

Leave of Absence

Tuesday, April 14, 2015

SENATE

Tuesday, April 14, 2015

The Senate met at 10.30 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Garvin Nicholas and Sen. David Small who are both out of the country, and Sen. The Hon. Marlene Coudray and Sen. Camille Robinson-Regis who are both ill.

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona O.R.T.T, S.C.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: MR. LARRY LALLA

WHEREAS Senator the Honourable Garvin Edward Timothy Nicholas is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LARRY LALLA, to be temporarily a member of the Senate with effect from 14th April, 2015 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Garvin Edward Timothy Nicholas.

Senator's Appointment

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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 13th day of April, 2015."

OATH OF ALLEGIANCE

Sen. Larry Lalla took and subscribed the Oath of Allegiance as required by law.

VISITOR

HON. SHIRLEY OSBOURNE

(Speaker of the Legislative Assembly of Montserrat)

Madam President: Hon. Senators, I have the privilege and honour to welcome in the Public Gallery, the Hon. Shirley Osbourne, Speaker of the Legislative Assembly of Montserrat. [*Desk thumping*] We welcome you and we look forward to your stay with us.

PAPERS LAID

1. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 2000. [*The Minister of Finance and the Economy (Sen. The Hon. Larry Howai)*]
2. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 2001. [*Sen. The Hon. L. Howai*]
3. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 2002. [*Sen. The Hon. L. Howai*]
4. Unconsolidated Audited Financial Statements of First Citizens Bank Limited for the financial year ended September 30, 2014. [*Sen. The Hon. L. Howai*]
5. Consolidated Audited Financial Statements of First Citizens Bank Limited for the financial year ended September 30, 2014. [*Sen. The Hon. L. Howai*]
6. Audited Financial Statements of the National Infrastructure Development Company Limited for the financial year ended September 30, 2013. [*Sen. The Hon. L. Howai*]

7. Audited Financial Statements of the National Commission for Self Help Limited for the financial year ended September 30, 2013. [*Sen. The Hon. L. Howai*]
8. Securities (General) By-Laws, 2015. [*Sen. The Hon. L. Howai*]
9. The 27th Annual Report of the Integrity Commission of Trinidad and Tobago to Parliament for the year 2014. [*The Vice-President (Sen. James Lambert)*]

JOINT SELECT COMMITTEE REPORT

(Presentation)

Ministries, Statutory Authorities and State Enterprises (Group 2) Community Improvement Services Limited

Sen. Dr. Victor Wheeler: Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

Twentieth Report of the Joint Select Committee on Ministries, Statutory Authorities and State Enterprises (Group 2), on the Administration and Operations of the Community Improvement Services Limited (CISL).

ORAL ANSWERS TO QUESTIONS

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you very much, Madam President. Madam President, the Government is in a position to answer all the questions on the Order Paper, questions 66, 67, 68 and 69.

And with respect to the written question, Madam President, because it is such a voluminous nature in the compilation of data from the Ministry of Sport and the Sport Company of Trinidad and Tobago, I humbly request a two-week extension for the written answer to question. But we are in a position to answer all four questions on the Order Paper this morning.

Fifth Report Joint Select Committee (Group 1) (Ministry of Health)

66. Sen. Elton Prescott SC asked the hon. Minister of Health:

With respect to the Fifth Report of the Joint Select Committee (Group 1) on the administration and operations of the Ministry of Health (with specific focus on primary health care facilities) presented to the Senate on May 14, 2013:

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- i. could the Minister confirm whether he has considered the findings and recommendations of this report;
- ii. if so, when will a response to this report be laid in Parliament as is prescribed by the Standing Orders of both Houses; and
- iii. to what extent have the findings and recommendations been addressed?

The Minister of Health (Hon. Dr. Fuad Khan): Thank you, Madam President. The answer to question 66, Part i, the answer there is yes. Part ii, the answer there is, soon and Part iii, the answer there is, a great extent. [*Desk thumping*]

Madam President: Question 67, Senator—[*Interruption*]

Sen. Al-Rawi: Sorry, Madam President. If I may, thank you by way of supplemental. I was leaving room for my learned independent, Sen. Prescott, to ask a question. Supplemental question to my learned friend, the hon. Minister of Health on such a terse and precise answer. If I could ask the hon. Minister through you, Madam President, with respect to Part ii of the question, the response is “soon” as to the laying of the report into Parliament. Hon. Minister, is there perhaps a better gauge as to what “soon” is intended to convey?

Hon. Dr. F. Khan: Oh, definitely, Senator. “Soon” could be anywhere between now and June 18th.

Sen. Al-Rawi: And June 18th?

Hon. Dr. F. Khan: Yes.

Sen. Al-Rawi: Thank you. [*Desk thumping*] And if I may, perhaps, amplify again by way of further supplemental with respect to Part iii. To what extent have the findings and recommendations been addressed? The response was to “a great extent”. Is the hon. Minister in a better position to, perhaps give us some elucidation on how great an extent this is?

Hon. Dr. F. Khan: The hon. Senator would recognize that we are very comprehensive at the Ministry of Health since 2010. [*Desk thumping*] And, Madam President, it has not been so prior to that. So, looking at the question and the extent, and the reason why I said full extent, we have looked at the report of the Joint Select Committee and we have compiled a full report on everything that would be laid in the Parliament very soon. I know question time is limited so I would not take the opportunity to read everything for you hon. Senator. But it is here.

Sen. Al-Rawi: Further supplemental. Thank you, Madam President and hon. Minister. Hon. Minister, I take it that what you just waved to us was a draft of the report. Is it that that has to be cycled still through the Cabinet processes? Is that what the particular process involves?

Hon. Dr. F. Khan: Yes, the Senator is correct, it is in the Cabinet as we speak and it is going to be discussed at Cabinet level and then it would be laid in the Parliament. That is why I give you the undertaking before June 18th.

Sen. Al-Rawi: Thank you, Madam President. Thank you, hon. Minister.

Hon. Dr. F. Khan: Thank you very much

**Sixth Report Joint Select Committee (Group 1)
(National Carnival Commission)**

67. Sen. Elton Prescott SC asked the hon. Minister of Arts and Multiculturalism:

With respect to the Sixth Report of the Joint Select Committee (Group 1) on the administration and operations of the National Carnival Commission presented to the Senate on March 19, 2013:

- i. could the Minister confirm whether he has considered the findings and recommendations of this report;
- ii. if so, when will a response to this report be laid in Parliament as is prescribed by the Standing Orders of both Houses; and
- iii. to what extent have the findings and recommendations been addressed?

The Minister of Arts and Multiculturalism (Hon. Dr. Lincoln Douglas): Good morning, Madam President. The answer to Question No. 67, Part i, is yes. Part ii, I think I will go with the Minister of Health date.

Part iii, to what extent have the findings and the recommendations been addressed? The findings and recommendations addressed issues of legality, legal requirements about the auditing of the NCC, about leadership and management, about Carnival as an industry and the marketing of Carnival and the fixing of the route, et cetera. If the Senators will allow me, I will give those—what extent have the findings and recommendations been addressed?

There are lots of initiatives that have been exercised in the consideration of the recommendations made from the Sixth Report of the Joint Select Committee on the administration and operations of the National Carnival Commission of Trinidad and Tobago.

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Act 9 of 1991, the National Carnival Commission of Trinidad and Tobago in its current form does not have the capacity to facilitate the NCC exercising its full powers and obligations with the mandate entrusted in particular section 4(a), (b) and (c), "Objects of the Commission".

To achieve the objectives made, manifest in section 4(a) and (b), the legislation needs to be expanded and the NCC granted necessary legislative endorsement to materialize the objects of the Commission in the most practical, cost effective and commercially viable avenues. In consideration of recent years of turmoil and apparent fragmentation of the mas fraternity in particular, there is a strong case for an immediate amendment to section 9(1)(a) of the Act which focuses on functions of the Commission of which have become of paramount importance is:

"the regulation, co-ordination, or conduct of all Carnival activities...held under the aegis of the Government;"

Any proposed amendment to the Act would require intense focus on section 9 which is an ideal outline framework platform on which the NCC can capitalize and develop into a diverse self-sustaining enterprise thus easing the burden on the public purse. In other words, there are activities carried on by various interest groups of the NCC that the NCC itself is not allowed to get into and we are suggesting that there will have to be a revision of the Act to give the NCC more powers to do certain kinds of things.

10.45 a.m.

So it would be considered most prudent from an industry and development perspective that section 16(2) and (3) of the Act should facilitate mandatory alliances between other Government agencies or the formal establishment of memoranda of understanding with foreign trade missions, some of which have already been established by the Government, but a bit more is required for the focus to be culture-development oriented.

In relation to the development of the steel pan industry, Pan Trinbago has undertaken the establishment of a pan factory for the manufacturing and chroming of various steel instruments.

In relation to other industry, live streaming for Carnival events and copyright, the NCC is fully cognizant of the fact that it is not poised in a position to fully capitalize on the royalties associated with streaming and copyright. Other groups and companies appear to be moving at a phenomenal rate in that direction. The

NCC considers it an instrumental part of its mandate to pursue and ensure that the true beneficiaries of Carnival reap their rewards. This can only be achieved by a further review and a robust implementation of copyright legislation.

To this end, the NCC, in July of 2014 hosted a two-day seminar in conjunction with the Ministry of Legal Affairs on intellectual property. We had the Intellectual Property Office here; the World Intellectual Property Organization, to bring to the forefront issues of copyright, of works of mas and all the associated related intellectual property issues and commence charting a way forward.

Further follow-ups are expected, one of which was held in August 2014 with a team from the University of Alcanté in Spain. The NCC has exercised initiatives through live local broadcasting with the option for international feed through local station CNMG.

The completion of the Pan Trinbago headquarters: the NCC is aware that the project is one that needs to be revisited and reassessed for completion, but this project itself is plagued with many technical problems that were not envisioned and not planned for in the implementation phase of the project. And so, since I have been in office we have been working very hard, surprisingly—even if it seems like nothing was done—to try to get this up and running.

Tendering process: the NCC, in November 2013 implemented a new Procurement and Purchasing Policy which was developed in conjunction with PriceWaterhouseCoopers Limited. The policy is quite robust, ensures transparency and accountability in the tendering process, and since its implementation, the NCC has been able to save the organization some \$90 million when compared to 2013. [*Desk thumping*]

The Purchasing and Procurement Policy is part of the thrust to ensure a robust adherence to good corporate governance and is under the ambit of corporate administration as “best practice”. In consideration of no effective procurement process previously, there are areas that can be better streamlined that can result in more savings to the NCC, less strain on the public purse and we are working on these measures.

Forensic auditing for the NCC: the accounts of 2005 to 2011 have been prepared for submission to the Auditor General. The 2012 to 2013 accounts will be ready for audit in the next 14 days. An accounting policy and procedure manual has been initiated and implemented.

When it relates to strengthening the role and the leadership role of the NCC, the NCC has requested and obtained audited accounts from special interest groups, that is, Pan Trinbago, TUCO and the NCBA, for the year 2014/2015 accounts have

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been prepared in draft for finalization of audit. And as most of you are familiar with recent developments, we are trying to bring everything under the alignment and the management of the National Carnival Commission and we are asking the leadership of these organizations to be more accountable and transparent to the people of Trinidad and Tobago.

As it relates to the marketing of Carnival, the marketing of Carnival is enshrined in section 4(b) and section 9(c) and (d) of Act 9 of 1991. To accomplish this objective, the NCC commissioned Dr. Vanus James to prepare a comprehensive report which includes the recommendations for the development and marketing of Carnival, transforming from Carnival, not only the festival, to Carnival, the industry. As you would know, Madam President, there is a great distinction. We have enjoyed the benefits of Carnival as a festival, which gives us an opportunity to “play we-self; enjoy we-self” as Trinidadians, but we are now making that transition where, what we considered folk art and folk development, into an industry, and that requires a significant amount of business processes to be in place.

We have hired a consultant that is helping us in that regard, and so, we say in strengthening our capacity, the NCC established a marketing and a sales department and employed a marketing manager. The marketing department engaged several initiatives to develop marketing strategies to promote T&T’s Carnival across the globe.

As you might be aware, Madam President, we have counted at least 300 Carnivals that have been developed from the Trinidad and Tobago Carnival. And when I say, “from”, I mean as a direct result of Trinidadians going to Alaska and saying, “Aye boy, these people up here need a Carnival. It too cold.” And they start one. So directly related to Trinidadians living abroad who feel that—and these countries have bought into this because they know that it has value, both as a social benefit to the people and also a financial benefit to the city or to the country in which it is being implemented.

