 35A.(1) talks about accelerated depreciation and capital allowances, and the Senator asked whether there was a duplication. I just want to reiterate what it says:

“35A. (1) Where capital allowance or accelerated depreciation is granted in an approved tourism project Order—

- (a) the capital allowance may be set off against the gains or profits accruing to the owner or operator from the rental or operation of the approved tourism project at the rate of one-fifth of the approved capital expenditures in each of any five accounting periods during the eight accounting periods after the accounting period in which the tax exemption period expired and not thereafter;”

The Tourism Development Act, 2000 provides for a tax exemption not exceeding seven years in respect of the gains or profits from the approved tourism project. It went on to say that it is only after the seven-year period, can the benefits of accelerated depreciation and capital allowances kick in. So this is not a duplication, one precedes the other.

Sen. Mary King raised some very important issues. She talked briefly about the information technology (IT) sector and how it impacts on our economy. Of course, Senators are aware of the Wallerfield project which will deal specifically with IT industries and the intelligence-based industry, as well as out-sourcing. That particular project under Evolving TecKnologies and Enterprises Development Limited (eTecK) will deal with the IT industries.

The Senator also asked about the ability to monitor motor vehicles, and to ensure that they are used as a certified tourism project. I just want to inform the Senator that before one acquires permission to use a vehicle in a tourism project, a certain due-diligence is done by the Ministry and Tidco. For example, the owners

or operators of any motor vehicles used in a tourism project must belong to various organizations like the Tobago Tourism Association, the Piarco Airport Authority, the Tour Guides Association or the St. Christopher's Taxi Drivers Association. We have considered these associations as bona fide associations which deal specifically with tourism. If these persons do not belong to any one of these associations, they will have to prove that these particular vehicles are used for the purposes of tourism only. Now, if these vehicles are not used for the purposes of tourism, within the Act, the Ministry of Tourism, in conjunction with Tidco, can conduct sporadic checks on the owners and operators of these vehicles, to ensure that they are being used for approved tourism projects only. If for some reason these motor vehicles are being used for another purpose, then that particular permission that was granted can be revoked, and that has been done before.

The Senator also raised the issue about charter boats, and why they were removed from schedule 9. Charter boats were removed from schedule 9 because they are already covered under section 9 of the TDA, which reserves transportation services for nationals only, and charter boats fall under transportation services. So there is duplication there. For international investors, the minimum expenditure is non-applicable. With reference to charter boats it says that owners and operators of charter boats, as I said, are already included in that schedule. If you check schedule 9, again, there are certain industries which are allowed only for nationals. Also included are: dive operators as well as transportation services.

The Senator also asked about the Tourism Development Act, 2000 and whether or not this Bill is silent on ecotourism. Well, if we refer to schedule 5 of the Act, the camp sites, dive and eco-lodges are types of tourism accommodations that are eligible for incentives under the TDA. So that eco-lodges, which you referred to, are under the schedule and incentives for eco-lodges are provided for under the Tourism Development Act, 2000.

The Senator also asked about the rate of accelerated depreciation. The rate of depreciation is also spelled out in section 35A.(1) of the Tourism Development Act. This section reads:

“35A.(1) Where capital allowance or accelerated depreciation is granted in an approved tourism project Order—

- (a) the capital allowance may be set off against the gains or profits accruing to the owner or operator from the rental or operation of the approved tourism project at the rate of one-

fifth of the approved capital expenditures in each of any five accounting periods during the eight accounting periods after the accounting period in which the tax exemption period expired and not thereafter;”

So, it states how and the format in which it ought to be used. I think Sen. Montano will give you more clarity on that matter. I am not a tax person.

Mr. Vice-President, Sen. Mark asked about how much money we are dealing with in terms of refunds in section 38. I do not have an exact figure, simply because these figures have to be audited; they have to be approved by the Board of Inland Revenue; and they have to be approved by the Ministry of Finance. These are audited figures which I am not privy to, but what I can do is give you an idea of the total capital expenditure that was done before the Act, and give a rough estimate of what I believe will be the figure. By all means, this will not be the exact figure. If you will permit me to give an estimate—that is the best that I can do—because those figures are provided after the projects are approved.

With regard to projects, there were 18 completed tourism projects and the owners of these approved tourism projects are awaiting the passage of the Bill, in particular, to deal with section 38 of the Act. The total estimated capital expenditure of the 18 projects—now this is the total expenditure, and this may not be how much money was loaned. The total expenditure is TT \$270.1 million. Based on that figure, I did a rough estimate of what banks allow as equity to debt ratio.

I understand that in the energy sector, the debt equity is about 15 to 20 per cent; in the commercial sector, it is roughly 20 to 25 per cent; and in the tourism sector, which is still considered a high risk—for that reason we are bringing amendments to the Bill—that figure is about 50 to 60 per cent debt equity ratio.

If you consider \$270.1 million to be the total estimated capital expenditure—you are talking about borrowings of \$130 million and interest being 10 per cent to 12 per cent, and 30 per cent going to the Government—you will have a payout of roughly \$5 million to \$10 million in total, and that is broken down among 18 projects. There will be an average of \$300,000 to \$400,000 per unit.

One has to remember that these developments are not necessarily big massive developments. These are small eco-lodges with about 20 units; it could be a hotel in Mayaro that has 15 rooms; it could be an eco-lodge; it could be a marina or it could be all types of activities, apart from large-scale hotels. So the refunds may not necessarily be one large amount, but there could be many small amounts, which I understand this to be.

Mr. Vice-President, it is also projected that these 18 tourism projects will generate some 652 jobs. It is also projected that there would be an extra room yield. In other words, for this \$270.1 million, there was an increase in the room stock of some 613 hotels. So that is a major accomplishment. Now, it is a matter of dealing with the legislation and ensuring that those persons who were promised that tax-free benefit, under section 38, acquire it by allowing this retrospectivity.

Mr. Vice-President, added to that, there were issues raised by Sen. Prof. Ramchand with respect to our investment in tourism, and whether we are getting value for money. This is a very relevant question. I have come up with some figures, which I hope can clarify some of those issues. *[Interruption]*

Last year, Tidco spent a total of about \$25 million or \$30 million on marketing. This year they intend to have a marketing budget of about \$45 to \$50 million. When you add up recurrent expenditure and total expenses, you are dealing with about \$80 to \$90 million which is the expense by the State.

I received a recent report from the Economic Intelligence Unit within Tidco. I asked them to provide me with the jobs, and the amount of contribution that the tourism industry makes to our GDP, and I have some figures here. The report says that in 2004, the economic impact on Trinidad and Tobago's travel and tourism industry is expected to generate US\$1,834 million—that is \$1.8 billion—of economic activity. The industrial direct impact is 14,421 jobs, which represents 2.6 per cent of the total employment. As I said, the contribution is US\$1,560 million which accounts for 2.3 per cent of the total GDP. Those are direct jobs and direct to our GDP.

When you talk about indirect impact, it says that since travel and tourism touch on all sectors—which Sen. Seepersad-Bachan referred to like the agricultural sector and all the other manufacturing sectors—of the economy, its real impact is even greater, and Trinidad and Tobago's travel and tourism economy, directly and indirectly, accounts for 58,466 jobs, representing 10.4 per cent of the total employment, and an indirect return on the GDP of US\$1,147 million. That is \$1.1 billion. These figures were provided by the Economic Intelligence Unit.

Clearly, there is a return that far surpasses the investment that the Government makes on tourism. In fact, I would like to say that the amount that is invested is much lower than it ought to be, based on your investment and the return that you are getting on the investment.

Mr. Vice-President, Sen. Baksh talked about airlift, and I could not agree with him more. I have often been quoted as saying that airlift is the umbilical cord of the tourism industry, and without airlift there is no tourism. One could have the best plant and the best product, but if there are no transportation links in and out of the destination, then tourism will fail. Perhaps that is why the industry in Tobago is doing remarkably well. Today, there is more airlift capacity flying into that destination than there has ever been before in the history of the island, and because of that there is a situation where the room occupancy levels are averaging in excess of 95 per cent. I could not agree with him more on that point.

Mr. Vice-President, Sen. Seetahal raised the issue of section 41 and that being inconsistent with section 38. I would just like to say that section 41 was never intended to apply to section 38; the sections relate to two different issues. So that the benefits provided for under section 38 are only granted and accessible upon final approval. However, section 41 talks about tax benefits related to other ancillary tourism projects.

In other words, from 1995, which section 41 refers to, allows projects—apart from hotels—such as marinas, tour operators and eco-lodges, and all those kinds of entities that fall under schedules 2, 5 and 6, to be entitled to the tax benefits under that Act. So, it was assumed that section 38 was in order and that section 41 referred to benefits apart from section 38. Mr. Vice-President, what we are dealing with here today is the ability to access section 38 which is not necessarily relevant to section 41.

Another point that was raised was the rationale for substituting the word “after” to “before” in section 18 of the Tourism Development Act. There is a clear explanation for that and that is, you cannot simply access before the final order is issued. The relevant documents must be presented to the Ministry of Tourism. So it has to be that way. For example, you have to provide the actual capital expenditure; you have to provide documents that were then deposited with the Ministry of Finance; you have to provide documents that are required up front to prepare the final order. So, therefore, the word “after” is replaced by the word “before”.

There was another question that was raised by Sen. Prof. Ramchand as to who really benefits from these incentives. I think the Senator was going along the line that the rich benefit and not the poor. I will disagree with that statement. I think the industry and all the ancillary services that I talked about earlier benefit.

Tourism Development (Amdt.) Bill
[SEN. THE HON. H. CHIN LEE]

Tuesday, March 08, 2005

Mr. Vice-President, it is a widely known fact that financial lending institutions are extremely reluctant to loan moneys to tourism investors, because the tourism industry is viewed as a very high risk industry. So it is necessary for the Government to help encourage this industry, because of all the other spin-offs that I referred to earlier. It is also for this reason that incentives are being offered to the financial institutions by way of tax exemptions on interest on loans, so that the borrowers can benefit by way of lower interest rates.

Mr. Vice-President, these were the issues that were raised with respect to the Tourism Development (Amdt.) Bill, and with those few words, I beg to move.
[*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed. That clause 3 stand part of the Bill.

Sen. Mark: Mr. Chairman, I had raised an issue under the definition “ground tour operation”. There are many taxi operators in the country—some operating out of Piarco, at the Trinidad Hilton Hotel and other major points. During my contribution, I had in fact raised some of the challenges and difficulties faced by these operators. I wanted to get a response from the hon. Minister as to what steps or measures he intends to take, to at least provide those taxi cooperatives with some degree of incentives so that they can do their trade without the kind of challenges that they are currently faced with. I made specific reference to “ground tour operation” because they are ground tour people. I am asking the hon. Minister what his Ministry can do to provide these particular individuals with passes for downtown operations, as well as Priority Bus Route (PBR) passes. That is an area that they have been raising with your good self and others.

Sen. Chin Lee: I know that this is not necessarily relevant to the definition of “ground tour operation”, but whenever I go through the airport, many of the taxi-drivers ask me why they have been refused to go into Port of Spain. I know that is a matter that is being dealt with by the Ministry of Works and Transport, and also the fact that there is congestion in Port of Spain and there is congestion on the

Priority Bus Route. I know that there are certain measures that are being put in place to deal with that matter. This is an issue that needs to be addressed. Is it that you have a problem with the definition of “ground tour operation”?