So the marketing department—the NCC is promoting the Trinidad and Tobago Carnival in foreign countries. We have invited, and we have sent contingents to South Africa, Zimbabwe, Notting Hill Carnival, England, Australia. Soon I will be going to Tampa, Hollywood, Philadelphia, et cetera. These are organizations that, in the last two years, are implementing the Trinidad-style Carnival.

The initiatives include: mas training camps for children, participating in foreign celebrations and even emerging as winners in South Africa and Zimbabwe. The NCC was also well featured along the Notting Hill parade route.

As a matter of fact, just last week we had the Minister of Culture from Grenada here, once again, studying Trinidad Carnival, asking us to come and help them with the implementation there. In Grenada they have two Carnivals—actually, one in Grenada itself in August and one in Carriacou around the same time as ours.

So the promotion of Trinidad and Tobago's Carnival, in conjunction with the foreign mission, is an ongoing exercise. I have just received word from our High Commissioner in South Africa, who represents Zimbabwe, et cetera, talking about a Carnival development project that we are trying to give some scholarships for. [*Desk thumping*]

In relating to congestion along the parade route on Carnival Tuesday, Carnival 2015 showed a marked decrease—50 per cent reduction of congestion along the parade route—[*Desk thumping*—and this was as a direct result of an initiative undertaken by the NCC to do a time and motion study spearheaded by Dr. Rae Furlonge, a professional transport and traffic engineer. The success of the initiative was a direct result of the NCC implementing the recommendations from the time and motion study.

The recommendations included the sterilization of specific areas—some people do not like the word, “sterilization” because they feel that we are talking about them in certain inferior terms. That study issue, Madam President, we are talking about clarifying the route, getting things off the route that create congestion, whether it is people, trucks, whatever it is, and have managed to create a clearer route so that the masqueraders can parade.

The recommendations included the sterilization of specific areas, training and engaging route marshals and collaborative efforts of several stakeholder meetings with bandleaders and other groups that contributed to the large reduction in congestion. Several of the recommendations out of the time and motion study examined options of bands being judged on both Carnival days, as well as including additional judging points.

As it relates to the late construction of the North and Grand Stand, Madam President, you will be glad to know the Grand Stand had been completed and ready for use in 2012, 2013 and 2014. The North Stand has been built on time for both 2014 and 2015.

Finally, as it relates to the location of NCC offices, the present is accommodated temporarily with the ultimate objective to relocate all offices, including those of the special interest groups, to the Savannah. So we are working

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that in the near future, that all of the NCC offices, as well as the special interest groups which we pay rent for, will be located in one spot, which is at the Grand Stand.

With these few remarks, Madam President, I thank you. [*Desk thumping*]

Sen. Al-Rawi: Supplemental, Madam President. Thank you, hon. Minister, for a comprehensive response to parts of the question. Hon. Minister, may I ask—in light of your response to the question, you indicated that audits were received from entities, including NCBA and several other entities. Hon. Minister, currently in the public domain there seems to be something which contradicts this particular bit of information. Specifically, I am asking whether the current information as to the dismissal of one Mr. Lopez from the board on which he serves, coming from the NCBA, is related to the receipt or non-receipt of audited accounts. Because a little while ago you spoke to the receipt of audited accounts from the NCBA, whereas there appears in the media, coverage which suggests that the entity, the NCC, did not receive those audited reports. Would you please clarify, if you can?

Hon. Dr. L. Douglas: Thank you, Member. Let me say, very clearly, that whatever information as it relates to the dismissal of the President of the NCBA is not related to issues of the auditing of accounts. Those issues are related very specifically to a request made to the NCBA to submit reports on Carnival 2015 as it relates to competitions held, to results, to scores, to a range of requests that were presented to all three of the special interest groups. They were asked to report to the Minister via the National Carnival Commission. Both the Trinidad and Tobago Unified Organization (TUCO) and Pan Trinbago submitted their Carnival report: all the competitions, all the results, who participated, who were disqualified, who “get, or did not get”; what were the prizes, et cetera. The NCBA, however, refused to submit and said it is none of the Minister’s business; that these are confidential, notwithstanding the many requests received by mas players, mas organizers and various organizations about their scores, about why they were disqualified, et cetera, that came to the Minister. I wrote a second letter to the organization—the NCBA—and they stoutly refused to give any information with regard to these matters.

It is to this extent we exercised the clause in the NCC Act that says that a commission member can be removed if they refuse to cooperate, for dereliction of duty, if they are uncooperative to the goals and the objectives of the National Carnival Commission. So I have asked the NCBA, in that regard, to resubmit a nominee for the board of the National Carnival Commission.

Sen. Al-Rawi: Thank you, hon. Minister. A further supplemental, Madam President. Hon. Minister, with respect to the copyright and the architecture that you spoke about in terms of revision, specifically in relation to works of mas, as you raised them, is the hon. Minister in a position today to give us any insight into any issues of collective management structures for works of mas and how that revenue is, in fact, being factored into this equation?

11.00 a.m.

Hon. Dr. L. Douglas: I am not in a position to give an answer. It is a very extensive answer and the issues, we have a sort of copyright attorney/lawyer here who knows about the high level of complication. I was at both of the seminars as it relates to works of mas and copyright issues. It is quite a complex issue that requires a significant amount of infrastructure to be put in place for the collection, the recourse, but we are in the process of developing the framework and the structure for putting these measures in place.

None of these things were considered in the past, you know. We played mas and we had a good time, but we are now in the process of putting in place these kinds of structures for collection of copyright, works of mas and setting up all of these things. So, I am not in a position to give you exact details right now, but to let you know that we are working on it.

Sen. Al-Rawi: Thank you, hon. Minister. Further supplemental, Madam President. Hon. Minister, when you say we are working on a structure, is it that the Government is looking for a state run, a state sponsored, a state organized entity to do that collective management of receipts and royalties for works of mas as well? Or is it that it is going to continue to reside in the hands of private entities?

Hon. Dr. L. Douglas: We are not looking for anything specifically other than we have hired a consultant, Dr. Vanus James, who is designing and looking at what is best. When his research and his work is done, he will make a recommendation to the Ministry of the Arts and Multiculturalism. We will collaborate with the Ministries of Legal Affairs and Justice and gain their insight into these matters and determine what is best for the people of Trinidad and Tobago. As it exists right now, as you might know, it is sort of like a private thing that is going on.

Sen. Al-Rawi: Further supplemental. Hon. Minister, and thank you, this information is very helpful, particularly in view of what is to come in the debate coming, but hon. Minister, I am quite interested if you could provide an

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explanation into the issue of how it is we manage the collection of revenues versus the pay outs which the NCC has to speak to in terms of prize moneys, et cetera. Hon. Minister, are we in a position where we are on a balanced position right now in terms of revenue? I appreciate that this may be beyond what you prepared to deal with today. Only if you are in a position to answer, I would like to understand whether we are balancing what our estimates in terms of payments out, for instance, prize moneys, et cetera, versus revenues that come in from entities such as the NCC insofar as that was factored in the report.

Hon. Dr. L. Douglas: I am not really in a position to detail the answer to that question, other than to say the Carnival development project, which is one of the major significant projects that we are doing at the NCC right now, is preparing the organization to understand, and the country, and the Government to understand primarily those issues. So those issues are a matter of study right now and a matter of research and development for the Carnival.

Sen. Al-Rawi: Further supplemental, hon. Minister. Through you, Madam President. Dr. Vanus James, is he as the consultant through the WIPO, or has he been retained directly by the Government through whatever entity it is the Government may be acting through?

Hon. Dr. L. Douglas: He has been retained by the National Carnival Commission.

Sen. Al-Rawi: Thank you.

Madam President: Sen. Dr. Victor Wheeler.

Scarborough General Hospital (Status of)

68. Sen. Dr. Victor Wheeler asked the hon. Minister of Health:

With respect to the current involvement of the Ministry of Health in new/expanded services at the Scarborough General Hospital, could the Minister state:

- i. if there are plans to construct an expanded ICU at the hospital;
- ii. if the answer is yes, could the Minister state what is the bed capacity of the new ICU being constructed;
- iii. the expected date of completion;

- iv. the expected date of commissioning and start of services in the new space; and
- v. the budget cost of construction of the expanded ICU?

The Minister of Health (Hon. Dr. Fuad Khan): Thank you, Madam President. Sen. Wheeler, Dr. Wheeler, is an extremely knowledgeable physician and a colleague of mine. I can understand why he has asked this question about the expanded intensive care of the Scarborough Hospital. You see, I do believe that after the next election when the TOP wins the two seats, they will need to have more of their members, especially Opposition Members, in intensive care. So I understand why he has asked the question. Unfortunately, I have seen one of the Members across the floor has withdrawn already, so she will not have to go into intensive care. *[Desk thumping]*

Furtherer to the answer, the expanded intensive care unit at the hospital, we have been in discussion with the Tobago Regional Health Authority and there is no firm decision that has come about for exactly what is going to take place. The Ministry of Health has already embarked and almost completed an MRI and a Cath lab in the Scarborough Hospital which we are doing in addition to the actual hospital itself. There are requests for the Intensive Care Unit, however, that I think is the responsibility of the Tobago Regional Health Authority and they will determine exactly what they need, what they desire and how much they are willing to pay for it.

Sen. Dr. Wheeler: Supplemental. Could the Minister state—if you say it is the responsibility of the Tobago Regional Health Authority, if the Ministry of Health itself will be involved in that project if it does go ahead?

Hon. Dr. F. Khan: Well, the answer to that is that the Ministry of Health has always been supportive of the Tobago Regional Health Authority, and if they so desire we will be ready and able with our project management unit to develop the specs, the user brief and also assist in any way that we can.

Sen. Dr. Wheeler: Further supplemental, just to clarify. At the moment there are no plans, no definite plans to have an expanded ICU. No definite decision has been made yet, is that what you are saying?

Hon. Dr. F. Khan: There is no actual definite decision. What we have done is we are in discussions to increase the bed capacity of the Intensive Care Unit, but it has not been defined as yet.

Sen. Al-Rawi: Further supplemental, Madam President. Hon. Minister, perhaps I missed it, but did we get an expected date for completion in answer to part one of the question and the expected date of commissioning per se?

Hon. Dr. F. Khan: That is for the question 68?

Sen. Al-Rawi: Yes, Sir.

Hon. Dr. F. Khan: I think you missed it.

Sen. Al-Rawi: 69. Oh, sorry. Sorry, Sir, I am actually on the wrong question.

Hon. Dr. F. Khan: I was just about to tell you that.

Madam President: The next question. Sen. Dr. Victor Wheeler.

**MRI Machine
(Installation of)**

69. Sen. Dr. Victor Wheeler asked the hon. Minister of Health:

With respect to the MRI machine to be installed at the Scarborough General Hospital, could the Minister state:

- i. the expected completion date of this installation;
- ii. the expected date of commissioning and the start of MRI scans being available at the Scarborough General Hospital; and
- iii. whether radiology staff have been hired or are being trained to do the MRI scans?

The Minister of Health (Hon. Dr. Fuad Khan): Thank you. Madam President, the expected date of completion for the MRI—in fact, we are hoping that it will be completed very soon. In fact, we were supposed to complete it on April 07, however, it has been pushed back to a couple of weeks based on the commissioning which is the second part of the question that is ongoing as we speak.

The third part of the question, the radiology staff are being identified by both the Ministry of Health as well as the Tobago Regional Health Authority. They are in discussion for that.

Sen. Dr. Wheeler: Supplemental. When the facility is completed, do you have an expected time for services even though I know you said that you expect it is going to be in a couple of weeks; could we anticipate that when the building is finished that services will be started immediately after that building is finished?

Hon. Dr. F. Khan: Well the building is finished and the MRI has been installed and is being commissioned. Also, the Cath lab has been installed and is being commissioned and as soon as that commission has taken place we are going to open the unit and once we open it, service will start as soon as we do open it. It will be under the responsibility of the Tobago Regional Health Authority. I could only say as the Minister of Health that once it is opened, once we have commissioned it and handed it over, services should start immediately.

Sen. Dr. Wheeler: Sorry to press, but at this point in time you are not able to give a definite or at least can we say one month, two months, before June 18, after June 18?

Hon. Dr. F. Khan: As Minister of Health I was told it would be on April 07. Everything is in place and the commissioning is going on. I will say in the next week or two.

Sen. Al-Rawi: Further supplemental. Hon. Minister, with respect to part iii of the question and the radiology staff, I recalled in interviewing the Ministry of Health that the backlog of services of this type was somewhere close to 10,000 at one point—this was about two years ago, et cetera. Is the hon. Minister in a position to tell us, in relation to this particular aspect in Tobago, whether the backlog is being attended to in an adequate fashion or will we suffer from the same difficulties in the reports from the scans, et cetera, being read and delivered back to patients; and is there a mechanism to deal with it?

Hon. Dr. F. Khan: The mechanisms that we have—Tobago is not suffering from any decrease in the MRI activity because there is no MRI there. They come to Trinidad for that. However, they do have the same problem of the reports being read at a very late date. The Ministry of Health has put into place the EPP programme so that the MRIs and CT scans will be done as a private sector interest—[*Interruption*]

Sen. G. Singh: What is the EPP?

Hon. Dr. F. Khan: External Patient Programme—and, as result of that, we are getting reports faster.

Furthermore, the Ministry of Health is also looking at utilizing external services of radiologists abroad by means of the digital technology, and we are in the process of organizing a digital hospital and digital PSE assistance so we could digitalize and send these films aboard so we can get the results within a day or two. Let us say maximum three days, under a week.

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In other words, that is how we are dealing with the backlog, but I must say now many physicians tend to utilize MRIs and CT scans in preference to examining the patients. So the reason for the backlog that many patients are being sent for MRIs and CT scans who do not really need them. Initially, what we learnt in medical school, you must examine the patient and then send them for investigations. I am putting it on record here that is what the proper procedure has to be so one would not have that level of backlog.

Sen. Al-Rawi: Thank you. [*Desk thumping*]

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, I crave your indulgence to revert to item three in the Order Paper in order to complete the administrative duties under Announcements. Hon. Senators, I have received the following correspondence from His Excellency the President Anthony Thomas Aquinas Carmona, O.R.T.T., S.C.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: ARCHBISHOP BARBARA BURKE

WHEREAS Senator the Honourable Marlene Coudray is incapable of performing her duties as a Senator by reason of her illness:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ARCHBISHOP BARBARA BURKE, to be temporarily a member of the Senate with effect from 14th April, 2015 and continuing during the absence by reason of illness of the said Senator the Honourable Marlene Coudray.

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 14th day of April, 2015.”

Oath of Allegiance

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OATH OF ALLEGIANCE

Senator Abp. Barbara Burke took and subscribed the Oath of Allegiance as required by law.

TRADE MARKS BILL, 2014

Madam President: Before I call on the Minister, I wish to advise that it will be necessary to return to item three on the Order Paper later in this morning's proceedings.

Continuing, Minister of Legal Affairs. [*Desk thumping*]

Order for second reading read.

The Minister of Legal Affairs and Justice (Hon. Prakash Ramadhar):
Thank you very much, Madam President. I beg to move:

That a Bill to repeal and replace the Trade Marks Act, Chap. 82:81 and to provide for the law relating to trademarks and related matters, be now read a second time.

Madam President, first of all, let me indicate what an honour and privilege it is to attend before this honourable Senate and to move this historic bit of legislation. But on a lighter note, I want to warn that this legislation and the presentation is not intended in any way as a torture to many. Others may find it scintillating, others may find it not so. I want to assure every Member here that there is nothing personal, it is necessary and important for us to proceed.

11.15 a.m.

Madam President, the Trade Marks Bill, 2014 is intended to repeal and replace the current Trade Marks Act, No. 11 of 1955. In Trinidad and Tobago, in order for a trademark owner to obtain exclusive rights, he must register under the Trade Marks Act, No. 11 of 1955. The present Trade Marks Act has been with us since January 02, 1957 and has been amended on three occasions by virtue of Acts No. 17 of 1994, No. 25 of 1996 and No. 31 of 1997. On each occasion, it was prompted by the need to comply with various international obligations, including the agreement on trade-related aspects of intellectual property rights among others. On this occasion, the Bill before us has not been brought in response to any external pressures, rather it has been brought on the basis of this Government's recognition of the critical role which intellectual property and related issues already play and which they must continue to play in our future.

This Bill is modelled primarily on a modern and progressive Singapore Trade Marks Act, Chap. 33:2, which was brought into law there in 2005. This is really because, like the Government of Trinidad and Tobago, the Government of

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Singapore views intellectual property as a preferred means of inspiring innovation and economic development. That Act itself is based primarily on the United Kingdom Trade Marks Act 1994, which modernized trademark law and practice at the time, and it became law. Legislation was also looked at from other Commonwealth countries inclusive of Australia, New Zealand and Canada.

This Government believes that repeal and replacement of the Trade Marks Act is necessary and prudent to bring our trademarks legislation up to international standards so that we may offer greater protection to existing holders of trademarks and encourage other local businesses to develop their brands as well. This includes facilitating accession to the Madrid Protocol concerning the international registration of marks. Accession to the protocol will allow applicants, foreign and local, to protect their marks abroad through a simple process in a time-and cost-effective manner.

While we feel satisfied that the present system in place at the IP Office has been and continues to function efficiently, we are also cognizant of the need to bring about enhancements that will make the system better and more relevant to today's users. This Bill, therefore, is viewed by the Intellectual Property Office and by this Government as a significant economic tool that will encourage more local traders, entrepreneurs and proprietors, to give deeper thought to their branding and encourage them to apply for their trademarks.

I should also state that another objective of this Bill is to make Trinidad and Tobago compliant with its obligations under the Cariforum European Community Economic Partnership Agreement which states that forum stage shall endeavour to accede to the Madrid Protocol. This Bill has been in the making for 10 years and has spanned several administrations. In fact, it began under the Opposition's administration and I must pause to pay respect and congratulate the efforts of the former administration. [*Desk thumping*]

During the 10 years, a draft of the Trade Marks Bill for Trinidad and Tobago was prepared with a great deal of assistance in the World Intellectual Property Office in wide consultation with local stakeholders such as IP attorneys and agents. I want to place on record Trinidad and Tobago's thanks and immense gratitude to the Director General of WIPO, Dr. Francis Gurry and his staff in Geneva, Switzerland. WIPO has lent willing support to the Intellectual Property Office of my Ministry inclusive of the provision of consultants and the training of our staff, often at their own expense. With the assistance of WIPO, consultations on this Bill were widely held with IP stakeholders. Among those were the CPC,

that is the Chief Parliamentary Counsel of the Ministry of the Attorney General, local trademarks attorneys and agents, officers of the Customs and Excise Division and members of the private Bar who specialize in intellectual property.

Madam President, there are at least 20 recognized firms that practise intellectual property in Trinidad and Tobago. A draft Bill was also sent to the Director of Public Prosecutions for comment. Further, the IPO continues to have extensive consultations with the Madrid registry of brands and design sectors of WIPO. We have sought counsel from a wide net of stakeholders and while there were little differences with respect to some of the issues which the Bill, like this, should address and a form that some of the measures should take, there was a general consensus that a time had indeed come for trademarks law to be further modernized.

The Bill was filed in this Parliament and put onto the website in early November last year. The IPO has indicated that this was communicated to the practitioners and stakeholders. Additionally, the legislation was emailed to practitioners. I have been informed that the IPO has consistently been in contact with practitioners and stakeholders informing and updating them on the progress of this Bill. I have also been informed by the IPO that the draft trademarks regulations and draft trademarks international registration regulations have been sent to WIPO and CPC for review. Like with the Bill, these regulations would also be available to practitioners and stakeholders for review.

But before I go further, Madam President, permit me to spend a few moments to assist the hon. Members of this House in understanding the subject matter at hand. The primary subject of this Bill is trademarks which is a form of IP protection for brands and logos for products and services. These are quite separate and are not to be confused with patents which protect an invention, a product or a process that either provides a new way of doing something or offers a new technical solution to a problem. Then there are industrial designs which have to do with how a particular article might look or appear to the eye.

Finally, there are copyrights and related rights which cover original literary, dramatic, artistic works such as books, movies and even our works of mas. Trademarks do more than identify goods and services of companies. Very often, they represent the ethos of a business entity. It represents its reputation and fixes the expectation of a consumer. That is, they represent what the entity stands for as well as the reputation and goodwill that the business would have developed and nurtured over time. Like other forms of intellectual property, trademarks are, indeed, property. They are intangible assets but they are assets nonetheless. I want

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to emphasize that it does not matter what size the business might be or what volume of goods and services are being traded, that company's trademark is its property and has value to that company.

To make the point, I think that we might be all familiar with, why would someone pay almost \$400 for a Nike jersey when one can go to the market, in Chaguanas for instance, for an unbranded jersey of similar look and possible quality and pay just \$40. In fact, some trademarks have become so widely recognized and so intimately associated with particular companies, that the value of the trademarks themselves far surpasses the value of those companies' tangible assets. A very salient example is a value of Apple as a brand and it is in the region, shockingly, of US \$118 billion. Similarly, Google, as a brand, is worth approximately US \$107 billion. In both cases, the value of the brand exceeds the value of those company's physical assets. I imagine the same will apply to many of our local manufacturers whose brands have been developed over many years and are now easily identifiable both at home and abroad. Some which immediately come to mind include Carib and, as we know in Trinidad, "a beer is a Carib" and Stag, "a man's beer"; KC Confectionery, SM Jaleel and their Chubby soft drinks, to name just a few.

Madam President, as I previously stated, this Bill modernizes trademark legislation. There are several provisions in this legislation which will bring Trinidad and Tobago up-to-date with international best practices in the administration of IP in general and trademarks in particular. The major ones are as follows: the Bill will introduce a broader definition of a trademark which will permit the registration of new types of marks which never existed before, such as scents, sounds and taste, provided that they are capable of being graphically represented. This is to be found at clause 3(1) of the Bill under the definition of "trademark". What this means in practical terms is that if and when our manufacturers of food and snacks, for example, develop a new and unique tasting product, they will have the capacity to gain trademark protection for taste. As we all know, "bhandhania" or "shado beni" as is locally known, is a flavour that is well loved in Trinidad and Tobago and it is something that we may very well, some day in the future, be able to formulate a recipe, if I may put it loosely, for export.

I remember before I was married, my wife Jay, did something called—what we called the "Jay curry sauce". I was vegetarian at the time. And she had concocted a mixture of curries that are not to be replicated, and I always then told her that we should, at some time in the future, trademark this "Jay curry sauce"

and I think we will win international markets on that. So too, if we had producers of fragrances that could develop new scents in using our national flora and gain protection of those scents, not just for the name of the scents. As you know, our local “tonka bean” is used as an additive to some of the best perfumes in the world, and I look forward to the day when one of our manufacturers, local and small industry, may come up with a scent that will really be a blessing economically to this nation.

And likewise, sounds, Madam President. If our companies wish to be associated with some unique sound, then that sound will be registrable providing it meets established criteria. We are all familiar with the advertisement of Intel inside and I will not attempt to replicate that sound here but I think we all know, when we put out computers on, that sound that is associated solely with Intel. I make the point here, this new legislation that we are here today dealing with, provides for these things, the old legislation could not and had not envisaged the possibility for scents, sounds and taste.

Another important feature of this Bill is that it seeks to remove an existing distinction which exists between Part A and Part B of the Trade Marks Register. In so doing, it will establish a single criteria for registrability namely that the item is capable of distinguishing. That is, it can be distinguished from other similar items. This is also found in clause 3 of the Bill under the definition of “trademark”.

The provisions of the Bill would also facilitate the electronic filing of trademark applications when the IPO is equipped to offer such filing. The current system only permits the filing of applications in paper form. Clause 5 of this Bill will facilitate electronic filing when the IPO is in a position to do so. And therefore, we know the future really is with electronic filing and so. The old law does not recognize that.

The protection of collective marks. The existing Trade Marks Act does not provide for the registration of collective marks which are marks that belong to an association or persons. This Bill will change that. At clause 54, for example, the Trinidad and Tobago Manufacturers’ Association or the Law Association of Trinidad and Tobago can be recognized as trademarks. It will also allow for the protection of well-known marks. The current practice at the IPO is that well-known marks are protected irrespective of whether they are registered or not. Under the Bill, a mark can be protected in Trinidad and Tobago whether or not its proprietor carries on business or has goodwill in Trinidad and Tobago. This, too, will be found in clause 3(1) under definitions.

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With respect to infringement, this Bill makes it an offence for anyone to use the same or similar mark of any product or service for which it has not been registered. Infringement would be found and dealt with under clauses 28 and 29 of this Bill. In other words, if someone attaches a proprietor's mark or a similar mark to any good or service for which that mark has not been registered, he or she would be guilty of an offence. If I may use a common example of a common offence, almost everyone would be able to relate to.