Sen. Mark: No. All I am asking, through you, Mr. Chairman, is whether the Minister can provide some assurances, because these people keep getting promises. They had these passes before, but the State—through the Airports Authority and the Ministry of Works and Transport—retrieved those passes and the PBR passes. You cannot be promoting tourism—people are coming through Piarco and they have to go into Port of Spain—and telling people because of traffic congestion they cannot go through Port of Spain; they cannot go down Frederick Street; they cannot go down Queen Street; they cannot go up Park Street; and they must drop out—even the Vice-President down at Independence Square has to walk up the road. These are things that we just cannot continue promising. We have to take action. I am saying to the Minister of Tourism, whilst I have no problem with the concept of “ground tour operation”, I am taking the opportunity to bring this to your attention for action. I do not want consideration; I want action.

Sen. Chin Lee: Let me reassure the Senator—although that is not relevant—that I will bring up the matter with the Ministry of Works and Transport, and try to provide some solution to the problem. I consider this to be a problem for the tourism industry.

Sen. Mark: Well, this is three years now. When can I expect an answer? Is it at the next sitting of the Parliament?

Sen. Chin Lee: We will talk about it.

Sen. Mark: I do not want any talk; I want action.

Sen. Chin Lee: Mr. Chairman, let us deal with the Bill at hand.

Sen. Dr. Saith: Do you think that this is Monday night—

Sen. Mark: No, this is serious business here. Are you part of NATO— “no action talk only”?

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Sen. R. Montano: Mr. Chairman clause 4 says:

“Section 3 of the Act is amended in subsection (3)—

(a) by inserting immediately after paragraph (b) the following paragraphs—

‘(c) an accelerated depreciation of depreciable equipment owned by the owner or operator and used in an approved tourism project;’

If you take a look at clause 16 of the Bill, clause 16(b) says:

“the accelerated depreciation on depreciable equipment may be set off against the gains or profits accruing to the owner or operator...”

Now should there not be some sort of reference in clause 4 saying something to the effect—I do not have the exact words yet—as outlined in clause 16(b)? I am not giving you the words; I am giving you the intent. In other words, should there not be some sort of cross-referencing in there?

2.45 p.m.

Sen. Jeremie: The Minister is saying that there is no need for it because the amending Bill will be read together with the Act, so that section 3 as amended, would form part of a concise Act, in which clause 35 providing for the mechanisms will exist.

Sen. R. Montano: I understand that but I do not think that I am making myself quite clear. Let us do it as if we were reading the original Act. So section 3C would now say:

“an accelerated depreciation of depreciable equipment owned by the owner or operator...”

You see you are now putting in this section 35A dealing with accelerated depreciation. When we come to this clause, I get problems with the wording of the clause. I am not attacking the wording of section 35A or B or whatever it is, neither am I attacking the Bill itself, what I am trying to say is, it is my personal view that we should have some sort of reference referring section 3 to section 35A or B, or whatever the number is. In other words, there should be some sort of cross referencing for the sake of clarity. What we are looking for is clarity, so when people are reading this Act they see that this is what we are talking about.

Sen. Seepersad-Bachan: The Minister rightly stated in order to appreciate how the accelerated depreciation would be taken after the accounting period, it was outlined in 35A. So, again, it is just for clarity, and even linking the capital allowance to the clause with the capital allowance.

Sen. R. Montano: We are talking of clarity; we are not discussing any changes to the intent of the legislation. I am just talking about clarity.

Sen. Seepersad-Bachan: It is done in several pieces of legislation, I have seen it done.

Sen. R. Montano: Yes, so have I.

Sen. D. Montano: Mr. Vice President, with the greatest of respect, I see no need for the talk. Once section 3 makes provision for the accelerated depreciation and the capital allowances; that is it. That is an enabling section and then the other section, clause 16, the new 35A, now says what it is going to do and how it is going to work. It is very simple and it sets out what it is. Section 3, clause 4 puts it into the Act and says that the Minister can grant these reliefs and in section 35 it says, and here is exactly what the relief is. It is very simple and it works, there is no need to refer one to the other. When you read the Act as a whole, it makes sense, there is no further need to change anything here.

Clauses 4 to 6 ordered to stand part of the Bill.

Clauses 7 to 15.

Question proposed, That clause 7 stand part of the Bill.

Sen. Seetahal: I had raised an issue that section 6 of the original Act needed to be clarified and this would have been an appropriate place to put in this amendment, that section 6 refers to the Act, that is where a tourism project or any part thereof which enjoyed benefits under the Act, is sold or used. The Minister said at the start of his original presentation last week, and today again, that this Bill will clear up all of these problems, and I specifically raised this and I said it twice, that there is nothing to indicate what "the Act" meant, and if it meant the Hotel Development Act, which it refers to in the last section, then that section should be amended. That was something I intended to raise earlier on, but the Minister did not take any questions, which is why I am raising it now. So, in my respectful view, section 6 should be amended to read just after "the", the words: "Hotel Development".

Sen. Chin Lee: We would like to agree with the Senator on that point, and instead of saying "the Act", referred to as "the Hotel Development Act"—that would certainly bring some level of clarity.

Sen. Seetahal: There needs to be an amendment to that section.

Sen. Dr. Saith: Could we move on to the others while they work it out?

Mr. Chairman: Hon. Members, section 6 will be revisited.

Clauses 7 to 15 ordered to stand part of the Bill.

Clause 16.

Question proposed, That clause 16 stand part of the Bill.

Sen. Seepersad-Bachan: Mr. Chairman, if I may? The Minister mentioned in his contribution that there was no need to look at the interim approval process and therefore wait only until the final approval, but then how does the investor go about starting his project, without knowing that he has the tax exemption from interest, before the final approval?

Sen. Chin Lee: In applying for interim approval you have to provide the relevant information, but it is only upon final approval that you have to prepare the audited reports and the figures have to be agreed with the Board of Inland Revenue and the Ministry of Finance; an estimate is provided for in the interim approval.

Sen. Seepersad-Bachan: But is not there some minimum capital expenditure that is approved?

Sen. Chin Lee: That is outlined in schedules 1, 2, 5 and 6.

Sen. Seepersad-Bachan: That is right. On that amount would they not be allowed to get the tax exemption on the interest for the financing?

Sen. Chin Lee: The tax exemption on this interest is in section 38, that is the one on the loan, that is separate from the other tax benefits that we spoke about.

Sen. Seepersad-Bachan: Oh sorry, I am making the mistake, I thought we were on that clause.

Question put and agreed to.

Clause 16 ordered to stand part of the Bill.

Clause 17.

Question proposed, That clause 17 stand part of the Bill.

Sen. Bro. Khan: From guidance from you I strongly crave this, subclause (5) of 17, I do not support the question of a retroactive payment. I do not know how we will bring this to the process, but I wish to record that. I would like to see that subclause (5) be taken out. In other words, what has gone before, we should not be in a position now to pay back, so to speak. This is how I interpret that, and with respect to making this part of the law that already more benefits are being granted, I do not see that we should give it in a retrospective way. I would like you to play that before the Senate, please.

Sen. Chin Lee: It is not that we are now allowing more incentives by allowing it to be retrospective, all we are doing is correcting section 38 and the promise that was made in this section. The section refers to exemption from tax of interest on approved loans and there is no way that you can have money being borrowed after the fact that it is approved; because anytime someone is building a hotel or a project, normally you borrow money before the final approval. So, it is not that we are providing more incentives, we are just providing clarity to section 38, by allowing “retrospectivity”, we are not giving more incentives.

Sen. Bro. Khan: What is clear in my mind is that if this were to come into force, that somebody would be benefiting from things that have gone long before, and we have heard it said that hotel industries are growing at a great rate as far as increase is concerned and benefits are derived. So, I cannot see why now we will be giving some sort of benefit for an interest that has gone, retroactive benefit that has gone. This is my major point.

Sen. Prof. Ramchand: I have a problem with the whole section. I asked the question why are these benefits being given to the lending institutions, and the Minister's reply—which I do not consider very satisfactory—is that it would cause the interest rate to go down. So unless I see some specific requirement placed upon the lending institutions, that in order to qualify for this tax exemption, you have to reduce the interest on the loan to match what you are getting, I do not see why they should be getting that. [*Inaudible*] Well, let it be set out as a subsidy and let it be clear to the banks that they have to pass it on.

Sen. Sahadeo: Mr. Chairman, this is in fact how it works. The lending institutions offer a lower interest rate based on that element and therefore it is in fact passed on to the investor.

Sen. Prof. Ramchand: Well they do that in the morning when they wake up and feel good, but I want it written that they have to do it, whether they feel good or bad.

Sen. Sahadeo: They would only qualify for the tax exemption if the reduction in the interest rate is, in fact, passed on to the investor, and of course it must be approved.

Sen. Prof. Ramchand: I would like to see it so stated.

Sen. Sahadeo: It is. It said it must be approved by the Ministry, so I think the regulations are there.

Sen. Prof. Ramchand: But the Ministry must have some guidelines on regulations.

Sen. D. Montano: Mr. Chairman, if I may, it is very simple. First of all, this is a question of policy, this part of the section is really not supposed to deal with it, but in any event, the fact of the matter is, the borrower, when he goes to the bank, he is going to know whether the bank is going to give him any kind of concession and if he does not, he certainly is going to come back and talk to the Minister and say. Do you know that in spite of the fact that you have given this incentive, the bank is not passing it on? We will know about that very quickly. So it is highly an old issue, believe me, you will hear it. It is not likely that we are going to create such an incentive and it not be passed on.

Sen. Prof. Ramchand: So what is the problem about writing it down?

Sen. Dr. McKenzie: Mr. Chairman, my point is coming from Sen. Bro. Khan's statement a while ago, because I remember when we were dealing with this Tourism Development Act in 1999/2000, it was based on the fact that, if you are going into any of these projects, we would have an Act guaranteeing you certain incentives and these incentives will be there for you.

These people were actually borrowing the money before the Bill was passed, and when hon. Minister Adesh Nanan brought the Bill, this was one point that was discussed in detail, and in fact, it came right back before the start of the Hilton project in Tobago, and they were accused of actually passing the Bill to facilitate the Hilton project in Tobago; I remember distinctly. So, based on the fact that the Government was saying to these investors, go ahead and spend your money, these incentives that we are talking about, we are going to bring a Bill to be an Act that would guarantee you this, and these people went back and did that, based on that promise.

The Bill was passed before the projects were completed and so the people expected it. My problem is, not with the retroactivity, but from when, as Sen. Seetahal had said; that is the problem. It is not that they should not get it as Sen. Bro. Khan is saying, I am disagreeing with Sen. Bro. Khan, but I am agreeing with Sen. Seetahal that there must be a time frame beyond which we should not go, and that is my problem, that is the issue.

Sen. Seetahal: If I could add to that. That was not answered by the Minister. I had made the point that this section 38 was excluded from section 41, which goes back to 1995. So it is being excluded.

If we are now to make anything retroactive, it cannot go back beyond the date of proclamation, and the date of proclamation is October 16, 2000. So, therefore, if we are talking about 5, it should be made retrospective to the date of proclamation. That is the point.

Sen. Chin Lee: I think there are two issues. You have asked a very relevant question and that issue is, at what point in time one is allowed that incentive? It is very specific, with the amendment to the Bill. It says: it is six years prior to the approval process. So once the project has been final, for example in Tobago, and it is approved by the Ministry of Tourism, then you can go back six years retrospective and during that time it would be up to the Board of Inland Revenue and the Ministry of Finance to determine the amount of interest that was paid. So it is specific and it spells that out. What you are talking about is section 41.

Sen. Seetahal: No, I am not talking about section 41.

Sen. Dr. McKenzie: She is talking about the retroactivity. When?

Sen. Seetahal: I am saying because section 41 excluded section 38—I read it, I have the Act—then when we are looking to put in a retrospective date in section 38, we should not go back to the original date that section 38 came into effect, which would be the date of proclamation; that is the point. I am not talking about section 41, because section 41 did not include section 38. It specifically said section 38 is excluded. So, when this Act came into operation in October 2000, section 38 was not retrospective, and if you said that section 38 was not operating before and now you are making this amendment, you should not go beyond the October 16, 2000, which is the date of proclamation, and that is simply the point.