It has become the habit among persons who trade in pirated CDs and DVDs to copy songs and movies onto discs which do not carry any label of any kind. At present, such persons can be charged under the Copyright Act for infringement of the producer's copyright. But if such persons print a label which they place on the CD or DVD jacket, as indeed we have started to see, and that label carries a producer's registered trademark, that vendor can be charged under this Trade Marks Act as well as under the Copyright Act. Clause 30 of this Bill deals with the exhaustion of rights. Under the doctrine of exhaustion of rights, a trademark owner's interest in controlling the use of the mark is deemed to be exhausted with regard to particular goods at the point when he permits them to enter circulation into the market.

11.30 a.m.

The section allows for the parallel importation from foreign sources, that is to say, it allows the free circulation of trademark products. This system, therefore, prohibits a trademark owner from making or taking a course of action against the importation, exportation and sale of genuine goods, on which a trademark has been placed by the trademark owner or registered user.

Clause 122 of the Bill addresses offences committed by a partnership, a corporate body. Essentially, it addresses liability in a partnership for offences committed under the Bill. Under the present law, Madam President, the Trade Marks Act does not address this issue. Further to this, the Bill creates a number of criminal offences which include not only the counterfeiting of a trademark, but also includes the making of an article that is specifically designed for making copies of a registered trademark. Offences are found under Part IV of the Bill, that is, clauses 49 through 56.

So, Madam President, the clear intention here is to go after not only those involved in trademark counterfeiting at the front end, but also to go after those at the back end of the process, those who produce the instruments which

manufacture counterfeit trademarks. This Bill expands the authority of both Customs and Excise Division, and the police service in relation to enforcement proceedings against counterfeit trademarks.

I want to take a moment, Madam President, to explain what that involves, and I want to make it abundantly clear—I must emphasize this—that this Bill does not attempt to give any new power or authority to either the police or to the Customs and Excise Division, which they do not already have. This Bill does not attempt to give any power or authority to either the police or to the Customs and Excise Division, which they do not already have. What it does, however, is allow these authorities to use the power they already possess under other legislation, to now enforce laws related to trademark and intellectual property.

This Bill, Madam President, is based on solid proven and established legal principles. The entire Bill itself is based on international standards—the Opposition would have been involved in this Bill as it had begun the work under their administration. When you examine the Bill, you will note that the majority of provisions were present in the current Trade Marks Act. The Bill simply seeks to clarify the same sections, so that it could be interpreted better and incorporate international standards.

Madam President, if you permit me a few minutes to explain this. The definition of a trademark is found in section 2 of the Act. The Bill, in clause 3(1) broadens the definition of a trademark to include:

“...any sign capable of being represented graphically...”

This definition permits the registration of new types, as I have said before, of marks such as scents, sounds and taste provided that they are capable of being graphically represented.

Disclaimers are addressed in section 16 of the Act, and associations in section 32 of the Act. Clause 31 of the Bill abolishes the requirement of disclaimers and associations, and gives the applicant the option to register a trademark, subject to disclaimer or other limitations, that is in keeping with present international standards.

The protection of well-known marks is found in section 13(a) of the Act. Clause 3(1) of the Bill, introduces a special protection for well-known trademarks, in that the mark can be protected in Trinidad and Tobago, as a well-known mark, whether or not its proprietor carries on business or has goodwill in Trinidad and Tobago. This protection stems from Article 6 of the Pirates Convention which addresses practical imperatives and strategies for the protection of well-known marks internationally.

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Under section 21 of Act, the period of opposition to a mark is three months from the date of the publication. Clause 14 of the Bill states that a person may from the date of the publication of the application of registration, give notice to the Comptroller of Opposition of the registration of the mark.

Draft regulation 27 of the Trade Marks Bill states that a period to file an opposition would now be two months. Sections 10 to 14 of the Act addresses the grounds of refusal for registration of a mark. Clause 8 of the Bill addresses the absolute grounds for refusal of a trademark application. Some of these absolute grounds for refusal are reflective of sections 10 to 13 of the Act, for example, if the mark is descriptive or generic. Clause 9 of the Bill, however, deals with relative grounds for the refusal of a trademark application. These relative grounds of refusal are reflective of sections 13 to 14 of the Act.

The Act addresses infringement, but does not specifically define the terms infringing goods, infringing material and infringing articles; clause 35 of the Bill now does this. This Bill improves on the existing Trade Marks Act as it pertains to infringement. Many of the offences in the Act, are also found in the Bill with the exception of enforcement measures and obstruction.

Clause 56 of the Bill addresses enforcement measures by police officers and customs officials. The Bill will permit police officers to arrest without warrant, persons who possess for trade or manufacture, sell, offer or expose for sale in a public place, goods to which a registered trademark is falsely applied.

The Bill permits customs officials designated by the Comptroller of Customs and Excise, subject to a warrant, to stop, search and board any conveyance, in which the officer reasonably suspects there are goods which a registered trademark has been falsely applied, and seize, remove or detain any such goods and anything which appears to him to be, or to contain or likely to be, or to contain evidence of an offence under clauses 49 through 52 of the Bill. It also explains the circumstances in which a magistrate may issue a warrant for search and seizure. Clause 114 addresses obstruction. It states that:

“Any person who—

- (a) refuses an Officer access to any vessel, aircraft, vehicle or place which the officer is entitled to...; or
- (b) obstructs or hinders an Officer in the execution of any power conferred upon him...commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for one year.”

This offence is also present in section 5 of the Customs Act, Chap. 78:01.

Madam President, may I now move to the Madrid Protocol concerning the international registration of the marks. I initially stated that one of the objectives of this Bill, is to facilitate accession to the Madrid Protocol. For the benefit of hon. Members of the Senate, I wish to take a few minutes to explain what the Madrid Protocol is. The Madrid System for international registration of marks consists of two treaties. The Madrid Agreement of 1981 and the Madrid Protocol of 1989, they are both administered by the International Bureau of the World Intellectual Property Office, located in Geneva. The objectives of the Madrid System are as follows:

1. “it facilitates the...protection”—of—“trademarks and service marks” internationally in several countries, with a single application in a specific language, either English, French or Spanish, and in one currency;
2. “since an international registration is equivalent to a bundle of national registrations, the...management of that protection is made”—even—“easier.” The Madrid Protocol essentially is a simplified method for gaining trademark protection in multiple jurisdictions, by a simple process and in a time and cost effective manner.

“The Madrid”—Protocol—“provides an optional, alternative procedure that does not dismantle”—and I want to repeat this, it does not dismantle— “the traditional route of direct filing.”

In other words, the Madrid Protocol should be viewed as a parallel to the national trademarks legislation. The applicant can file a single trademark application in several countries that are contracting parties to the protocol in one language, that is English, French or Spanish, and pay one currency which is then distributed to the designating countries. Currently there are 93 contracting parties to the Protocol, including the United States of America, the United Kingdom, Cuba, Antigua, Singapore and India.

Madam President, what happens at present, is that the person who wishes to gain protection for his trademark in multiple jurisdictions, must file individual applications in each of these jurisdictions. This means that he must pay individual filing fees in each jurisdiction. He must pay legal fees in each jurisdiction, and he must pay translation fees for each jurisdiction as applicable.

But by accession to the Madrid Protocol, persons will be able to register their trademark in Trinidad and Tobago, and automatically gain protection in as many countries as he chooses that are signatories to the protocol. The way it would work is that upon filing an application here for trademark protection, and upon

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paying a single prescribed fee, will be able to get coverage in any number of countries that he wish but you pay the filing fees for those countries. If you require protection in more jurisdictions, you would be required to pay the additional filing fee only for each additional jurisdiction. You will not be required to pay additional legal fees nor translation fees that are really one-time payments which are built into this initial registration fee.

Under the Madrid Protocol, one could expect to pay a total of \$60,000 as a single fee, using one single application in English. If the same protection had to be sought under the present system, the applicant would have to file separate applications in each of the desired countries, pay separate legal fees, and have the information translated into languages of the respective countries.

The administrative fees alone, not taking into account, legal and translation fees, will equate to the total cost of using the Madrid Protocol method. Additionally, the Protocol dramatically reduces the burden of trademark management. There is only one registration to renew, and changes such as a change in ownership or in the name and address of the holder, can be recorded in the international register through a single, simple procedural step.

Under the Madrid Protocol, the individual intellectual property office is compensated for work that it performs. The individual fee is collected by the international bureau and are transferred to the designated contracting parties, in respect of which they had been paid. When international registration service closes its biennial accounts with a profit—and this is very important—the proceeds are divided amongst contracting parties.

Madam President, small and medium enterprises benefit greatly from the Madrid System, as they are most affected by the considerable cost involved in registering and maintaining marks abroad. According to WIPO, one-third of worldwide applicants filed through the Madrid system, and 80 per cent of that one-third of these applicants, can be categorized as small and medium enterprises, having a small portfolio of one or two trademarks. Madam President, Trinidad and Tobago decided to accede to the Madrid Protocol, because of the following reasons:

- The protocol makes the Madrid System more flexible and more compatible with domestic legislation of certain countries which were not able to accede the Madrid Agreement;
- The Protocol has made a number of improvements to the Madrid Agreement, thereby overcoming the shortcomings of the said agreement. For instance, under the Madrid Agreement, an application can only be

filed in one language, that is French. Whereas under the Madrid Protocol, the applicant has the option to file the application in three languages: French, Spanish or English.

Queries have been raised in the past about the experience of other countries. To that extent, the IPO office—and I want to congratulate the work of Mr. Regan Asgarali and his team, for the incredible work over the years, together with Mazina Kadir, who really was the doyen of the entire intellectual property creation in Trinidad and Tobago, and in the region, a very well respected office; if I may say so.

The IP Office had examined the experiences of Antigua, Barbuda and also of Cuba. In Antigua and Barbuda, they acceded to the Protocol in 1999, and from communication with them, that is the Antigua and Barbuda Intellectual Property and Commerce Office, it was noted that the country experienced some issues regarding administration of the Protocol, such as:

1. adequate consultation with stakeholders;
2. sufficiently robust staff and administrative structures to facilitate the protocol;
3. an IT infrastructure prepared to receive applications; and
5. existing back laws which resulted in oppositions.

Carefully noting these experiences and to ensure that Trinidad and Tobago did not face these issues, the IPO effectively and actively did the following:

1. consulted extensively with various stakeholders inclusive of IP practitioners, agents and right holders;
2. ensured the establishment of a Madrid Protocol Processing Unit, which has undergone significant training on the Protocol;
3. extensive technical training to ensure the readiness of the industrial property automation system, to accommodate Madrid applications. A Madrid module has already been installed and tested by WIPO, and the office is ready now to receive applications;
4. review of the Madrid Protocol regulations by the WIPO legal unit and by the Chief Parliamentary Counsel;
5. numerous training workshops and study visits both in Trinidad and Tobago and in Geneva, for members of staff of the Protocol;

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6. before accession, a desk audit is to be conducted by WIPO to ensure that the necessary staff and IT infrastructure, legislation and other administrative framework are in place to facilitate accession to the Madrid Protocol.

Cuba is very much in the news these days, Madam President, the IP also visited the Cuban Industrial Property Office in 2012, to ascertain their experiences with respect to implementation and office operations of the Protocol. Cuba had acceded to the protocol since 1995; 20 years ago. From that visit, it was observed that the office experienced considerable success under the Protocol, primarily because of the following reasons:

1. well-qualified and trained staff were made available on the Madrid Protocol;
2. effectively functioning IT system to facilitate applications under the Protocol;
3. commitment and understanding by the Government.

11.45 a.m.

You see, Madam President, the intellectual property policy of Cuba is not a stand-alone policy, but is deeply embedded in its national development, trade, science and technology, and cultural practices. How ready are we at the IPO? Madam President, the IPO has assured me that the staff and IT infrastructure are in place to facilitate implementation of the protocol. By way of a Cabinet Minute, No. 1638 of 2014, Cabinet agreed to the establishment of a Madrid Protocol Processing Unit and IPO to administer Trinidad and Tobago's treaty obligations upon accession to the Madrid Protocol.

The unit consists of six members of staff, including the following: two Trade Mark Systems Specialists, one Trade Mark Operations Administrator, one Trade Mark Operations Officer, two Trade Mark Search Technicians. The IPO has been extensively training the Madrid Protocol Processing Unit for implementation of the Protocol since 2011 through WIPO expert missions, on-the-job training, and with respect to trademark examinations and WIPO training workshops.

The following is a detailed list of the various training initiatives undertaken by the Madrid Protocol Processing Unit: A study visit to the International Bureau, Registry, Brands and Design Sector, of WIPO. The visit entailed meeting key individuals involved in the execution of Madrid processes at the International Bureau, and focused on the following areas: document processing unit, processing of international applications, practical examples on Vienna classification,

electronic communications—that is exchange of information—Madrid office portal, et cetera, Madrid customer service, and promotional activities and resources about the Madrid Protocol. Training workshops for national offices of the operations of the Madrid System for the International Registration of Marks. This workshop included presentations from various experts at the Madrid Registry, inclusive of their legal division, processing team, operational support section, and a database section.

Mission on Madrid Protocol concerning the International Registration of Marks: This mission focused on the following presentation by Mr. Neil Wilson, Director of Functional Support Division, Brands and Design Sector, WIPO, on the steps involved in filing of an international application under the Madrid System. Discussion of the financial implications of a session with regard to staff structure and the establishment of the Madrid Protocol Unit, discussion of a human resource requirement to implement the Madrid Protocol were also WIPO distance learning courses undertaken by the IPO. Staff of the Madrid Protocol Unit has undertaken the WIPO advanced course on Trademarks, Industrial Designs and Geographical Indications, which is specifically geared towards the Madrid Protocol.

Additionally, significant technical training was undertaken by staff at the IPO and included the following: a mission by Mr. Adel Baccouche, Project Manager, Industrial Property Office Business Solutions Division of WIPO. This mission ensured the readiness of the Industrial Property Automation System for accession to the Madrid Protocol at the IPO, and included the following: installation of the IPAS Madrid module, configuration of the Madrid workflow, testing the process of sample Madrid notifications, and training and knowledge transfer to staff at IPO.

Mr. Baccouche visited the IPO on two occasions, in 2013 and in 2014. It was also a WIPO technical training workshop for Industrial Property Automation System Administrators. The objective of that workshop was to train in the administration configuration and usage of IPAS. Before accession, a desk audit is to be conducted by WIPO to ensure that the necessary staff and IT infrastructure, legislation and other administrative framework, are in place to facilitate accession to the Madrid Protocol.

Further, in consultation with the Madrid Registry, Brands and Design Sector, WIPO have stated their commitment to assist in the further development of the Madrid Protocol Processing Unit at the Trinidad and Tobago Intellectual Property Office. Additionally, WIPO has extended a 24/7 customer service to our IP Office in order to address any queries or concerns that may arise upon accession to the Madrid Protocol.

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Madam President, I wish to clarify any misconceptions that this Bill abolishes the use of the Paris Convention in claiming priority. It simply does not. The Paris Convention for the Protection of Industrial Property applies to industrial property, in the widest sense, inclusive of patents, trademarks and industrial designs. Currently, there are approximately 176 member states of the Paris Convention. Trinidad and Tobago had become a member of that Paris Convention on August 01, 1964. The Convention falls into three main categories: national treatment, right of priority and common rules. Under the Paris Convention the applicant may, within six months of the date of first application, apply for protection in any one of the other contracting states.

These subsequent applications will be regarded as if they had been filed on the same day as the first application. Madam President, currently, under section 76 of the Trade Marks Act, an applicant can obtain priority in Trinidad and Tobago once the application for registration in Trinidad and Tobago is filed within six months from the date of the first application in the Convention country. Clause 11 of the Bill provides the same claim for priority under the Paris Convention as in the Act. Therefore, companies such as Apple, which is a frequent user of our local Intellectual Property Office, can still file their applications under the Bill and claim priority under the Paris Convention, and this is very important.

Madam President, a very significant change also is this: clause 5(4) of the Bill. Clause 5(4) of the Bill concerns the date of an application and priority. This clause simply states that when you make your application you have to pay for your application. At this present time there is no time frame within which practitioners have to pay for an application. So, sometimes we have situations where practitioners file for the application, get the benefit of the filing date but the IPO receives no payment.

Now, we have asked for this Bill to be brought as a special majority Bill. Madam President, I am mindful of the fact that this Bill seeks to expand the ability of the Comptroller of Customs and of the police to enforce legislation, therefore, out of an abundance of caution, more than anything else, we thought it prudent to pass this Bill with a special majority. The IPO has extensively consulted with the CPC on this issue. According to the CPC, the reasons for the insertion of a provision for a special majority in this Bill are as follows:

1. Under clauses 97 to 104 of this Bill, which address Border Enforcement Measures, the power of the Comptroller of Customs to seize goods pursuant to a notice from an objector would affect enjoyment of property.

2. Clause 110 of the Bill, which grants the Comptroller of Customs the power to board and search any conveyance for goods liable to be seized, will also affect enjoyment of property.

If I, by way of example, state this: it could be analogous, Madam President, to a security guard who has jurisdiction over a warehouse. The owners of the warehouse, first of all, may stock paint and, therefore, the security guard has jurisdiction of oversight over the paint. But later on the owners of the warehouse may very well stock brushes, and other items attendant to. What this does, this legislation really does not create any greater oversight. What it does, it allows for a higher level of inventory over which the security guard may have oversight.

Some points to note, Madam President, is that this Bill is compliant with the TRIPS Agreement, that is the Trade-Related Aspects of Intellectual Property Rights, which establishes the minimum standard of protection for the protection of the many forms of intellectual property. This Bill is in keeping with Trinidad and Tobago's obligation to comply with the Cariforum European Community, Economic Partnership Agreement, known as the EPA, at Article 411E, which states that:

“...EC Party and the Signatory CARIFORUM States shall endeavour to accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.”

The Bill is in keeping, also, with Article 66, Protection of Intellectual Property Rights of the Revised Treaty of Chaguaramas. The treaty was signed by Barbados, Guyana, Jamaica and Trinidad and Tobago, and established the Caribbean Community, including the Caribbean Single Market Economy.

The treaty clearly states that all member states should promote the protection of intellectual property rights within the community by strengthening of regimes for the protection of intellectual property rights, and calls for the participation by the member states in international regimes for the protection of intellectual property rights.

The Bill not only provides for the implementation of the Madrid Protocol but also strengthens the current trademark legislation, and keeps in tandem with modern and progressive trademark legislation. Of course, in the process of consultations, there were some issues and concerns raised with respect to the Madrid Protocol.

Madam President, the IPO, the various Chambers in Trinidad and Tobago, and the Manufacturers' Association, IP practitioners and other stakeholders, joined with WIPO in addressing the concerns and assertions made against the Madrid

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Protocol. Of course, there was a legitimate concern about the loss of income by some of the practitioners but, in answer, we were informed that many Latin American countries, African countries, as well as other Caribbean countries, which constitute major export destinations for Trinidad and Tobago businesses, remain outside of the Madrid Protocol, thus, individual applications will still have to be filed in these countries, and this will require the need for the services of local trademark practitioners.

The following are various studies on the impact of the Madrid Protocol on trademark attorneys and agents: in Japan, for example, 80 per cent of all Japanese users continue to use representatives, even for the Protocol applications. This was obtained through WIPO document named *Madrid Experience Sharing Report, Japan's Experience in Joining and Using the Madrid System*. From Turkey, Turkey's agents upon accession noted that there was a significant increase in work overall, for example, with respect to provisional refusals, and this was obtained from a *Study on Accession to the Madrid System for the International Registration of Marks*.

Mexico, upon the accession there was an increase in the use of the Protocol as a route to enter trademark applications from abroad to Mexico, arriving in 18 months after accession to a figure close to 18,000. IP attorneys had to answer many questions from foreign applicants, communicate with the Mexican Institute of Industrial Property, and answer professional refusals based on classifications or descriptions of products and services. Agents generally appeared to have adjusted to these changes over time and see the potential for the system to be of significant benefit to trademark owners. Once again, from the WIPO document, *Study on Accession to the Madrid System for the International Registration of Marks*.

It should be noted that the crux of accession to the Madrid Protocol is mainly a benefit to the trademark owners, inclusive of local manufacturers and exporters, who wish to protect their marks overseas through a simple process and in a cost and time-effective manner. The main beneficiaries of the accession to the Madrid system will, indeed, be the small and medium enterprises. Local SMEs, as we shall call them, will have the ease of filing applications with many of Trinidad and Tobago's main trading partners which are parties to the Madrid Protocol in a cost and time-effective manner. The Protocol will address the difficulty of local businesses in accessing international markets with branded products. SMEs benefit greatly from the Madrid System as they are the most affected by the considerable cost involved in registering and maintaining marks abroad.

According to WIPO, I shall remind, one-third of worldwide applicants file through the Madrid System, and 80 per cent of those are categorized as SMEs, having a small portfolio of one or two marks. Information provided by agents and firms in Turkey indicates that since accession to the Protocol there has been a significant increase in filings for international protection from SMEs, with SMEs benefiting from raised awareness of the need to protect marks appropriately in other jurisdictions. Statistics gathered from member states of the Protocol does not support the assertion that there will be a flood, an overwhelming flood of applications at the IPO upon joining the Madrid Protocol.

According to WIPO, with respect to the offices of Australia, Turkey, Korea, Singapore and the United States, statistics revealed that there was a growing trend with respect to a number of applications but with moderate intensity. With respect to Ireland, Japan and the United Kingdom, there was little or no growth in terms of the number of applications. Mexico also did not experience any overload of applications.

The international registration done by the International Bureau of WIPO does not grant any new rights—and I want to repeat that—it does not grant any new rights. The Madrid Protocol only offers an alternative process to file for protection in the contracting parties, according to the respective legislation. National offices retain the absolute discretion to grant or refuse protection of a mark in their country, according to the applicable national legislation. National offices will not lose revenue under the Madrid Protocol, given that they could collect their own individual fees every time they are designated or act as offices of origin.

Delaying accession and coming into force of the new Trade Marks Bill represent a potential loss of revenue to the IPO office of approximately \$300,000 per month.

Madam President, what are the potential issues or drawbacks of the Protocol? One, transformation of an international application to a national application, and, two, the ability to transfer ownership is restricted.

12.00 noon

Madam President, the IPO has duly taken notice of the potential issues of the protocol and has consulted with the WIPO and its legal unit. In relation to the transformation of international application to a national application, we have been advised that all registrations issued under the Madrid Protocol must be identical to the registration in the country of origin which provides the basis for the

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international registration. If the original application is amended or refused, it would have the same effect on all Madrid Protocol applications in contracting parties.

In this regard, an applicant's entire registration is vulnerable to what is termed as a "central attack" against its home country mark for a period of five years after registration issues. Thus, a successful cancellation action against the home country registration will likewise result in the cancellation of extension registrations. In order to soften the consequences of the five-year dependency feature of the Madrid System, the protocol provides for the holder of a cancelled international registration to transform that cancelled registration into regional or national applications in all of the designated parties.

WIPO's response to those concerns or drawbacks is that the dependency period and the possible ceasing of effect of the basic mark which would have a direct impact on the international registration, are by many seen as a disadvantage of the Madrid System. Transformation is a feature produced and introduced with the Madrid Protocol which limits the effect of dependency, and this is seen as purely positive since it will allow a holder where the international registration has been cancelled due to ceasing to effect of the basic mark to preserve his rights by filing an application. Transformation has never been viewed as a potential drawback to the protocol, but rather as something that is positive and that may take the edge off the dependency period of central attack.

Indeed, there are not many real central attack cases per year. We are informed that the working group meeting in 2013, a report was done on the findings of an exercise involving 29 offices for a period of 12 months. Participating offices reported to have sent during the period of the exercise 2,527 notifications of ceasing of effect. However, it is to be noted that these offices reported that only 618 of those notifications appeared to have been a result from central attack.

To overcome the concerns of central attack it will be important to convey the message to potential users that they need to have a strong basic mark and that it is registered, thus giving the applicant an exclusive right.

Another issue is the ability to transfer ownership that is considered to be restricted. The holder of an international registration under the Madrid Protocol can only assign those registrations to a national or ancillary of a contracting party or to a person with a bona fide and effective industrial or commercial establishment in such a country. This restriction currently includes all the non-Madrid Protocol countries mentioned above. WIPO's response to this is, that

regarding the transfer of ownership, the only restriction is that the international bureau can only record changes in ownership in the international register, where the new owner has an entitlement with the protocol. Parties may agree on a transfer of rights, but this may only be recorded where the new one is entitled.

Madam President, to address the drawbacks of the Madrid Protocol the following initiatives will be undertaken by the Intellectual Property Office to assist IP attorneys and agents with respect to the concerns over the Madrid Protocol Bill. The IPO intends to do the following: the creation of a regional trademarks manual which will explain the provisions in the Bill in collaboration with the World Intellectual Property Organization; the IPO clamoured for a regional trademarks manual and this has been agreed to by WIPO.

In this regard, a consultant will soon be appointed to oversee this process. Meetings with IP attorneys and agents to address questions of the Bill and training seminars; to ensure that users of the trademarks system inclusive of local businesses under the Madrid Protocol and Bill, the IPO intends to have a nationwide IP education programme.