Sen. Dr. Saith: Could I ask Sen. Dr. McKenzie a question? When it was passed in 2000, was it meant to cover any project that was started before 2000?

Sen. Dr. McKenzie: Yes.

Sen. Dr. Saith: Therefore, if we only go back to the date it was proclaimed in 2000, we will exclude those projects that started and that is not the intention.

Sen. Dr. McKenzie: No. You see, that was one of the issues with the Board of Inland Revenue and the tax process, because that was the point that was raised by former Senator Daly on the whole question when we were saying, this should not only concern the people dealing in tourism and Tidco, it should concern the people who are working out the finance sector. You go back to the notes of *Hansard*—I mean my brain is old but it is still there—and you will see and that is why the then Opposition accused the Government of actually passing the Bill to suit the Hilton in Tobago. Tobago had a very strong problem with that, remember Wade and they fired two Senators for that. That is the situation. So really and truly, I think we fouled up. What is happening now is really, that nobody understood when we were saying that was something to deal with—Inland Revenue and taxes and taxation. Sen. Baksh could support me. [*Crosstalk*]

Sen. Seetahal: I think we need to look at section 41 of the original Act. If we do not have section 41, there might be confusion. Section 41 says:

“Where on the commencement of this Act any person engaged in the tourism project which commenced on, or after 3rd August, 1995,...such person may submit an application...for the tax benefits that he would be entitled to, ...from August 3rd, 1995.”

So what Sen. Dr. McKenzie was saying is covered here. It says here:

“(2) Subsection (1) shall have effect from the date of the proclamation of this Act.

(3) Subsection (2) shall not apply to section 38.”

Which means that section 38 was specifically excluded from the “retrospectivity”. So what Sen. Dr. McKenzie is talking about are the rest of benefits. So there was a reason—for whatever, I do not know—that section 38 was excluded. If we are faithful to that reasoning, we should—now that we are amending section 38 to make it work—not go back beyond when the Act would have come into effect anyway.

Sen. Chin Lee: With regard to section 41, and that was written where any project that began before August 3, 1995 and following that to 2000, was allowed to access the tax benefits in this Act, and that specifically meant projects apart from hotels under the Hotel Development Act; projects such as tour operations, marinas and all of that, they were now allowed the benefits under that Act. In this

Act they assumed that section 38 was accessible and that one was able to access these benefits under section 38. For that reason, they wrote subsection (3) which does not apply to section 38—that is a separate matter to section 38. All we are now doing is trying to correct section 38, for the same problems that Sen. Dr. McKenzie said, in that many persons in Trinidad and Tobago built projects on the assumption that section 38 was accessible, but were unable to do so.

Sen. Seetahal: It would have been accessible from the date of proclamation, and that is my point. Therefore, you cannot go beyond when it would have been accessible in the first place. You are giving them the advantage to go back to March 1999, when that was not what was intended. So, if you are correcting the thing, correct it to what was intended. Section 38 was intended to come into operation when the Act was proclaimed, not from March 1999. If we amend it now and put six years it will go back to—

That is my point, I thought I made it clear.

Sen. D. Montano: Sen. Seetahal is actually quite right in the sense that section 38 was specifically excluded from any retroactivity in the original Act and, therefore was intended to be effective only from October 6, 2000 and forward. This clause, however, does make it possible for the Minister—when he does his Order—to put in that date in the Order that it should not go beyond October 6, 2000. Because that section says it shall go beyond the six years, without giving a specific date. So, we do not exactly know when this Bill is going to be proclaimed. We do not know when the Minister is going to come with an order.

So the Bill is drafted to give the Minister a certain amount of flexibility, but what we are saying—and I think Sen. Seetahal is actually correct—is that the original intention of the original Act was not to go beyond October 6, 2000. That does not mean that we cannot change our minds at this point, but the original intention was, that provisions should not go beyond that date. In any event, this section gives the Minister the discretion to limit the “retrospectivity” to October 6, 2000. In his Order, he can say it shall have affect only starting October 6, 2000, or whatever date it is. So there is no fatal flaw in the legislation as it is presently drafted.

Sen. Mark: How would the Parliament be made aware, given how section 38 is couched? I am not saying for a moment the Minister of Tourism would not adhere to the principles as outlined by Sen. Danny Montano and the point made by Sen. Dana Seetahal, that this Bill ought not to be retroactive to 1999, but effective from 2000, when it was proclaimed. Now, if that is not contained in the Bill and you leave it up to the discretion of the Minister, who is to scrutinize, to ensure?

Sen. Dr. Saith: You can put that question at question time.

Sen. Mark: What are you asking me about question time?

Sen. Dr. Saith: No, I am saying that is one way of doing it.

Sen. Mark: You mean I must raise it at question time?

Sen. Dr. Saith: You can put a question saying, how many you have done and what is the period you have done it for?

3.15 p.m.

Sen. Mark: No, I do not want to go through that. Why can we not have it enshrined in the law? It is the same discretion, he would know that he is guided; something is guiding the Minister of Tourism. If you leave out that date and leave it to his discretion, I must now come and ask a question?

Sen. D. Montano: Mr. Chairman, with the greatest respect, that argument is flawed on the premise that the Government is bound by the provisions of the original Act and cannot change its mind to say we want it to be effective as of whatever date in 1999. We can do so; it was not necessarily our intention to do so, but, we can do so and this section makes the provision for us to be able to do that.

I was merely saying that Sen. Seetahal was right in terms of the original Act but this administration is not absolutely bound by the original Act. We can change that, and that is what we are doing; we are giving the Minister a certain amount of leeway to do two things. One is to get this Act or to get this Bill proclaimed; and, secondly, to draft the orders, and giving him a window of six years. He does not have to give six years. He may give six months; he may give two years, under different situations to different companies. He merely has the power to go to six years, and there is nothing flawed in that. We are not absolutely limited and bound by the original Act.

Sen. Seetahal: There are two things, because the Minister said that his reasoning was, and the rationale for it was to make the thing as it was intended. So, if that is his reasoning then with respect to what Minister Montano is saying, with due respect to him, really, we cannot come and change that policy now; or we could; but, it would be really outrageous, because his reasoning for this subsection was that you wanted to have the Act as was intended.

Secondly, there is no date of proclamation for this Bill. The date of proclamation was for the original Act. This Bill does not need a date of proclamation. So, once this is assented to, it can go back. My suggestion—and I

am just saying this—is that subsection (5) be amended at the end to include “but in any event not earlier than the date of proclamation of this Act”. That is my suggestion. So that the Minister, when he makes an Order, can go back to six years if he wishes, but in any event not earlier than the date of the proclamation of this Act, which would mean the original Act.

Sen. Prof. Ramchand: Mr. Chairman, I support that too, but, of course, you all changed the topic. [*Laughter*] I still want a guarantee that the banks are going to pass on the benefits they receive.

Sen. Chin Lee: The issue at hand is, it goes back to 1963, because section 37 of the Hotel Development Act has the same incentive, and actually back then people were able to access it, and for some reason—and they were able to access it retroactively. It is only in 2000 or 2001 these lawyers came and said, no, you cannot access that anymore, because there is no explicit expression of retroactivity, and therefore, all we are attempting to do is to make it explicit and to put the wording in place, so that those same persons who were promised, after the fact that it was not explicit, are now given their due amount.

Sen. Dr. Saith: That was the intention in 2000.

Sen. Chin Lee: That was the intention in 2000, when this Act was brought to Parliament. With that, Mr. Chairman, I wish to propose that this clause is approved without amendments.

Sen. Mark: Why? But why?

Mr. Chairman: Hon. Senators.

Sen. Mark: Mr. Chairman, why would the hon. Minister of Tourism, unless there is an ulterior motive? Why is it he would want to come and tell this Parliament, after a very rational and plausible amendment has been advanced, that he is going ahead without this amendment? He wants it passed just so.

Mr. Chairman: He could not say he is going ahead; he did not say that.

Sen. Mark: What did he say?

Sen. Seetahal: Pass without amendment.

Mr. Chairman: He suggested.

Sen. Mark: That it be passed.

Mr. Chairman: He suggested.

Sen. Mark: I find that is an arrogant suggestion.

Mr. Chairman: Hon. Senators—

Sen. Seetahal: Mr. Chairman, what is wrong with the amendment? What is the concern of the Minister with respect—

Mr. Chairman: Pardon me.

Hon. Senator: *Inaudible.*

Sen. Mark: Yes, I support Dr. Saith on that—yes Saith, prevail on that gentleman for us. [*Laughter*]

Mr. Chairman: Okay, clause 17 will be deferred.

Clause 17 deferred.

Clauses 18 to 23 ordered to stand part of the Bill.

Clause 24.

Question proposed, That clause 24 stand part of the Bill.

Sen. King: Mr. Chairman, during my contribution, I had asked the Minister for the rationale for the deletion of the column headed “Local Investor.” We did not get any explanation, so, I think we need to have that before we could proceed, please.

Mr. Chairman: Thank you. Mr. Minister, Sen. King had asked in her contribution for an explanation as to why chartered boats—

Sen. Mark: Local investors.

Mr. Chairman: Local investors, sorry.

Sen. Chin Lee: You asked about the chartered boats?

Sen. King: Local investors being removed from schedule 9. I wanted an explanation on that, please.

Sen. Chin Lee: Are you referring to schedule 9, why the minimum capital expenditure was deleted?

Sen. King: No, Mr. Minister—Mr. Chairman, through you, I was asking why the column identified as “Local Investors” is being removed? What are you putting in its place, are you changing the heading of the other column?

Sen. Chin Lee: It is removed under schedule 9 to refer to the minimum capital expenditure for local investors.

Sen. King: Are you saying then local investors have no minimum?

Sen. Chin Lee: Correct, but there is still a procedure which one has to apply for approval for projects. It is not like you can come with a project for \$100 and build a project. It has to come through Tidco and the Ministry of Tourism. But, all that we have done is reduced the minimum level for investments in the local industry. In other words, the accommodation facility for \$2.5 million would be removed.

Sen. King: But, it must be replaced with something if we are going to have a rational progression.

Sen. Seepersad-Bachan: You are removing the whole column, or you are removing just the term “Local Investors”?

Sen. Chin Lee: We are moving the column for local investors; meaning, that as long as there is a legitimate business and that it is approved by Tidco, then it would be approved—there is not a minimum expenditure, anymore.

Sen. Seepersad-Bachan: No. Mr. Chairman, through you, the local investor was being given an additional benefit, in that he would have required a lower minimum capital expenditure, and I think this related back to—

Sen. D. Montano: No, actually, minimum capital expenditure—the international investor must invest a minimum of \$18 million; local investors only have to invest a minimum of \$2.5 million.

Sen. Seepersad-Bachan: Which is why we want to give the preference to the local investor.

Sen. D. Montano: Yes, so you are taking this out now—

Sen. Seepersad-Bachan: So, he would be like an international investor?

Sen. D. Montano: No, he is not.

Sen. Seepersad-Bachan: I do not understand.

Sen. Seetahal: I had asked—and I thought that I had enquired—if you amended section 8—is that what you are saying? That if you amend section 8, which is what you are doing, you do not have to have any minimal qualification if you are a local investor?

Sen. King: That is what I am asking.

Sen. Seetahal: Yes, but they did not say that—that is what you mean.

Sen. Chin Lee: What did you say, minimum qualification?

Sen. Seetahal: Minimum capital expenditure?

Sen. Chin Lee: No, there is no minimum capital expenditure for local investors. That is to allow easier entry for the locals—

Sen. Seetahal: That is the intent.

Sen. Chin Lee: —whilst you put a minimum expenditure on international investors to ensure that we can at least protect the local investors who want to enter the industry. But, what I said is that any small operator cannot enter without the permission from Tidco implying that it is a valid tourism project.