So, Madam President, in substance this is what this Bill deals with. But I took the liberty—and I am grateful for the parliamentary staff to have provided for every Member and, I imagine, today, delivered to your desk a cross reference of sections of the Trade Marks Act compared to the Trade Marks Bill. This really highlights some of the very salient changes. May I enquire how much more time do I have, please? Ten minutes? So, if I may—[*Interruption*]

Madam President: You have 15 minutes.

Hon. P. Ramadhar: Thank you very much. The torture shall soon end. If I may invite my hon. Senators to look at the document and you will see placed there on the left hand column the Trade Marks Act, the present law and the Trade Marks Bill, 2015, the law that we are attempting to pass here today. You will see some of the very salient distinctions to it and differences between both. Section 2 of the Act deals with definition of trademarks. Clause 3(1) of the Bill deals with the new definition where it reads:

“...except in relation to a certification trademark, any sign capable of being represented graphically...”

When I had spoken earlier about sense, taste or smell, this new definition permits for that. Under the old law, it could not have.

I shall not trouble you too much to go through all of the details, but just to refer, for instance, to section 21 of Act and contrast it to clause 14 of the Bill where, in fact they change the period from three months under the Act to two

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months under the Bill. You now have a new right under the Bill to allow any person at any time before the registration of the mark to make observations in writing to the comptroller as to whether the mark should be registered. The person who makes observation does not become a party to any proceedings in relation to the application. The right to make observation does not now exist under the Act.

We go, with your leave, to the following page in the classification of goods and services. At present, Trinidad and Tobago utilizes the seventh edition of the Nice classification system. The Bill will now permit us to move to a far more advanced classification of the tenth edition rather than the seventh.

If I may take you then—the Act sections 10 to 13, 13 and 14. Under the Bill, clause 8 deals with the absolute grounds for refusal that I had spoken about earlier. It gives some examples there that Senators may very well find very useful to look at, so you could better understand what this is all about.

Sections 5 to 7 of the Act deal with infringement. Clause 28 of the Bill expands upon that—clauses 28 and 29—and the actions to be taken on infringement. Clauses 32, 37. Under clause 35 of the Bill it gives a definition of infringing goods. The Act does not, however, give a definition of infringing goods, infringing material and infringing articles.

A startling revelation, if I may say, is that under the new Bill, clause 48, this governs the use of trademarks on the Internet. One could appreciate with the trademarks being a 1955 Act, there is no recognition of the Internet. Now, clause 48 now recognizes it and it says. This section states:

“The use of a sign on the Internet shall constitute use in Trinidad and Tobago only if the use has a commercial effect in Trinidad and Tobago.”

So you see the need for modernizing a very simple matter.

Then at section 66A we have offences which are dealt with now under section 49 where we have increased the fine and penalty for them. Under the Act, section 66C there is no term, no fine or imprisonment. Under the new clause 50 there is a fine and a term of imprisonment. Equally, at 66A(3), clause 51 increases that. 66A: under the Bill, clause 52 increases the penalties. And I can go on.

But, Madam President, I am very grateful for the opportunity. With these words, I beg to move. [*Desk thumping*]

Question proposed.

Madam President: Those Senators wishing to join the debate may do so at this time.

Sen. Faris Al-Rawi: Thank you, Madam President. I rise with pleasure to make a contribution to this particular Bill before the Parliament. This is Bill No. 22 of 2014. It is a Bill which has passed through the House of Representatives and is now before us in the Senate being an Act proposed to repeal and replace the Trade Marks Act, Chap. 82:81.

Madam President, intellectual property is something which is perhaps a goldmine in the current environment globally. It is particularly one which bears significant strength and measure for our people as an opportunity for development. The fact is that the exploitation and development of intellectual property rights is the new frontier, much like the gold rush was in its particular time as the industrial age came, as the invention of the wheel came. Intellectual property rights in and of itself are really the mainstay of activity.

One need only look so far as the youth in this country to recognize that technology is now wedded to palm, ear, eye and very physical presence. I think it is safe to say that children go into convulsions and fits when there is no WiFi presence available, and that we technically have a society that is addicted to constant communication. But we are communicating what, Madam President? We are communicating information through technology and, therefore, there is a value that is now immediately appreciated to the intelligent production of material and work.

We are no longer confined to paper and to real, hard assets, but now find zero to billionaire enterprises created literally out of the thin air. That is meant to wake us up a little bit. To put some juice into this debate a little bit, but it is sometimes hard to grapple with concepts such as this and to make it real to our lives.

If I could, through you, caution every person in Trinidad and Tobago that what we are about to discuss in this Senate affects every single one of us. It does so because the concept of infringement of intellectual property rights, in this case trademark rights, is what we are discussing here.

We are discussing the creation of intellectual property in the form of trademarks. We are discussing the licensing, the transfer, the ownership of this particular subset of intellectual property trademarks. We are discussing the manner in which it is protected, the manner in which it may be infringed and, very importantly, we are discussing the offences that one should suffer for this kind of infringement—there being different kinds of infringements, from wilful to innocent infringement. We are also contemplating, very importantly, the operational structure of the law which we seek to make today.

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I have a slight situation. I am an attorney-at-law. I practise in Trinidad and Tobago. I have a masters in intellectual property. I have had great attention and love for the area of intellectual property for many years, and I must therefore make an immediate qualification and disclosure to the Parliament that I am actively involved in the trademark practice in Trinidad and Tobago. [*Desk thumping*] I am involved in litigation in the courts of Trinidad and Tobago which specifically involves matters which this Bill may affect. [*Crosstalk*]

I make this disclosure because this Bill is one that can affect those things potentially. Unlike the Government's allegations on previous occasions where anything is a conflict of interest, there is no conflict of interest that has ever arisen prior, but this one here certainly for the practitioners present—I am sure Sen. Vieira will have to make a disclosure. Sen. Prescott may, as a practitioner; perhaps Sen. Lalla, I am not quite sure, but the fact is, those of us who practise in court or practise at the Registry or at the Intellectual Property Office would have to certainly make some form of disclosure. I propose a little bit later on so that I can get specifics of two bits of further disclosure that I may wish to make. As I get into the meat of the discussion, I think I may further need to disclose two particular matters that are currently in the court that may be affected.

Now there is a qualification because we have transitional provisions in this law which say that the old law is to apply to circumstances already in existence. That perhaps can take care of it. But insofar as litigation may end, and it may restart after this Act is proclaimed, it is very important for those of us who practise insofar as a vote on this Bill could affect matters which we have in our conduct as practitioners, it is important for us to make these disclosures.

Madam President, the key that we are looking at inside of here is bifurcated. On the one hand, we are looking to the technical considerations of this Bill and, on the other hand, we are looking to the operational considerations of this Bill.

12.15 p.m.

I want to compliment the hon. Minister for carrying forward the work begun before him in administrations prior. I would like to immediately congratulate the very many members of the Intellectual Property Office who have been stalwarts to drive forward the protection and acknowledgement of benefit of intellectual property rights in Trinidad and Tobago. They, of course, Madam President, include people starting as far back as Wilma Primus, moving to Mazina Kadir, now passing through the person of Tene Reece and now coming to the very capable hands of Regan Asgarali and the entire IPO team. I think that we have

been well served as a country by the energies of dedicated professionals [*Desk thumping*] who have driven this process forward, and I wish to salute them publicly.

Madam President, we do not seek to amend the laws today, and here is where I beg to defer from the hon. Minister's position, not that I am chastising him for it, but I beg to differ. It is not that we are at sole gratitude for the Government. It is not that we are under no obligation to amend our laws, far from that being the truth. In fact, there are two very important drivers to this process. The first one is, of course, the Cariforum Agreement by which we undertook to consider the Madrid System as a system for IPO registration in Trinidad and Tobago. And secondly, we are driven by the World Intellectual Property Office itself. It is on a mission to develop a systemization which can span jurisdictions and have a simplification of process. Those are the two drivers inside of this.

The UK Trade Marks Act, 1994 was a very good anchor for comparison of our current laws and certainly spurred some consideration of some of the shortcomings in our laws and we were very materially assisted by the 2005 trademark legislation in Singapore. But, Madam President, our system is not quite in the operational state that those jurisdictions have, and our system is not in that state because our laws are a little bit more fragmented.

Now, Madam President, this is a very large area of the law. We have in this Bill 107 pages, comprising 141 clauses. If we were to do the mathematics behind this Bill it would be an impossibility for us to touch on the heart and soul of all of the provisions that we should properly consider as a Parliament. May I state, at the immediate outset, having given the gratitude to where it should be placed, that I am very concerned that this Bill ought not to be passed today and that it should be the beneficiary of some further consideration in either a Special Select Committee or a Joint Select Committee of both Parliaments. [*Desk thumping*] And let me explain why, Madam President.

We as legislators are being invited today to make the law which will repeal and replace the Trade Marks Act. I am confident that the vast majority of Senators sitting here today would be in a similar situation to the one that I am in, which is having to digest all of the material and to sign off by way of our vote on a three-fifths passage of this Bill that we agree with all of the terms and conditions of this Bill. One need only remember that the Parliament sat in united purpose when we dealt with the Administration of Justice (Indictable Proceedings) Bill and we all agreed as a Parliament that it was a useful enterprise to clear the backlog of preliminary enquiries in Trinidad and Tobago, and for that purpose we passed legislation which included the now infamous section 34.

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I raise that because the intention of the Parliament was honourable. But, Madam President, as it turns out the proclamation by the Government made for an absurdity in respect of the intention of the Parliament, [*Desk thumping*] because the circumstance by which that law was proclaimed was in many, many persons having publicly expressed this view, it was surreptitious, pre-mature and if not, deceitful. I say that, Madam President, to say that the adage, that the road to hell is paved with the best of intentions, sometimes finds itself even in a place like the Parliament of Trinidad and Tobago. And I do not mean to be pejorative, but my caution to all Senators present is, if you do not know what you are talking about do not vote, yet until we have had an opportunity to consider the ramifications of the law. [*Crosstalk*]

Sen. Lambert: That is your prerogative.

Sen. F. Al-Rawi: Yes, that is my prerogative, Sen. Lambert, and I am going to explain why I say that now.

There are provisions in this Bill that cause me pause, Madam President. I think the Bill is an excellent Bill. I think the Bill is well drafted. I think that there has been an attempt to provide harmony to other pieces of legislation. I think it is forward thinking. I think it looks very much like our copyright laws did when they came onto the table for debate. We have some of the best laws as it relates to copyright protection in Trinidad and Tobago. Quite novel, quite interesting, a unique blend between the French perspective and the English perspective. The trademark law that we seek to put in now opens several floodgates, and some of the floodgates include things which we have not seen in Trinidad and Tobago before.

I wish to thank the hon. Minister and more particularly the Intellectual Property Office for circulating today a table of comparison between the sections in the Trade Marks Act which we seek to repeal and the Trade Mark Bill which we have before us. And I wish to state that apart from the several pages of consideration provided to us, there are clauses and conditions not represented in this circulated version which we should focus upon.

Madam President, may I say, that the time permitted to discuss this kind of debate does not allow for the deep consideration that I know we have to pour into this Bill. I would therefore be confined to speak to only a few aspects of general understanding. But I wish to inform that I certainly do intend to participate very heavily in the committee stage, that my preference would be that the Senate as a whole could consider this thing by way of a limited Joint Select Committee or a

Special Select Committee, that would allow Members the confidence that the Parliament is acting upon a report of a Special Select or Joint Select Committee. The minutes of the meetings would be part of the record, the consideration of a clause by clause analysis would be part of the record and any amendments coming back to the Houses of Parliament would also be part of the record. That would make for a better use of parliamentary time.

I wish to jog Members memories as to the experience that we chose to adopt in relation to the securities industries legislation and also in relation to the Insurance Act, both of those two pieces of legislation had unified agreement by a Parliament as we sit now, this Tenth Parliament, that we agreed that the laws needed to be amended. We went to Joint Select Committee on those Bills. Indeed we did it for the planning Bill as well and what I can say, Madam President, is that the result coming out of that committee work was nothing short of spectacular, because it had like minds sitting to come up with a good product.

In fact, I do hope that we will see tabled before us the Insurance Bill as has been amended in the committee, and I am sure that Sen. Howai would agree that the work of the committee was an excellent purpose.

The Planning and Facilitation Bill is one where we spent a short time in committee stage and I think that we made for good amendment to that Bill as well as difficult and as tortuous as it may have been at times. Sen. Tewarie knows what I am speaking about. I think that the product that came back to the Parliament was a better one.