Sen. Seetahal: We have amended section 8; and we have removed certain words in section 8; and we are also now amending the schedule. Together, those two amendments, I do not think I got it clear from you, but, is not the purpose together to say that local investors would have to provide no minimum capital expenditure—is that it? Okay.

Sen. Bro. Khan: Mr. Chairman, it seems to me that, on the one hand—

Mr. Chairman: Hold please.

Sen. Bro. Khan: It could be, it looks like—

Mr. Chairman: Hold please, Sen. Bro. Khan. Could we have one person at a time? Yes, please.

Sen. Bro. Khan: It could be it might appear to be a little way out, that by removing local investor you leave him outside the door. If, on the other hand, you are removing the bar, I think that could be put into the system.

Sen. R. Montano: Let him put long term investors at zero dollars.

Sen. D. Montano: No, you cannot do that. What it does, Sen. Bro. Khan, is that before, for local investors, if one, for example, wanted to invest in water sports there was a minimum expenditure of \$310,000. So, in other words, if you wanted to invest in a small vessel that cost \$50,000, the local investor was unable to do that, because, there is a minimal capital expenditure. All that we are suggesting is, that we remove the minimal capital expenditure for local investors. So, persons who want to invest in water sports and want to buy a dinghy to take

people on fishing tours, can now take part in that, because there is no minimum capital expenditure as long as the project is approved by the company or corporation responsible for tourism. So, in fact, it helps the smaller guy getting into the industry to operate as travel agents—water sports.

Sen. Bro. Khan: Thank you for that, but could it be used in another way to leave him out—the small local investor—how it is?

Sen. Seetahal: No, it has to be approved.

Mr. Chairman: Sen. Bro. Khan, could you repeat the question, please?

Sen. Bro. Khan: You see, on one hand, we are hearing about being in a person's hand to move forward without a bar. What was it before \$300,000? It is no longer there. Now, it still puts the decision-making in the hands of the Minister, or who have you, to grant something. Could he use that then of not granting? This is the question, as far-fetched as it might be.

Sen. Chin Lee: No, I mean, there are basic criteria which are written in the law as to what are tourism projects and what are not tourism projects.

Sen. Bro. Khan: So those basic criteria are—

Sen. Chin Lee: In fact, it makes it easier for smaller industries or smaller businesses to be part of this tourism industry. It does not put more strength in the Minister's hands as to whether he can approve or disapprove. It actually opens up the local industry more to persons wanting to get involved.

Sen. Bro. Khan: Okay, thank you.

Sen. King: So, Mr. Minister, are we saying then that we are going to develop some criteria, by which investors would then come and collect from you? How are we going to specify it in the Act?

Sen. Chin Lee: No, in the Act there are already criteria that are written. I mean you have to have a company, you have to have a certified corporation; there are things that are required before you apply for interim approval as a tourism project. So, it is not any and everybody coming forward and saying this is a tourism project. It has to be approved by the corporation and there are criteria which are listed in the Act, for which you can be given permission and the incentive provided for in the Act.

Sen. King: And it is up to the discretion of the Minister?

Sen. Chin Lee: No, there is no discretion.

Sen. King: There is no discretion of the Minister?

Sen. Chin Lee: Well, it is the discretion of Tidco, but if they filled the requirements that are written in the law, there is actually little discretion once you meet the requirements.

Sen. King: Okay.

Mr. Chairman: Are we clear on that?

Sen. Mark: This measure would now be extended to Caricom nationals? Minister, under the Caricom Treaty a national of Guyana or Barbados would now be able to enjoy all these benefits?

Sen. Chin Lee: Yes.

Sen. Mark: So they will have similar provisions?

Sen. Chin Lee: Dealing with the CSME there is no provision.

Sen. Mark: No, no, no. I am saying that we have incentives there for nationals, that you have now introduced. Would there be similar incentives?

Sen. Chin Lee: I have not now introduced this—this was introduced before.

Sen. Mark: Yes, but you are now deleting “Local Investors” in terms of the sum. As you said, if it were \$300,000, that now it has gone now to zero. You must have a good project; submit it to Tidco; they approve it—you go on. This is for nationals; but, because of Caricom, this would now automatically be extended to Caricom nationals. Would Caricom countries have the same provisions in their legislation to facilitate nationals of Trinidad and Tobago to go to Barbados with zero cents? You see, what I am saying is that we have to be careful what we are doing here.

Sen. Chin Lee: The answer to that is under the CSME.

Sen. Mark: So, we have to go to the court?

Sen. Chin Lee: Yes.

Sen. Mark: I going to the High Court, I am not going to no CCJ.

Sen. Dr. McKenzie: Mr. Chairman, I do not think it is a matter of money and so on. I will tell you why I support this. There was a tourism consultation in Tobago, and there was the incentive given from the cry of some Tobagonians; look, we do not want the big hotels and so on. We do not mind being given the incentive, to use our own dwelling house, upgrade it, putting two special rooms,

own baths, own toilets, et cetera, and have foreigners come and stay with us in our home, with nice facilities—better than some of the hotels they put us to stay here in, when we come—and therefore, I do not need any \$2.5 million, I need \$200,000. I have my own land, I have everything. All I am going to do is submit my proposal. Tidco approves it, and I can have \$200,000. I could have two lovely rooms, baths, everything. You come and inspect it, because you had a clause about inspection and standardizing and grading and so on.

This was one of the reasons why—in fact with the present Bill, some of the people in Tobago could not do that in their remote homes in Charlotteville and so on. And if you have this incentive lessened, and you do not have to start, I must have \$2.5 million. Where will we find that? So, I am totally in agreement, move it.

Mr. Chairman: Okay, one more contribution.

Sen. R. Montano: Mr. Chairman, the problem as I see it is this. I would buy what Sen. Mc Kenzie is saying. So, why are we doing something that is open to a dispute downstream—why do we not be clear? Why do we not simply amend the schedule to say local investor, zero dollars; minimum capital requirements, zero dollars, or \$100, or \$1,000, or \$10,000. Put a ridiculously small sum. Put a very small sum in the schedule, so that it is quite clear then: You are removing discretions around the board, but, doing it this way, you are going to run into some problems as sure as night follows day; and that is the issue.

What we are discussing here is not policy. What we are discussing here is form, the practicality. So, rather than do it one way, which can create confusion, why can we not do it another way that makes it quite clear what we intended—and that is the point? So, rather than having to go back and forth, let us try to go this way.

Mr. Chairman: Hon. Senators, I have to put the question—

Sen. R. Montano: Before you put the question, could I get an answer to what I said?

Sen. Chin Lee: I thought I was very explicit in explaining why we deleted the entire column and Sen. Dr. McKenzie also added to it. So, I do not think there is anymore explanation with regard to removing the cap X on projects.

Sen. R. Montano: No, with respect you have not addressed the issue that I raised. I am going along with you, fine, but, you are not addressing the issue that I raised. In other words, I am coming from a completely different angle and I am

Tourism Development (Amdt.) Bill
[SEN. R. MONTANO]

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saying—let us make it into a situation where there can be absolutely no doubt. I do not see what the problem is. Is there a problem that you are stuck with your draftsman’s advice, and that no matter which way you turn, we got to go with the draft, or, are you stuck with your policy? If you are stuck with your policy, no problem. I am not trying to upset that, but, what I am trying to do, is, say to you: “Listen, your policy is this—fine; well, let us put in a ridiculously low minimum”.

Instead of doing it this way, which has the potential for confusion downstream, let us remove the confusion, and put in a ridiculously low minimum. You set the figure—anything from zero dollars up—\$1.00 and up, minimum capital requirement. Set the figure, and, then that way we all know what you are doing, and that way we know there is a minimum capital requirement. So, as long as I meet the minimum capital requirement, I am going to get in. Because, you know the other thing is this, you may decide tomorrow morning in your discretion, Minister, that you are going to give John Thomas—allow him to come in with a minimum capital requirement of, let us say, \$5,000 and, I come along wanting to do something very similar to John Thomas, and you tell me no, no, no, I need \$500,000 minimum capital requirement. Now, you realize right there and then, you open up yourself to judicial review. Because, if ever I find out that you have treated me unequally, I am going to go before the court, and I am going to say “Hey, why was I treated unequally?” Now, you know in the recent Privy Council’s decision concerning the CCJ, the Privy Council said something that has relevance to the arguments here, and I am going to amend what they have said slightly.

Sen. Chin Lee: No, you cannot amend.

Sen. R. Montano: The risk—

Sen. Jeremie: No, you cannot amend.

Sen. R. Montano: No, I am going to amend what they have said slightly, for my point. Of course I can, do not be silly.

Sen. Dr. Saith: You are not the Privy Council.

Sen. R. Montano: The risk that a Minister might do something—
[*Interruption*]

Mr. Chairman: Sen. Montano, please, please.

Sen. R. Montano: The risk that a Minister might do something wrong may be

hoped fanciful, but an important function of law is to give protection against governmental misbehaviour; and that is the point.

Sen. Chin Lee: Mr. Chairman, just in response, he speaks about unfair treatment. I think the only thing that is unfair about having a minimal capital expenditure is the fact that only certain persons with a certain amount of money would now be allowed to invest as a local investor. We are now making the playing field even more level. So, anyway, with that I wish we could vote on that and amend clause 24.

Question put and agreed to.

Clause 24, as amended, ordered to stand part of the Bill.

Mr. Chairman: We have to revisit clauses 17 and 6.

3.45 p.m.

Clause 17 reintroduced.

Sen. D. Montano: You are looking at it from the wrong side, Senator.

Sen. Prof. Ramchand: I am looking at it from the right side. I do not think the banks need that protection. I do not think they need that concession; they make a good bit of money.

Hon. Senator: Yes.

Sen. Prof. Ramchand: I want to be sure that the investor gets the benefit.

Sen. R. Montano: If this matter is not dealt with, the Government runs a serious risk of being accused of looking out for the interest of the big banks and not that of ordinary persons.

Sen. Dr. Saith: We run that risk, in any case. Whether we do it or not, Sen. R. Montano will say it. We have debated this issue and we—

Sen. R. Montano: You cannot shut up debate just like that.

Sen. Dr. Saith: We are not debating. We are getting the benefit of your advice of what the Government will be accused of; I thank you for the advice.
[*Laughter*]

Sen. R. Montano: Okay.

Sen. Chin Lee: We have exhausted that issue. I spoke about it in my opening and closing remarks.

Sen. R. Montano: We have not exhausted the issue.

Sen. Dr. Saith: We have another Bill to do.

Sen. Chin Lee: I propose, with respect to clause 38(5), that after the word “Minister” we delete the full stop, we add a comma—this is Sen. Seetahal’s proposal:

“but in any event not earlier than the date of proclamation of this Act”.

Mr. Chairman: Hon. Senators, the proposal is that clause 17(5) be amended to read:

“An Order made under this section may be made retrospective to a date not being earlier than six years from the date on which the Order is signed by the Minister, but in any event not earlier than the date of proclamation of this Act.”

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

New clause 6.

Sen. Seetahal: Mr. Chairman, I had proposed an amendment to section 6 of the original Act. I raised it right after clause 6. I said that we should insert an amendment there to tidy up the original Act.

“Section 6 of the Act is amended in subsection (1) by inserting immediately before the word ‘Act’, the words ‘hotel development’.”

That is my proposal.

Sen. Chin Lee: We wish to propose your recommendation, that is:

“To insert immediately before the word ‘Act’”—

Sen. Seetahal: My recommendation is:

“Section 6 of the Act is amended in subsection (1) by inserting immediately before the word ‘Act’ the words ‘hotel development’.”

Sen. Chin Lee: We are in agreement with that.

Sen. Prof. Ramchand: So is this a new amendment being proposed by the Government? [*Crosstalk*]

Sen. Mark: What is being proposed? [*Crosstalk*]

Sen. Jeremie: Mr. Chairman, the Government proposes a new section 6, as follows:

“Section 6 of the Act is amended in subsection (1) by inserting immediately before the word ‘Act’ the words ‘hotel development’.”

Subsequent clauses are renumbered accordingly.

Sen. R. Montano: Just on a small point of procedure, so that I understand it; correct me if I am wrong. I would be quite happy to be told that I am wrong. I thought that additions like this could not be made unless the proposals were, in fact, made when we were in debate and the amendments have to be proposed. I seem to remember being told, when I was in this position and wanting to do certain things, that I had made certain proposals that I had not made in the debate proper and they could not be done. Just for clarification and for the record, so that the next time it happens—the procedure we are adopting right now, is it proper procedure? Next time, can I do it, too?

Sen. Dr. Saith: Are you suggesting we do not do it?

Sen. Mark: No, we just want a precedent. We have a lot of changes that we want to make.

Sen. R. Montano: Is this proper?

Mr. Jaggassar: New clause 6:

“Section 6 of the Act is amended in section 1 by inserting immediately after the word ‘Act’ the words ‘hotel development’...”

Sen. R. Montano: Hold it, Mr. Clerk. We have not even reached there yet. I have asked Mr. Chairman a serious procedural question. I do not think it is for the Clerk to dismiss me. This is important. I keep on saying that it is either we do things properly or we do not. I am not against this amendment; I am going to vote for it, but I want to make sure that we do it properly. It is either the procedure that we are adopting is acceptable or it is not. If it is not an acceptable procedure, then we can fix it quite easily. We can go back into session, as it were, make the proposal and there will be no debate on it and we could come back out, but we are going to do it properly, one way or the other. Is this procedure proper?

Sen. Jeremie: Sen. Seetahal raised this point in her contribution and the Government, as it always has, took note of it and has accepted the proposal. Can we now begin debate on the Caribbean Court of Justice?

Mr. Chairman: In addition to that, Standing Order 53(7) clearly says that it can be done; in which case the Clerk would have to read the new clause and proceed.

Sen. R. Montano: Thank you. Mr. Chairman, I just wanted to know, because the next time—and there will be a next time—I want to be able to say, “Do you remember?” [*Laughter*]

Sen. Seetahal: I think when I heard the Clerk read the amendment just now, he said after the word “Act”, but it should read “before the word ‘Act’” in the amendments.

Mr. Jaggassar: It should read:

“Section 6 of the Act is amended in subsection (1) by inserting immediately before the word ‘Act’ the words ‘hotel development’ and renumbering the subsequent clauses accordingly.”

New clause 6 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill

Question put and agreed to.

New clause 6 added to the Bill.

Clauses 6 to 24, renumbered clauses 7 to 25, ordered to stand part of the Bill.

Question put and agreed to.

New clause 6 ordered to stand part of the Bill.

Sen. R. Montano: I told you that I would not vote against it. [*Laughter*]

Sen. Mark: Mr. Chairman, I would like the hon. Minister, in the interest of transparency, accountability and having regard to the fact that we have \$300 million in capital expenditure, to make available to the Senate, a list of the 22 developers who are to benefit.

Sen. Chin Lee: If the Senator provides a question, I would gladly answer it.

Sen. Mark: A question? You are bringing a Bill here, saying to me that I must give these incentives and you are telling me that I have to bring a question?

Mr. Chairman: Hon. Senators, we cannot allow this.

Sen. Mark: Mr. Chairman, that is unheard of; this is a Bill that is in committee stage.

Sen. D. Montano: Mr. Chairman, we are finished with the session. I do not know what is happening here; this is totally out of order.

Sen. Mark: What is out of order?

Sen. D. Montano: We have settled on the Bill now.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman, can I engage you?

Sen. D. Montano: Mr. Chairman, we have to bring some order to this.

Mr. Chairman: You asked a question.

Sen. Mark: And I sought your permission.

Mr. Chairman: You asked the Minister to provide a list. The nature of the question is certainly one that could be set for question time. I do not think here is the place for it.

Sen. Mark: So you are saying that in this Bill where we are being asked to approve—

Mr. Chairman: No, no; the question does not come up in the Bill.

Sen. Mark: But it is linked to the Bill, because we are dealing with these 22 developers.

Mr. Chairman: Therefore, Sen. Mark, I suggest that you bring a question and the Minister will be obliged to answer.

Sen. Mark: I beg to differ.

Sen. D. Montano: Mr. Chairman, what does this have to do with the committee stage of the Bill?

Sen. Dr. Saith: We are not breaking for tea; we will stay here until 6 o'clock.

Sen. Mark: “Yeh”, you are a dictator. Who are you? “You telling de President we not breaking for tea?” Is he not the Vice-President?

Mr. Chairman: Please, Sen. Mark.

Sen. Mark: What Saith think it is? Out of place! Your Prime Minister is a dictator and you got the disease? We could leave here 2 o'clock in the morning; we have no problem with that. [*Crosstalk*]

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

CARIBBEAN COURT OF JUSTICE BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie): Mr. Vice-President, I beg to move,

That a Bill to implement the agreement establishing the Caribbean Court of Justice in its original jurisdiction and for related matters, be now read a second time.

Mr. Vice-President, despite all that has gone before, today is, indeed, a red-letter day in the history of this country.

Sen. Mark: Why? [*Crosstalk*]

Sen. The Hon. J. Jeremie: In 1962, against the voice of a vociferous Opposition, the government of the day led this country to political independence; but independence, in a political sense, is not complete independence.

A State is comprised of three arms of government: the legislative, the executive and the judicial. Our decision to chart our own course in 1962, to be masters of our own destiny was, unfortunately, at the time, partial in nature. For example, on the attainment of independence, India made its independence complete in the sense that all ties, in relation to all branches of government, were broken with their colonial masters. This is not a matter which troubled us in the heady days just after independence, but it is a matter with which we must treat and which thinking men, even at the time of Independence, were troubled by.

Sen. Mark: Political red herring!

Sen. The Hon. J. Jeremie: The complicated issue of precisely how an independent State could retain ties, even in a judicial sense and in relation to the judicial arm of the State, with our colonial masters, troubled many jurists at the time of Independence.

Sen. Mark: Multinationals dominate our country and are in charge of our country, but we independent?

Sen. The Hon. J. Jeremie: My good friend, now deceased, and former colleague at the University of the West Indies, one of the leading Caribbean jurists of all times, Telford Georges, former Dean of the Faculty of Law, said in 1970 at a lecture at the University of the West Indies:

“Starkly put, it appears to me that an independent country would assume responsibility for providing a court of its own choosing for the final determination of legal disputes arising from decisions in that country.”

Sir Telford noted that sovereignty is, in fact, compromised by allowing the resolution of disputes to go to a court which is part of the former colonial hierarchy. He dismissed the counter jurisprudential argument that on achieving independence, Caribbean States had a choice. That choice was allowing appeals to external courts to continue, or abolishing them, so that it was not, in fact, a derogation from sovereignty to allow appeals to continue to the Privy Council. He dismissed that argument as being fundamentally flawed.

Sir Telford acknowledged that this was, indeed, the exercise of a right of independence; that is to say, to hold on to the coat-tails of our colonial masters. But he felt that this was the type of argument which the average person would call “a lawyer’s argument”. He said:

“It asserts that it is an exercise in sovereignty of independence to choose a situation of dependency. In real life, anyone who behaved that way would evoke pity and exasperation. He would be like the grown man who demonstrates his independence, but continues to live in his parents’ house.”
[*Crosstalk*]

These are the words of my colleague, now deceased. I felt it appropriate to share them with hon. Senators on this occasion for two reasons: Firstly, Sir Telford spent many of his most productive years in our own Court of Appeal and he would have been proud of the fact that we are here today, finally, debating this Bill on the Caribbean Court of Justice, albeit in an emasculated form.

The second reason is that, although we are not, in fact, debating the Bill which was designed to bring in the CCJ in its final jurisdiction, the appellate jurisdiction, I feel that the sense of pride which we must all feel in establishing the court itself, albeit in its limited jurisdiction, is an essential and necessary step for us to take toward the establishment of the court, in its fullest sense, hopefully, in the not too

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distant future. I submit, when that is achieved, we shall no longer be, in the words of Sir Telford, “like the grown man who demonstrates his independence, but continues to live in his parents’ house”. [*Interruption*]

Before leaving this point on the completion of our sovereignty, I would like to let hon. Senators know that in the United Kingdom, specifically on June 23, 1999, Mr. Mendez Campbell, the Member for Northeast Pyle in England, discussed the reaction of the House of Lords to the hanging of nine convicted murderers in Trinidad, after their appeals were dismissed by the Privy Council. I remind my colleagues on the other side that it was under their watch that these nine convicted murderers were hanged, one after the other on two days in 1999.

Sen. Mark: What is the problem there, and you kill Glen Ashby?

Sen. The Hon. J. Jeremie: This is what the House of Lords said. Lord Browne Wilkinson, the Senior Law Lord at the time, suggested that the time had come to end the role of the Privy Council in Caribbean cases.

Sen. Mark: That is one person.

Sen. The Hon. J. Jeremie: David Panick, a distinguished Silk in the United Kingdom, said:

“Our valuable judicial resources should no longer be used on the resolution of disputes from abroad. It is time to bring down the curtain on the British legal empire.”

Sen. Mark: What is the British Government's position on this matter? He is talking about individuals.

Sen. The Hon. J. Jeremie: This was said in 1999, as again I must repeat, when my colleagues on the other side held the reins of power. It was, perhaps, the reason the former Prime Minister, Mr. Basdeo Panday—

Sen. Mark: Honourable to you.

Sen. The Hon. J. Jeremie:—forced his Attorney General to lay the Caribbean Court of Justice draft instruments in Parliament on September 24, 2000. Colleagues, all of us in this place today are here only because 43 years ago we were bold enough and certain enough of ourselves to put an end to life in our parents’ house.

Sen. Mark: Rhetoric boy!

Sen. The Hon. J. Jeremie: We must begin to complete our independence and to put an end to living in our parents' judicial house, especially when they do not want us.

Sen. Mark: PNM dictators!

Sen. The Hon. J. Jeremie: I acknowledge that what I have just said is, really, a cry for freedom and independence, but it is a cry which has validity and relevance today and because of that very fact, I ask this Senate to pass what we do today unanimously. I ask us to put aside our differences, for a couple of hours, and to say that we are one nation, indivisible, united in purpose to resolve our disputes among ourselves and to live in our own houses.

Sen. Mark: And get kidnapped!

Sen. The Hon. J. Jeremie: Nothing short of this would reflect the labour of love which our leaders, all of them, have exercised in this particular matter in relation to the CCJ. [*Interruption*]

Sen. Mark: Sixty-two murders in 66 days.

Mr. Vice-President: Sen. Mark!

Sen. Mark: Sorry, Sir; I just wanted to inform him.

Sen. The Hon. J. Jeremie: For the benefit of my colleagues on the other side, in 1970, at the sixth Conference of Heads of Government (COHOG), Eric Williams put in his labour. In 1989, at the eighth COHOG, ANR Robinson—[*Interruption*]

Sen. R. Montano: A total waste of time!

Sen. The Hon. J. Jeremie:—the leader of the party then in power—a coalition government of which members on the other side were a part—put in his labour. In 1992, Patrick Manning, following on the commitments made by the West Indian Commission in their report, “A Time for Action”, put in his labour.

Sen. Mark: He was opposed to the CCJ in 1987!