Madam President, may I therefore adopt a few global positions in relation to this Bill. Do Members know, and I am just going to pull one out of the blue, that this Bill now introduces comparative advertising for the first time in Trinidad and Tobago? [*Crosstalk*] Sen. Ramnarine quite correctly says, “what is that?” That is a very, very big concept in law. That is the concept that allows a person to legitimately use the trademark, identifier, signage of a competitor and make references to that competitor. So that we move away from the position of saying another popular brand said the following things in relation to it, and you blur the brand and you cannot say who the brand is.

Now, this law allows us to use by way of an exculpation of liability, another person’s trademark and compare our goods and services in relation to that. That is a first for the laws of Trinidad and Tobago. That requires a consideration in respect of the rules and regulations as they relates to advertising and the laws that

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prevail in that. That is a serious moment for pause. Because the industry preparedness for that and the avalanche of litigation of which will be avoided and created have to be balanced carefully.

Madam President, this Bill also has introduction for the first time of a global concept for the use of the Internet. We are allowed now to publish in any medium and there may be positions in relation to the use of the Internet if there is economic effect into Trinidad and Tobago. That is a second area which is quite novel. But there is a third and much larger area as it relates to the acceptance of well-known marks, well-known trademarks to be found at clause 3(1) of the Bill and indeed in relation to further sections which deals to exceptions and reservations of well-known marks under the Bill as it is constituted. And I speak particularly to clause 29(3), clause 29 in general and also the relationship to offences there, and flagging these particular issues.

There is another one that is quite interesting from a trade and industry perspective, and that is to be found, and what is demonstrated at clause 30 of the Bill. We are introducing into Trinidad and Tobago for the first time a very important concept of parallel importation. We are now allowing for a modification of our trade routes to remove the limitation that we had, such that a trademark owner could roll up and say, you cannot import my trademark goods from the United States of America into Trinidad and Tobago because you are only allowed to import the trademark goods which I have produced for you from Costa Rica.

Let me give you an example. Colgate toothpaste. In that paradigm we know that there is a difference of commodity prices. We know that there is a difference of consumer ingredients and goods and laws that protect these things. And if you use Colgate as a toothpaste, for example, you will note that there is a difference between the type of toothpaste that you get out of the US and the type you get in Trinidad and Tobago. I am trying to bring it down to normal understanding as opposed to an ethereal legal concept. But the fact is, prior to the introduction of this Bill the licensee had to act within the parameters and could, in fact, stop another person from bringing in goods which were trademarked under licensing arrangements or the fact that parallel importation was not permitted. Not so the case right now. So there is going to be a floodgate opened where persons who bring in goods in certain circumstances would have the benefit of saying I am allowed the privilege of parallel importation which did not exist before.

Madam President, having flagged that, I would move on to the fact that the offences as another general area, cause concern when you look to the novelty of offences which we are bringing on to the books of Trinidad and Tobago, and in

particular, the fact that there are now in the offences sections no similar provisions which existed in the Act. And I speak specifically to clauses 110 to 115 where we are supposedly engaged in an exercise of harmonizing the customs laws of Trinidad and Tobago in what the hon. Minister referred to as other laws providing the benefit for enforcement but bringing it into this particular piece of legislation. But we have done so, Madam President, in circumstances where there is no harmony in the application of the offence itself.

One could look, for instance, to the disparity between the Customs Act at clause 114 of the Trade Mark Bill versus section 5 of the Customs Act. And just by way of example, the offence set out at clause 114 is an offence where summary conviction would result in a fine of \$15,000 and imprisonment for one year, and under the Customs Act you have the bifurcated route of summary offences \$500, imprisonment for six months or \$15,000, and imprisonment for five years.

So the Trade Marks Bill will propose one thing and the customs law, another thing. And it is important for us to have some degree of harmony with respect to the offences that we are looking at. Those are some of the global areas, Madam President.

I propose now to look, to drill down into a couple of these, sorry—
[*Interruption*]

Madam President: Hon. Senators, as was indicated earlier we need to revert to Item three on the Order Paper.

12.30 p.m.

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President Anthony Thomas Aquinas Carmona O.R.T.T, S.C.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: DR. KRIYAAN SINGH

WHEREAS Senator David Small is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, Kriyaan Singh, to be temporarily a member of the Senate with effect from 14th April, 2015 and continuing during the absence from Trinidad and Tobago of the said Senator David Small.

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 13th day of April, 2015."

OATH OF ALLEGIANCE

Sen. Dr. Kriyaan Singh took and subscribed the Oath of Allegiance as required by law.

Madam President: Hon. Senators, it is now 12.33 p.m. and we will take the lunch break and resume one hour from this time. The sitting is now suspended until 1.33 p.m.

12.33 p.m.: *Sitting suspended.*

1.33 p.m.: *Sitting resumed.*

TRADE MARKS BILL, 2014

Madam President: Hon. Members, when we took the break, Sen. Al-Rawi was on his feet and he has 24 minutes more of original speaking time. [*Desk thumping*]

Sen. F. Al-Rawi: Thank you, Madam President. Madam President, it is, perhaps, useful to feed lawyers well during the lunch break so that their attention is a little bit distracted to the digestive tract. So may I say, thank you first of all for allowing us that lunch break and also thank you to the Parliament staff for their kind provision to us all of a little bit of a break.

Madam President, before we took the break, I was going through to a short global orientation of where we stand in relation to this law, of saying that it is an important piece of legislation, that it is certainly one that bites into every aspect of

life in Trinidad and Tobago, this being the new entrepreneurial circuit for development of a country such as ours and, indeed, well seated in a world that is now progressively information oriented in terms of its technology and intellectual property.

I had made the submission that a Bill of this type requires proper and full consideration of the parliamentarians on more than just a say-so basis, that whilst it is that we applaud and laud the work of the persons at the IP Office and, indeed, successive administrations, in coming to the fore, that that aspect of work and that production is not necessarily the work of the parliamentarians themselves who must assent to this law by way of a vote at the end of this Bill and the discussion on this Bill.

I had also made the submission that in those circumstances it made sense, in my humble opinion, for us to go to a short committee so that we could explore some of the avenues that needed to be explored. And then I was on an orientation of identifying a few large areas in the Bill that I had hoped to drill down to, and I had named, in fact, a few of them, ending off in offences, and I was about to embark upon a discussion in relation to some of those sub-items that I had mentioned. But I wish, before doing that, to now add a few other areas of general observation which I think we as a Parliament should certainly consider.

Those areas, by way of a global identification of issues and not full drill down, include the issues relative to the assignment of the property right which we are acknowledging and creating; secondly, the issue of the regulations which are to govern this piece of legislation; next, the issue of the Madrid Protocol and the Madrid System being a combination of both the Madrid Agreement as well as the Madrid Protocol, together referred to as “The System” by the World Intellectual Property Organization’s practitioners and office; also including the issue of costs and how the Controller’s costs are to be dealt with under this new regime, and then moving on to the issue of summonses and attendances of witnesses, and perhaps coming now, then, into the exercise of the other controller in this legislation, which is the Comptroller of Customs, as opposed to the Controller of the Intellectual Property Office. The last bit, of course, would be dealing with the issue of the inter-articulation of this piece of law in particular as it relates to the new regime which is an electronic filing aspect, and then dealing lastly with the area of the operationalization of this law, how we bring it to life.

Permit me now, having added on to the list prior, to go into a few of these areas to demonstrate some of the concern which I think we ought to have some pause on.

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Madam President, I was particularly interested to look at “Well-known Marks”, and in looking at “Well-known Marks”, I wanted us to reflect upon clauses 29 and 58 of the Bill. “Well-known Marks” are now factored in the Bill in a unique way. A well-known trademark is a mark which, as the name suggests, is well known to the mind of the public, of any particular area. Trinidad and Tobago, now the beneficiary of serious Internet penetration and accessibility, is of course well aware of everything we see on cable television. We are well aware of Home Depot; we are well aware of McDonald’s; we are well aware of Costco; we are well aware of many international brands that now occupy our information space.

That being the case, we have taken quite a novel and interesting step in the management of well-known marks. The current legislation prescribes that well-known marks must be anchored into the mind and occupied space of commerce in Trinidad and Tobago. It says that a well-known mark must have some trade engagement on the ground. The new Bill proposes, under “Well-known Marks”, that we can take active conscious knowledge and have registration of well-known marks without there being actual trade in Trinidad and Tobago, and that is a very important step to make.

We are well aware, some of us—I know Sen. Vieira will smile when I mention this particular case—of the very famous case of *McDonald’s v McDonald’s* in Jamaica. In that particular case on that occasion in Jamaica, McDonald’s, the hamburger franchise, came to do business in Jamaica and was met with another hamburger restaurant which was operating by the name of McDonald’s, albeit under the name of the owner, Mr. McDonald.

This Act recognizes that you can have a concurrent user. This Bill recognizes a concurrent user. This Bill recognizes, and our law recognizes, that you can use the name that you have without infringing another, hence in local parlance, Maraj Jewellers, not infringing upon Maraj Jewellers per se, two gentlemen by the name of Maraj allowed to trade side by side.

But in that case, the McDonald’s case, what was explored particularly was the fact that there was a piggybacking of an international name and the courts of Jamaica upheld the use of McDonald’s, the local Jamaican enterprise.

1.40 p.m.

In Trinidad and Tobago, we had quite an interesting phenomenon, a particular case involving The Home Depot of the United States of America coming to do business in Trinidad and Tobago and that there was a company here called Home

Depot, and Home Depot found that it could not displace the Trinidad and Tobago Home Depot and was compelled in those circumstances to actually acquire the rights of the local Home Depot. That did not quite go to litigation, but was worked out along the line and many of us know of that experience. But under the well-known marks, I think it is important to flag for the business community something which I have had some experience with and which I must now declare in some better particular form.

I have acted for a company, Carib Brewery, the Caribbean Development Company Limited of Trinidad and Tobago. They own a mark of a beer called Pola Beer, P-o-l-a Beer. There is an international beer produced in Venezuela by Cervecería Polar and they produce Polar beer. Both of those marks involve a polar bear on it, with a particular background and both are engaged in the sale of alcoholic beverages, beer in this particular case.

I declared that I have acted for the Caribbean Development Company Limited which is Carib Brewery in a matter against Cervecería Polar and others. That matter is in fact before the courts of Trinidad and Tobago and it is something which is quite interesting. Without going into anything that would offend the sub judice rule or otherwise and knowing full well that the existing law will continue on by way of transitional provisions in this Bill as it applies to that particular existing, it is interesting to note by way of a case example only, that CDC, the Trinidad and Tobago company, inherited a brand owned by a predecessor company and was producing a beer since 1956 or earlier, this Pola beer, but the international well-known brand now Cervecería Polar is on the market.

When this law becomes effective, the international well-known brand will automatically have certain registration privileges in Trinidad and Tobago as a well-known brand whether it trades in Trinidad and Tobago or not, and therefore, it has the potential to open a door for the market in Trinidad and Tobago to be affected. I am giving a real life example of how this well-known mark can operate. It can operate in a very useful way to prevent piggybacking and something which is wrong, which is the abuse of someone else's name which is well known. But it can also cause, where there is a concurrent user and a legitimate one, trade now to be viewed in a different way, and the question for us as a Parliament is now whether that trade fraction has any impact that we ought to consider in dealing with this Bill.

In fact, I am very concerned that I do not offend by taking a position on this Bill, one way or the other, anything to deal with something which may be affected by this law which we are now passing, and for those reasons I may perhaps need

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to seek some guidance when we come down to a vote on how I should participate on this particular measure. I want to be very careful not to offend the Standing Orders of this Parliament as it relates to a vote on a Bill.

There is also another matter which I am currently engaged in before the courts, which deals with another piece of legislation, the Chutney Soca Foundation of Trinidad and Tobago as it relates to the Chutney Soca Monarch competition, another factor which is going to be impacted by the management of this particular Bill. How we bring this into life and we allow concurrent users, and how that will be worked out is specified in the Bill, but the question is: is the population well enough aware of these provisions and is the practice well enough aware of these provisions?

I made a call to the Law Association and spoke with some of the representatives of the Law Association, and I am concerned that I understand the Law Association to not have a position on this Bill because it has not been considered yet. I do know that the Bill has been around for quite a while on the Order Paper. I accept the Minister's position. I am sure that he will say in reply that this is something which has been around and surely public comment could have had. I do know that there was good consultation by the IPO office. Indeed, I received a copy of the Bill from the office by way of their dissemination out sometime ago, but Trinidad and Tobago is an unusual place where people tend not to pay attention until the immediacy of the event comes upon us, much like I am sure many of the Senators sitting here today may not have had the opportunity to fully digest the meat and content of this Bill before us.