Sen. The Hon. J. Jeremie: I remind colleagues on the other side that in 2000 the then Prime Minister opened the Caribbean Court of Justice, as it then was, on Richmond Street. He agreed that Trinidad and Tobago would seat this court and he also agreed that because of the draft instruments which his Attorney General laid in the House, that this court would have full jurisdiction, both in relation to the Caribbean Single Market and Economy matters and final appeals.

Mr. Vice-President, with that call to unity, I wish to turn briefly to the constitutional points raised in the Jamaican appeal and which my colleagues on the other side indicated, on the last occasion, they might have a difficulty with today. I speak now to the constitutional propriety of our actions in light of the decision of the Privy Council in the *Independent Jamaica Council for Human Rights and others versus Marshall Burnett and the Attorney General of Jamaica*, Privy Council Appeal 41 of 2004. In that case, the Privy Council held that the Judicature, the Appellate Jurisdiction (Amdt.) Act, 2004, the Caribbean Court of Justice Constitutional (Amdt.) Act, 2004 and the Caribbean Court of Justice Act, 2004 in Jamaica, were not passed in accordance with the procedure required for amending an entrenched provision of the Jamaican Constitution and were accordingly voided.

The objectives of those three Acts were, firstly, to abolish the right of appeal to the Privy Council; secondly, to transfer that right of final appeal to the Caribbean Court of Justice and, thirdly, to create the Caribbean Court of Justice, as a superior court of record, in the domestic law of Jamaica. The Jamaican legislation sought, therefore, to create and enact the CCJ with both the original and final appeal jurisdiction. It was accepted by all parties in the Privy Council, attorneys for the Attorney General and attorneys for the Independent Jamaican Council for Human Rights, that the right of appeal from the Court of Appeal of Jamaica to the Privy Council, under section 110 of the Jamaican Constitution—which was not an entrenched provision in Jamaica, as it is in Trinidad and Tobago under section 109—that the right of appeal could be repealed by a simple majority vote. The three Acts were passed, therefore, by a simple majority vote in the Jamaican Parliament.

The issue which the Privy Council had to decide, was whether the procedure adopted by the Jamaican Government to achieve those three objectives identified, were consistent with the Constitution of Jamaica. It was also accepted in the Privy Council, that the Parliament of Jamaica, by a simple majority, could lawfully abolish the appeal to the Privy Council. The result of that would have meant that the Jamaican Court of Appeal would have been the final Court of Appeal for Jamaica; there would have been no more Privy Council for Jamaica. That was accepted by the Privy Council. It was also accepted that the CCJ could lawfully be the final Court of Appeal for Jamaica, but the question of whether the procedure followed by Parliament to pass the Acts to achieve that goal was held to be constitutionally invalid.

Mr. Vice-President, I spent some time on this point, because I anticipated that questions will be raised, even in relation to the original jurisdiction, the emasculated Caribbean Court of Justice which we have brought here today, as to the constitutional propriety of the Government's actions. I hasten to add that the Government has taken time to study the Jamaican appeal and that is why, first of all, we did not rush debate on this matter in the Lower House and that is why we have studied the impact of the Jamaican Court of Appeal decision. That is also why we went to the Legal Affairs Committee meeting in Suriname and had the benefit of the views of all our colleagues from Caricom countries and the Prime Minister has agreed to ratify the agreement establishing the Caribbean Court of Justice in a particular form, which will be discussed later on in the debate. I spent some time on the case.

Mr. Vice-President, the case had been won throughout by the government in the Jamaican courts. In the course of the appeal, counsel for the appellants argued that the CCJ could only become the final Court of Appeal, if the relating legislation was enacted by a special majority. Remember here I speak of the CCJ as a final Court of Appeal. The Privy Council's decision was not at all confined to the CCJ in its original jurisdiction, which is what we are here to debate today. The Privy Council held that if the Jamaicans wanted to introduce the court as a final Court of Appeal, that legislation had to be enacted by a special majority vote and not by ordinary legislation.

The reason was because the court held that it would undermine certain provisions of the Constitution, which were afforded special protection, and could only be altered by the procedure required to alter an entrenched provision. The Privy Council held that this would be in keeping with the principle of constitutional supremacy, which obtains in the Commonwealth, and not parliamentary sovereignty as obtains in the United Kingdom. So the Privy Council agreed with the appellants and struck down the Jamaican legislation.

The decision, as I have been at pains to say, related to the final appeal jurisdiction; it had absolutely nothing to do with the original jurisdiction. The Government has done a review of the decision and finds it, first of all, to be condescending, but we also find it to be wrong. We say, on this point only, that it is instructive to note that the Prime Minister of the United Kingdom has the power to appoint a large number of Lords, including Law Lords. That is a power under the CCJ Treaty and the arrangements which we had proposed, that does not reside in the hands of our Prime Minister. It resides in an independent service commission, the Regional Judicial and Legal Service Commission.

Sen. Mark: That is independent?

Sen. The Hon. J. Jeremie: It is staffed by persons of impeccable integrity, one of whom appeared in this matter against the Government of Jamaica, Dr. Lloyd Barnett. He is a member of the Regional Judicial Legal and Service Commission; if that is not independent, then I do not know what can be.

Sen. Mark: One man!

Sen. The Hon. J. Jeremie: We say that type of political interference, which is contemplated in the United Kingdom, could not have been exercised by the Caribbean Court of Justice as drafted in its final appeal jurisdiction. Nonetheless, we accept the decision and we have moved on. We accept that the Privy Council has told our Jamaican colleagues to create a new court to which appeals from the Court of Appeal of Jamaica would lie, when that new court, the CCJ, would enjoy none of the constitutionally entrenched protection given to the Jamaican Supreme Court and the Court of Appeal. We accept that the Privy Council's decision, insofar as it says that, cannot be appealed. All that we are adding is that the Privy Council, itself, is not entrenched in Jamaica and, not only that, but the right of appeal to the Privy Council is not entrenched in Jamaica.

What the Privy Council did in Jamaica was to find that our Caribbean Court of Justice, in which we had set up elaborate mechanisms to protect against political interference, even in relation to the final appeal jurisdiction, was an inferior arrangement to the Privy Council, which is a completely not entrenched court and, in relation to which, there was no entrenched provision to guarantee the right of appeal. We find that strange, but we have accepted it, in relation to our colleagues in Jamaica. The Privy Council went as far as to say that the creation of a superior court, such as the CCJ enjoys no equivalent protection. How that is so, when the Privy Council itself enjoys no protection at all in Jamaica, is beside the point, but this is what the Privy Council said. They said that would make a mockery of the entrenched constitutional safeguards intended to ensure the integrity of the legal process in Jamaica.

They went on to say that it was no answer to rely on the safeguards contained in the Caribbean Court of Justice agreement, because these were not constitutionally protected in Jamaica and could be amended by the parties to the agreement, forgetting that the Privy Council itself was not constitutionally protected in Jamaica; not even the right of appeal to the Privy Council, which is protected in Trinidad. Our colleagues in Jamaica sought to create the CCJ as a court with original jurisdiction and also the final appeal jurisdiction.

A close analysis of the ruling, as I have attempted to do, revealed that the board nullified the legislation because it failed to create the CCJ as the final appeal court on the same constitutional footing as the Supreme Court and the Court of Appeal. They did not compare oranges with oranges; they did not compare the CCJ with the Privy Council; they compared the Caribbean Court of Justice with the Court of Appeal in Jamaica and the Supreme Court, which has certain constitutionally protected provisions. That is why they said that if you wish to abolish appeals to the Privy Council, that is fine, but to abolish appeals and reside the final say in your Jamaican Court of Appeal, runs against the grain of the integration process. This afternoon we are on the Caribbean Court of Justice in its original jurisdiction; that is the Bill before this Senate, which was passed in the other place on February 02, 2005, by a simple majority.

In light of the Jamaican case, the constitutionality of the Bill becomes an issue which I am sure my colleagues on the other side will ask us to address. To decide that issue would require an analysis of the salient provisions of the Bill, even as emasculated. When the Bill was introduced in the other place, it sought to create the CCJ both as a court with original and final appeal jurisdiction. However, the Bill was amended in committee stage to only confer original jurisdiction on the court. It is recognized by the Government that because the right of final appeal in Trinidad to the Privy Council, under section 109, is an entrenched right of our Constitution, a constitutional amendment which required a special majority vote would have had to be obtained to abolish this right of appeal. So unlike the Jamaican situation, Trinidad and Tobago did not pass the Bill to create a superior court of record with both original and final appeal jurisdiction.

From the attitude of the Members on the other side, notwithstanding our appeals to them and our meticulous examination of the hands that were part and parcel of doing this work, it became quite clear that they were not going to support the legislation. So the Government was forced, in committee stage, to pass the legislation in its original jurisdiction. Unlike Jamaica, Trinidad and Tobago does not seek to abolish the right of appeal in this legislation. We hope that our colleagues on the other side will become enlightened, as they were in 2000. They are not there just yet, but we live in hope.

Sen. Mark: Not under this dictatorship.

Sen. The Hon. J. Jeremie: The Bill merely seeks to create the Caribbean Court of Justice in its original jurisdiction. In fact, the Bill, in no way, seeks to amend the Constitution, not even by implication. The Privy Council's ruling in the Jamaican case is limited to the issue of creating a court of final appeal. The judgment of the board does not focus on the CCJ as a court exercising original

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jurisdiction. It is to be noted that our Bill, in the first instance, seeks to create the CCJ not as a review or appellate court. The Privy Council ruled in the Jamaican case that to create a superior court with final appeal powers by simple majority legislation, when the Supreme Court and the Court of Appeal enjoyed entrenched protection in the Constitution, would be inconsistent with the Constitution.

The Government is, therefore, of the view that the Caribbean Court of Justice Bill has properly been passed in the other place and it does not require a special majority vote. Notwithstanding that, I started off by asking all of my colleagues on the other side to join with us today to pass this Bill unanimously. The reason the Bill does not require a special majority vote is because it does not expressly or impliedly seek to alter any provision of the Constitution, nor does it seek to create a final Court of Appeal in lieu of the Privy Council. That is not to say that if we do not see it as arguable that there are provisions in the Bill which might, conceivably, cause some argument, we would not address those provisions. We have studied the Bill in its entirety, both as a Government and at the Legal Affairs Committee (LAC) meeting in Suriname.

Sen. R. Montano: I do not understand that statement.

Sen. The Hon. J. Jeremie: Members on the other side were part and parcel of the LAC which has been in existence now for 12 years and, in respect of which, the former Attorney General, Mr. Ramesh Lawrence Maharaj, played an important role in advancing the court and former Attorney General, Mrs. Kamla Persad-Bissessar, who is still on the other side, also played an important role in advancing the court.

There are two possible areas of concerns which have been flagged by my department. Mr. Vice-President, I have come to the Senate with clean hands. Those areas of concern are the referral jurisdiction which is contained in Article 14 of the Agreement establishing the court:

“Where a national court or tribunal of a Contracting Party is seized of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned shall...”

And the language is mandatory.

“if it considers that a decision on question is necessary to enable it to deliver judgment, refer the question to the Court...”

this is the Caribbean Court of Justice.

“for determination before delivering judgment.”

This Article mandates national courts of Member States faced with issues concerning the interpretation or application of the revised Treaty, in a matter before them, to refer that issue to the CCJ for clarification and interpretation. Its genesis is an important provision of the CCJ.

It is contained in one of the recommendations of the West Indian Commission in its report entitled, “Time For Action”. The Commission, on page 38 of the report, recommended that the Caribbean Court of Justice:

“Should have an original jurisdiction in matters arising under the Treaty and that any Caricom citizen, individual or corporate and any Government of any State should have the competence to apply for ruling of the court in a matter arising under the Treaty.”

The Bill seeks to give effect to this Article at clause 6(4), which was inserted in the other place. The new clause 6(4) reads as follows:

“Where a court or tribunal is seized of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal shall if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Caribbean Court of Justice for determination before delivering judgment.”

The intent of the referral jurisdiction is to promote uniformity of the decision-making process in relation to the interpretation and application of the Treaty among all member States. That is a central proposal of the West Indian Commission.

I am moving back from the Commission to the legislation. The West Indian Commission said that integration in its broadest economic sense, involving a single Caricom market, monetary union, the movement of capital, labour and goods and functional cooperation in a multiplicity of fields, must have the underpinning of community law. Integration rests on rights and duties; it requires the support of the rule of law applied regionally and uniformly. Those are not my words. The Caribbean Court of Justice, interpreting the Treaty of Chaguaramas—I am going back to the Commission now—resolving disputes under, including disputes between government parties to the Treaty, declaring and enforcing community law, all by way of an original jurisdiction, is absolutely essential to the integration process. It represents, in our recommendations, one of the pillars of the Caricom structure of unity.

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Mr. Vice-President, we have taken careful advice on this; including advice from counsel involved in the Jamaican appeal, not on behalf of the State; that is to say, the aggrieved party in the Jamaican appeal; the gentlemen to whom I referred as being independent, his being a part of the Regional Judicial and Legal Services Commission. He has advised us that the referral provision is consistent with the dichotomy between international law and domestic law, in the sense that, the decision by the Caribbean Court of Justice, when taken in its international law jurisdiction, because that is what it is, when it is functioning in its original jurisdiction, as a trade court applying international law principles, those decisions are quite separate and distinct from decisions of our local courts, taken in the exercise of their domestic jurisdiction. On that score, we have been advised that the referral regime passes muster on the *Hinds v R* test which was applied by the Privy Council in the Jamaican case.

I turn now to the second area of concern and that relates to the enforcement provisions. The enforcement provisions are to be found in Articles 15, 16, and 17 of the Agreement. Article 15 states:

“Member States, organs, bodies of the community or persons to whom a judgment of the court applies, shall comply with that judgment.”

Again, in mandatory terms. Article 16 states:

“The Court shall have the power to prescribe, if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of a party.”

Article 17 states:

“Judgment of the Court shall be legally binding precedents for parties in proceedings before the Court unless such judgments have been revised in accordance with Article 20.”

Mr. Vice-President, clause 9 of the Bill seeks to make the decisions of the Court binding on Member States. It states as follows:

“The judgment of the Court in its original jurisdiction shall be final and constitute legally binding precedents for parties in proceedings before the Court.”

The court there being the Caribbean Court of Justice. In his treatise on public international law, Prof. Brownlie states at pages 34 to 35 as follows:

“A State cannot plead provisions of its own law or deficiencies in that law...”

This is a principle of international law.

“in answer to a claim against it for an alleged breach of its obligations under international law...It is a generally accepted principle of international law that in relations between parties to a treaty, the provisions of domestic law cannot prevail over those of the Treaty. This principle is not affected by reliance on constitutional provisions.”

The permanent Court of International Justice in the *Polish Nationals in Danzig* said:

“It should be observed that a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties enforced.”

4.45 p.m.

But, again, the simple answer here is that these Articles apply to states and not individuals. The constitutional provisions guarantee rights on behalf of individuals as against the states. International law is concerned with relations between states. So that is the simple argument to the constitutionality of the enforcement provisions.

So that it is hoped that the combined effects of Articles 14, 15 and 17 shall be to confer on the court the ability to ensure that regional courts follow its rulings or judgments. But that is a hope. In accordance with the principles of comity, we would expect that that would be so. It is, of course, open to our courts and they must act in a manner consistent with the provisions of our domestic law, including our supreme law, the Constitution.

But the common provisions of the Articles which I have cited at some length and which I have traced back to the recommendations of the West Indian Commission, are designed to develop a uniform interpretation and application of the Revised Treaty across the region.

The potential difficult areas aside, in relation to the original jurisdiction, I turn briefly to the less controversial but critical areas on which the CCIJ, as amended, as emasculated, will have to adjudicate. The Bill to implement the CSME which was

moved by my colleague, the hon. Minister of Foreign Affairs, includes at its core, provisions which speak to the unrestricted movement of factors of production, that is to say, goods, services, capital and skilled labour, the right of establishment, which is the freedom of nationals of any member state of the Caribbean Community to establish business enterprises throughout the community and to be treated no less favourably than nationals of that country, opportunities for sustainable development of all of the member states throughout the mechanism for protecting vulnerable countries, and regions in those countries and sectors in those countries, and also a framework for the establishment of the most vital sectors in the individual states economies.

The framework within which the court shall exercise its original jurisdiction is dealt with in a number of Articles and clauses in the Bill which is before us. The CCJ Bill, as amended in the other place, shall have exclusive jurisdiction to hear, and to deliver judgment on, disputes between contracting parties to the Agreement. There can again be no constitutional difficulty with that because our local courts are not international courts. Disputes between any contracting parties to the Agreement on Caricom, for the same reason, there can be no conceivable constitutional difficulty with that because our local courts have, again, no jurisdiction in that matter. Referrals from national courts or tribunals of contracting parties to the Agreement, I have dealt with that. Applications by nationals in accordance with the Articles concerning the interpretation and application of the treaty, that is dealt with in the international law point.

It is also envisaged that the CCJ will have to adjudicate on matters such as the rules of origin, discriminatory import duties, the application of export drawback schemes, quantitative restrictions, rules of competition, dumping and subsidies, the right of establishment and the free movement of services. From what I have said before, it is clear that the CCJ, as amended in the other place, shall be primarily, initially, a trade court, but it is much more than that for us on this side. It is the symbol, as I have said, of true independence.

It is a source of some discomfort to us in Government that Barbados has now moved ahead of us in relation to the Caribbean Court of Justice. It has moved rapidly to bring the court in, in both of its jurisdictions. Guyana has done the same. I ask again for all of us to support this work, as I close, that has been crafted by each of the hands which have led this nation: Prime Minister Williams, Prime Minister Robinson, Prime Minister Manning, Prime Minister Panday. Whatever our difficulties—and there are many—I say to my colleagues here today that we should not let this opportunity pass. We should not let this

opportunity for real and true independence of thought, spirit, action and unity, pass, and we should not let this opportunity pass to live in a state of independence and in a house of our own.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Mr. Vice-President: Hon. Members, we are a considerable time away from what should have been the tea break. We are going to take the tea break now and come back at 5.30 p.m. The Senate will now be suspended until 5.30 p.m.

4.52 p.m.: *Sitting suspended.*

5.30 p.m.: *Sitting resumed.*

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move, that the Senate be now adjourned to Wednesday, March 09, 2005 at 1.30 p.m., at which time we will continue the debate on this Bill. But before we do so, there is a one-word amendment to the Pesticides and Toxic Chemicals (Amdt.) (No. 2) Bill, which we would do first.

Mr. Vice-President: Hon. Members, there are two matters to be raised on the Motion for the Adjournment.

Harassment of Journalists (Protective Services)

Sen. Wade Mark: Mr. Vice-President, the first Motion standing in my name addresses the issue of the persistent harassment of journalists performing their legitimate duties consistent with section 4 of the Constitution, by members of the protective services. Under section 4(k), the freedom of the press is enunciated in our Constitution. That gives to the journalists, reporters and members of the media, the right to conduct their affairs without any harassment, intimidation or even threats from any quarter, particularly members, in this instance, of the security forces.

What we have witnessed over the last few years, and I dare say over the last two years, is a dangerous pattern and if not nipped in the bud, could lead to implications and repercussions that could result in the media not being able to execute its duties and responsibilities to the population of this Republic. The media in our country constitute a very important pillar of the democratic process and everything must be done in order to facilitate and protect the media. They have rights and they also have responsibilities; we all know that. But we, in the

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UNC, have discerned a pattern of conduct developing. I cannot say whether it is premeditated; I cannot tell you if it is calculated or if, in the course of their duties, members of the protective services become so over-enthusiastic that they tend to exercise, what I would like to describe as, the use of excessive force against members of the media. I do not think that is a healthy development for our nation.

This particular pattern is even more serious when account is taken of the threats that are being laid by the Telecommunications Authority to the media houses in this country, which, to my mind, is another dimension of a kind of intimidation by the authorities in the context of that particular agency. I want to make reference to some journalists who have felt the brunt, who have come under the hammer blows of members of the security forces. I am not saying the entire protective services are involved, but members of that particular agency or organization are involved. I do not know if you recall when the TV-6 morning producer, a lady by the name of Caroline Onokuti, was literally brutalized by members of the protective services. From my reports her clothes were torn. She was harassed and literally brutalized by members of the protective services.

There is a young lady called Susan Edwards-Lewis who also, in the execution of her duties, came under some harassment and intimidation, and she was eventually charged by the police. There is a cameraman called Ivan Toolsie. He operates in the south. He, too, has been the victim of, in this instance, private security, because at the San Fernando Hospital I think the MTS have guards who are on duty 24 hours a day. This particular cameraman, executing his duties outside the hospital compound—he did not enter the building, he was on the compound—taking photographs, was forced by these private security personnel to delete from his camera, shots that he had taken as they related to certain events that were unfolding at the San Fernando Hospital. If I were Ivan, I would never have deleted my film from my camera. They would have had to kill me! I would not have done it! You have to stand up for your rights! But he was forced to remove the shots from his camera, that he had taken during that particular period in question.

I know even the “Gladiator”, Ricardo Welch, has also come under assault and intimidation by members of the security forces. But he is a person who is a fighter and he will not allow them to intimidate him. There is another person I want to bring to the attention of the Minister of National Security, Sadro Mohammed. He lives in Mohammedville, and one morning a police vehicle appeared in front of his house. He was not at home at the time. His wife and children were home. The

police proceeded to enter this man's home; went into his yard; went up the stairs; knocked on the people's door, saying that Sadro sent them. Sadro was not home, you know! And they remained on the premises for almost an hour, intimidating, harassing and virtually threatening the family—three members of the police service in this instance. They never charged Sadro. He did not commit any offence. Why were they there? Do you know why? Because as a talk-show host on 106.5, he is fearless and relentless in what he has to say about what is taking place in this country. Maybe some political “police” who did not like what he said, went that evening to harass him and his family.

I raise these matters to at least find out from the hon. Minister of National Security if there is a subtle policy on the part of the Government to target certain members of the media for harassment, with a view to intimidating and putting them into a frame of mind where they would no longer criticize the regime. So if they strike fear and terror into your heart and consciousness, they may think that would be sufficient to allow you to retreat from the assault that they are engaging in.

We are concerned. I have read in the newspapers of a bill that is supposed to be here. I am not anticipating what the bill is going to be about, but I can tell you from what I have read in terms of public information, that is another dangerous weapon that is directed by the State this time, at the heart of the media industry. I will have more to say about that when we come to deal with that matter in the not-too-distant future. Is there a policy on the part of the Government to use sections of the security services to harass the media?

Journalists' phones are being tapped. I want to tell you that when a dictatorship seeks to take root in any civilization, they go after two institutions: They go after the media to cow, attack and silence them. The next area they go for—as they are going for—is the Judiciary. [*Interruption*] We can take care of ourselves, man. We are preparing for you any time and anywhere. You cannot intimidate the Opposition. You dare not.

This is an area that we are concerned about. We speak in defence of the media; we speak in defence of the freedom of the press and we call on the Minister of National Security to make an unequivocal statement this afternoon as to that particular threat that is developing in our country. We would like to know whether the Government is part and parcel of a secret conspiracy, a plot, virtually, to intimidate, harass, undermine and frustrate the good work of the journalists in the country.

I thank you very much, Mr. Vice-President. [*Desk thumping*]

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. Vice-President, I am supposed to respond to concerns raised by my colleague, Sen. Mark, on the so-called persistent harassment of journalists performing their legitimate duties consistent with section 4 of the Constitution, by members of the protective services, and I notice in his contribution he introduced something about the Telecommunications Authority that I would not even touch.

This Motion states that there is persistent harassment of journalists performing their legitimate duties, by members of the protective services. I want to emphasize that the Government of Trinidad and Tobago is committed to upholding the freedom and constitutional rights of every citizen in Trinidad and Tobago. The media has enjoyed, and will continue to enjoy, that level of freedom which is guaranteed in our Constitution. When I looked at the wording of the Motion and listened to Sen. Mark, I immediately detected a level of carelessness on the part of the Opposition. The term “persistent harassment” implies that there is constant and relentless persecution of journalists by members of the protective services.

Once again, the Members—well, I should not say, the Members; Sen. Mark, this Member of the Opposition has engaged in a line of action here in this Chamber which proves that he is predisposed to jumping to conclusions without the necessary review of the facts, and I would not even remind him about when his party was in government and what were some of the statements and attacks made on the media. That is insulting, not the least of the cellular statement.

He has arrived at a decision that there is a distinct pattern of confrontation between the media and the police to the extent that the latter inhibits the constitutional freedom of the former. Nothing could be further from the truth. Within the last year, there were three known reports of alleged confrontation between the media and the protective services. Sen. Mark mentioned some others, and as I normally do, I will get the *Hansard*; I would follow it up to see whether or not the extent of what he is saying has any relevance, any bearing, and what needs to be done.

The first occurred on August 05, 2004 at Southern Main Road, Chaguanas, on the compound of DSM Plaza at Intercontinental Bank, where there was a protest involving members of the Hindu Credit Union. One of the guards was alleged to have assaulted Mr. Ivan Hutchinson, a cameraman, employed with the now defunct Trinidad and Tobago Television (TTT). Mr. Hutchinson was advised to visit the Chaguanas Accident and Emergency Department to be medically examined in order that the police could obtain a medical report on his behalf.

According to the records from the Central Division of the police service, he never did and was contacted via telephone after the incident, but to date he has not shown up.

The second incident took place on August 15, 2004 at Southern Main Road, Chase Village, in which an incident occurred which involved Miss Ann Marie Ganness and Mr. Rawle Borde of the defunct National Broadcasting Network. Here it was reported that a security officer pointed a gun at Mr. Borde. The matter is under investigation by senior superintendent of the Central Division of the police service. Again, I am dealing with those matters that are supposed to have involved the national protective services.

The third and most recent case involving members of the media and the protective services occurred on Friday, January 28, 2005 and involved Miss Suzette Edwards-Lewis, a newspaper photographer. This matter is still before the courts and therefore it cannot be the subject of any discussion here in this Chamber as a result of the *sub judice* status.

These are just sporadic cases of alleged harassment and, therefore, there is no evidence which will suggest that there is a persistent harassment of journalists by the protective services. Recent reports from the fire services state that there continues to be a very cordial and professional relationship between media personnel and fire officers. My colleague on the opposite side needs to tread very carefully when bringing a Motion of this nature in this Chamber. While he may genuinely believe that he is performing his duty as a Member of the Opposition, he must also realize that a loose and mischievous description like “persistent harassment of journalists”, can only serve to send an inaccurate and dangerous image of Trinidad and Tobago to the international community.

The media community and the police services must work together to ensure that not only must the public be thoroughly informed of national developments, but also that perpetrators of crime be brought to justice. The latter involves preserving the crime scene so that evidence is not contaminated and made inadmissible. In such a circumstance, unauthorized persons would be restricted from having access, even though the crime scene is a public place.

In essence, one would appreciate that the incidents involving conflict between the media and the police in the discharge of their respective duties are not unique to Trinidad and Tobago and both parties must grapple with the issue in attempting to establish some guidelines, so that a harmonious and functional relationship can be worked out. Whether it is a strike, a protest, a fire or a crime scene, the

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members of the protective services have their work to do. Notwithstanding the best of training, the natural instinct of the officers must come into play. The arrival of these anxious moments also applies to journalists in the execution of their duties.

The urgency or eagerness of journalists to get information ahead of their colleagues in rival media houses, sometimes result in spontaneous behaviour which can obstruct law enforcement officers in the execution of their duties. This is particularly so in sensitive crime scene investigations. What I, indeed, urge in such circumstances, is mutual respect of each other's profession. What the media personnel must understand is that the members of the protective services are fully cognizant of the critical role they play in the process of national development and will not prevent them from doing their jobs.

The journalists must also understand the sensitivity and security imperatives of the job of the members of the protective services. While there may, from time to time, be some level of over-exuberance on the part of workers on both sides, there should always be the presence of ethical and professional conduct in keeping with the dictates of national interest and public safety.

I thank you, Mr. Vice-President. [*Desk thumping*]

**Forensic Science Centre
(Lack of Resources)**

Sen. Wade Mark: Mr. Vice-President, the other Motion I wish to address deals with the negative impact on the criminal justice system created as a result of the failure of the Ministry of National Security to provide the Forensic Science Centre with adequate funding, equipment and human resources.

It has been said that justice constitutes the soul of any democracy or any nation, and justice is being denied. Thousands of citizens who happen to run afoul of the law in this land, the reality is that whether they have been incarcerated or on bail, there is a very important centre that has to conduct analyses referred to it by the relevant authorities in order to provide evidential information to the relevant authority at the court level so that those cases can be prosecuted accordingly.

What has happened is that after some three and a half years in office the PNM has just been making excuses in addressing the inadequacies that exist currently at the Forensic Science Centre at Federation Park. First we had the former Minister of National Security. He was in charge. He came; he saw; he left. We have a new Minister of National Security. He has arrived. We do not know when he will

leave, but very shortly I think he will. Like his colleague, we will see the back of him. But the reality is the two Ministers in question, with a combined term of office of near to three and a half to four years, have done little to improve the conditions; to provide the resources; to provide the equipment and the machinery necessary for the workers of the Forensic Science Centre to perform their duties and in the process address the inadequacy in the administration of the criminal justice system in this country.

Poor terms and conditions of employment continue to harass the workers of the Forensic Science Centre. In addition to that, we have, for instance, inadequate staff. Because as we all know and the Minister alluded to it sometime ago, you need scientific personnel; a certain calibre of personnel, to function effectively and efficiently in the Forensic Science Centre. Yet we have an inadequate number of personnel to service the increasing needs of the population and you have, as I said, a lack of state-of-the-art equipment.

We cannot fight crime because this is a very important institution in the fight against crime and in the promotion of justice in our country. Somehow you get the impression that the Minister of National Security, in his best efforts, is inadequate to the task, and we have a situation where, as I said—and was admitted here; there are records of Parliament to show where the Minister indicated that there are thousands of matters that are with the Forensic Science Centre, with no light at the end of the tunnel.

As I said, human beings are being denied justice in the country. When you take three, four and five years to provide crucial evidence because of a lack of resources, a lack of manpower, state-of-the-art technology, machinery and equipment, to the courts of this country, you deny justice to people who have been incarcerated. Justice must not only be done, it must be seen to be done, and it also must be done efficiently. The Magistrates' Courts are the poor man's courts! Yet there are over half a million cases pending in the Magistrates' Courts today and the Government continues to fumble and sleep.

So they are not providing the resources to the Forensic Science Centre and they are not providing the resource to the Magistrates' Courts, as the case may be. There is a lack of judges in the High Court and the Appeal Court and all these things are linked to the criminal justice system. But a key point I wish to draw to your attention and my colleagues' attention this afternoon, is the complete breakdown at the Forensic Science Centre. I do not want the Minister to come here this afternoon and just give us a ream of promises. We do not want NATO forces any longer. *[Interruption]* *[Laughter]* "No action, talk only". I know I was

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going to “ketch yuh”. When ah say so and ah drifted, yuh feel ah forget.” NATO is “no action, talk only”. I do not want any part of that club.

I want to ask the hon. Minister of National Security to get out of the NATO club. I want him to get active. I want him to intervene. I want him to provide resources to the Forensic Science Centre. I want him to go to Cabinet and get his colleagues to support him in providing resources, equipment and manpower so that the administration of justice in this country could be better served; so that people who are incarcerated can have speedy justice in this land. Those of us who do not run afoul of the law would not be able to understand the pangs and pains of those who are, in fact, infringing the law and are incarcerated.

That is why, in closing, a recent human rights report issued by the State Department in the United States painted a very, very dark picture of Trinidad and Tobago in terms of the prison conditions here. So I call on the Minister of National Security this afternoon, no more NATO; I want action; I want clear proposals in terms of implementation to address all the inadequacies now confronting the Forensic Science Centre so that there can be justice, progress, peace and the administration of justice in our country can get a boost that is so vitally required at this time in our nation’s development.

I thank you very much, Mr. Vice-President. [*Desk thumping*]

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. Vice-President, you know, my colleague, again, says that he does not want me to belong to the NATO club, and my colleague here is asking me if I should belong to the UNC club. Do you know what is unfortunate, especially in the Forensic Science Centre and that area of forensic science? My colleague, who was at one time the Minister of Public Administration and Information, knows the length of time it takes for persons to acquire forensic science skills. So what we have inherited now at the Forensic Science Centre did not happen in the last two and a half years. [*Desk thumping*]

Sen. Mark: Thirty-five years the PNM was in power—

Sen. The Hon. M. Joseph: Do you want to continue?

Sen. Mark: No, go ahead. [*Crosstalk*]

Sen. The Hon. M. Joseph: Mr. Vice-President and Members of this honourable Chamber, first of all to say that resources have not been provided to the Forensic Science Centre is not correct. In 2003, the budget for the Forensic

Science Centre was \$7.1 million; in 2004, it was \$9.4 million; in 2005, it was \$12.4 million.

Sen. Mark: Totally inadequate.

Sen. The Hon. M. Joseph: There were increases in every year. That is with respect to just the finances. In 2004, as far as human resources, three posts of Evidence Technician were created and eight posts of Junior Forensic Scientist were created. In 2003, 12 posts of Scientific Officer were created; six filled and four posts of Junior Forensic Scientist were created. In 2004, two posts of Scientific Examiner/Documents, one post of Human Resource Officer II and one post of Autopsy Technician were created. In 2005, we created two posts of Junior Forensic Scientist, one post of Autopsy Technician, one post of Human Resource Officer II and two posts of Scientific Examiner.

In February we got Cabinet approval for five scholarships, four in forensic science and one in forensic pathology. We engaged in discussions with the United Kingdom because we recognize that it is going to take some time to bring the skill level up to par. What we were trying to do was to get from the United Kingdom at least six Scientific Officers in key areas. The UK sent a scoping team. They spent two weeks here and they have prepared a report for us that will allow us, in the short term, to get human resources to help us discharge the responsibilities necessary in forensic science.

We just recently acquired the IBIS machine, the only one in the Caribbean; the Integrated Ballistic Identification Systems. When the Forensic Scientist came from the UK, she was surprised that we had that equipment here in Trinidad and Tobago. And we have acquired other pieces of equipment, all designed to deal with the backlog, because, as my colleague has indicated, there has been an increase in the amount of workload. I have come here and have been honest with this Parliament and telling them exactly what the state of play is in the Forensic Science Centre, and I have indicated what we are doing in order to deal with the backlog and to ensure that the Forensic Science Centre provides us with the kind of services absolutely necessary.

I will continue to update this Parliament, as the Government of Trinidad and Tobago, and it is the Government of Trinidad and Tobago providing all the resources necessary, but there are certain things that we just cannot do. We cannot produce, for instance, forensic scientist experts overnight and put them in the Centre. So we will continue to do what is necessary to ensure that in the

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immediate short-term and long-term, the Forensic Sciences Centre is provided adequately with the resources designed to improve on its performance.

I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.10 p.m.