So I am concerned that some of the wider consultation issues should be canvassed and I am concerned that in relation to the well-known marks, in particular, that we are conscious of the business communities approach to this particular opening of the doors in relation to well-known marks. Well-known marks are not something which is new for us. It is the manner in which we anchor it now in the Bill that is going to be novel, which is that trade is not necessarily required here and we would be balancing two competing interests which is the lack of bona fides in using someone else's mark, albeit from outside of Trinidad and Tobago versus here because we have live examples of people who have established businesses who may find themselves affected by the introduction of this particular provision.

Madam President, I am very concerned that the concept of assignment in the Bill is going to be dealt with and the registration requirements. We know that we are dealing with property. This Bill recognizes intellectual property as personal

property as opposed to real property in the nature of chattels or things. Same way a bank account can be owned, same way goods can be owned which is not real property. But what we are doing here is, we are establishing a system of registration for any time we deal with the transfer of this particular property, this intellectual property called a trademark. If you are going to deal with it, it must be registered at the registry, save only in respect of interest that deal with trusts.

Now the Bill deals with the ranking of priorities between the law itself and the law of equities itself. Let me break that down. The rule in law is that equity prevails over the common law. Let us draw an example from Shakespeare. If you are to take Shylock's example of saying, you have a contract with me, you can have your pound of flesh closest to the heart, that is the law. The law is that you can take the pound of flesh. But the equity came to trump that legal contract to take a pound of flesh by saying albeit that you could take the pound of flesh closest to the heart, you cannot spill a drop of blood while you do it. That was the fairness of the contract which came to supersede the legal requirement that a pound of flesh closest to the heart be delivered up in Shakespeare's analogy.

In this instance here, our registration requirements as it relates to land and other interest is quite unusual. We are not on par with the English system of registration which causes priorities, and our law recognizes that the equitable purchase of something can supersede the legal notification of it. In fact, the hon. Minister alluded to it when he spoke to the difficulty in the implementation of the Madrid Protocol. In the Madrid Protocol one of the two main issues raised by the Minister, in acknowledging that there were some issues in relation to its implementation, was the property right. The fact that you could not under the Madrid Protocol assign your right, that is sell or transfer it either wholly or partially to someone else, and have it registered under the Madrid System, if you found yourself in the situation where the person who is going to have the benefit of that and should be registered is not a member of the Madrid treaty.

Now that affects your property right, and albeit that the hon. Minister did point out that you do not need a three-fifths majority, sometimes in legislation I think that clause alone requires a three-fifths majority properly when you think about it because it is a fetter on the right to own property. Albeit, it is a right which is a subsidiary right in terms of registration of property as opposed to bona fide ownership of property. But the registration is critical because that is what protects you and gives notice to the whole world of the existence of your rights. If we are going to use the Madrid Protocol which is notice to the entire world and an easy centralized system, it means that the issue of what is referred to in the learning as the central attack on the Madrid Protocol countries becomes a real one, that you can weaken the protection at source by putting an attack at source.

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So I wanted to flag out the issue of assignment of rights, the acknowledgement of the legal versus beneficial ownership of those rights, and the fact that I think we need to be careful, to consider it a little more closely, not because there are certainly new concepts of law, but because the countries from which we take these laws, that is the 1994 UK Trade Marks Act and the 2005 Trade Marks Act, those two countries have different systems of registration versus the law and the equity as it relates to an assignment of a contract. I know it is a little bit thick in the legal language, but it affects how you own this thing and how you can exploit your rights in relation to it.

Madam President, I am also quite concerned about the issue of the regulations under this particular Bill. Now, the Minister would be correct to say that it is not axiomatic or automatic that you have regulations laid on the table at the same time, but most respectfully we have very important decisions and comfort to be pulled from, decisions to be pulled from and comfort to be gained in the sight of the regulations, and I would personally have preferred to see the regulations tabled at the same time as this Bill has been tabled and I will tell you why. When we are looking at this area of the law, we recognize that of the 95 countries that deal with the Madrid Protocol, only one in the Caricom actually uses it and that is Antigua and Barbuda. None of the countries principally in South America—I should not say none. Almost all of the countries in South America do not use it.

The Trinidad and Tobago user of trademarks exports to certain zones. Caricom is an important aspect of exploitation for our manufacturers, and in that circumstance it is important for us to remember, yes, we will be using the Paris Convention as it relates to international use of marks in the Caribbean, but the Madrid Protocol and the regulations to be produced under that and the regulations in general under this Act, none of them are to be viewed by the Parliament of Trinidad and Tobago. The law in this Bill as prescribed by clause 123 of the Bill simply says that the Minister may make regulations for items (a) to (ac), that is passing through (z) going (a), (ab) and (ac), and (ac) says:

“generally for carrying out the provisions of this Act.”

When you look at the Bill, any time you see the word “prescribed” you need a regulation. Any time you see “regulations”, you need a regulation. But importantly, this being new law I find it a shortcoming for the regulations not to be tabled in the Parliament and to be the subject of at least negative resolution and at least on the first occasion affirmative resolution.

My submission to the hon. Minister, through you, is that clause 123 of the Bill ought to be amended by tabling the regulations to be produced by the Minister, certainly including the Madrid Protocol regulations, having them on the

Parliament. On the first occasion it would be good to do it by affirmative resolution and on the second occasion and all other occasions after, by negative resolution. I will tell you why I say that. Let us look to the Madrid Protocol.

The Minister mentioned Japan's experience in relation to the Madrid Protocol. I found that quite interesting. Japan agreed very early to amend its trademark legislation, coming up to the international standard, shortening the time frame for examination, having consultations, et cetera, but it dealt with a very important problem and I hope the hon. Minister is listening to this one. The important problem that it dealt with was the fact that when you make an application to Madrid, the central authority, you no longer have to do the advertising of the mark locally. So once you have the origin dealt with, there is a mark or an application for a trademark in, if you are going to use the Madrid Protocol as other countries do and designate on the outside of Trinidad and Tobago to be registered via Madrid, let us say—so somebody in the US has a mark, there is an origin in the US, it nominates through Madrid that Trinidad and Tobago should also have a registration bite in, there is no requirement to register that mark in our local context via an advertisement.

1.55 p.m.

Now, the advertisement of a mark, when you open the papers and you see these trademarks advertised, is for the purpose of opposition. So that people look at it and say, "well, hold on, I recognize McDonalds, I know the place down the road name McDonalds. Do I want to oppose or do I not want to oppose?" In this current scenario, we do not have an advertisement requirement and I do not know if that is in the regulations.

In Japan, what I found quite useful was that they prescribed that the marks that were going to come through Madrid had to be advertised in two gazettes and the gazettes were the international marks themselves that were going to be registered or the applications for marks. I wonder whether the Minister would be in a position to tell us whether the regulations that are in draft right now, as prescribed by WIPO together with our particular officers, actually contemplate the double-gazetting for applications for marks and marks themselves, because I think that the opposition requirement is a very useful one.

Now, I accept that the Madrid Protocol is only going to be a procedural route, that it does not change our substantive law in relation to opposition of marks, et cetera, but I think that the public knowledge of the marks is equally important from an opposition perspective so that the substantive law can be invoked

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appropriately. What I found quite interesting under the Madrid Protocol itself or the Madrid System, if I were to take the argument a little bit further, I am grateful that the hon. Minister reflected upon some of the issues in the Madrid Protocol but I would have hoped that he would be in a position to tell us about some of the broader issues in Madrid. And I know that WIPO has a very interesting paper dealing with some of the issues arising from Madrid. And may I suggest to all Senators present, and certainly all people listening, that they visit the IPO website in Trinidad and Tobago.

I want to compliment the Intellectual Property Office of Trinidad and Tobago for having a very useful and well-populated site. There is some very excellent material to be factored there. And in particular, I recommend that all Senators present, immediately, should have read the “STUDY ON ACCESSION TO THE MADRID SYSTEM FOR THE INTERNATIONAL REGISTRATION OF MARKS” prepared for WIPO by Barbara Bennett; the “Madrid Experience Sharing Report”; “Japan’s Experience in Joining and Using the Madrid System”. Again, a publication of WIPO. They should have read as well, “The Economic Contribution of Copyright-Based Industries in Trinidad and Tobago” produced by Vanus James. Again, somebody who we have heard a second time for this Parliament now.

Madam President: Hon. Senators, the speaking time of Sen. Al-Rawi has expired.

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes. [*Hon. G. Singh*]

Question put and agreed to.

Sen. F. Al-Rawi: Thank you, Madam President. Thank you to the Leader of Government Business for kindly moving my extension. The last one that I would recommend that should be read is the “Accession Kit: The Madrid System For The International Registration Of Marks”. All of which can certainly be found on the IPO site. Forgive me, there is one more, the “Comments on some statements about the Madrid Protocol and its impact on acceding countries”. That one I found to be quite useful. A very short document which tells us of some of the pitfalls in the Madrid system.

Now, the reason why we need to factor that and Madrid as a whole, is that there is definitely going to be a consequence of the accession of the Madrid Protocol. That protocol which is a layer on top of and coming out of the Paris Convention which is that unified, simplified system of registration internationally. That system has dynamics to be factored. It has manpower and organizational

dynamics to be factored as the hon. Minister dealt with some of them. The six-man team for the manpower comprising the Madrid desk in the IP Office. But it also has to factor, there will be a consequence, yes, on some of the practitioners losing income by persons electing to use the Madrid system as opposed to local attorney representation and therefore fees for them. That is going to be a consequence.

But, I am not so much concerned about that one as I am concerned about the optic in the volume at the office of the Intellectual Property Office in Trinidad and Tobago. That optic in volume is something which is not unique to the issue of whether one should accede to the Madrid Protocol or not, it has been factored in other countries, but it has not been factored in other countries such as ours. Antigua and Barbuda certainly did deal with it. I am not sure what their experience is. Cuba is an entirely different situation for Trinidad and Tobago. Albeit that the Minister did give us some insight into the Cuban experience, Cuba has operated under embargo and sanctions for many, many years, and has a very specialized, homogenous sector for medical research and development and, indeed intellectual property, and the export of their medical tourism, certain goods and services which we do not have here. So I think it would be useful to understand what the Caricom position and in particular, the Commonwealth Caribbean Caricom position is going to look like.

I am concerned also about the provision as it relates to costs. We see an unusual, not unfamiliar, utilization of the concept of security for costs in the Controller of intellectual properties examination or the Comptroller of Customs examination in clauses 83, 86, 89. When we look at this, in proceedings before the Controller, the Controller can say, "I am not going to hear your proceedings if you do not pay security for costs". Let me explain what security for costs is. It is a concept which we have out of the civil jurisdiction of the Supreme Court of Judicature in the Rules of the Supreme Court, a local defendant gets to say of an international claimant, "You are not allowed to pursue your action because you do not have assets in the jurisdiction and because you do not have assets in the jurisdiction, I want you to have to pledge money's worth in the courts of Trinidad and Tobago, and if you do not do that, I am going to have your action stopped or stayed". That concept now finds itself into this particular Bill at a non-judicial level in a quasi-judicial setting. And I am sure that there is bona fide purpose for it but I would want to see again the regulations which are going to manage how this is to be worked out so that we are sure that the due process argument is not unduly diluted in the process.

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Now, in chatting during the break, I had a conversation with one of my fellow colleagues, Independent Senator, who mentioned to me the truth that look, tinkering with this Bill which is so finely tuned could be dangerous and it could be dangerous because the concepts as mapped out in the Bill are good concepts, and it has been born out of experience coming out of, in particular, litigation on the issues. What concerns me, however, in that argument is that it is only the practitioners and persons who participated in developing this law that are intimately familiar with the law. That being the case, we have a sense of paternity over it. We feel a sense of affinity and sometimes lack the distance. Are we all able to tell our children that they are not really as good-looking as we think they are or not really as intelligent as we think they are?

Sen. G. Singh: Unless you establish paternity. *[Laughter]*

Sen. F. Al-Rawi: Yes, the hon. Leader says that you must establish paternity, and for those instances where paternity is not only attributed to someone but established, the point is when you are too close to the equation and you have been a participant in the process—*[Crosstalk]* “Ah hear Sen. Hadeed grumbling ah little bit”, I do not know why, but anyway. So, when you are a little too close to the situation, the thing is that you may not have the depth of perspective. The question is: Are we leaving enough room for other people who are not as aware of this law as is proposed to be implemented to come up to speed with us?

I do accept that there was consultation room but I am not quite sure if it was adequate. I want to draw from the experience—as I am sure Sen. Howai can bear me out on this—of the insurance legislation. It was out for public comment forever but it was only when we stepped in that Joint Select Committee which was a phenomenal experience and I think from which good product has come, without anticipating the introduction of the Bill in the Senate, I think that we actually had the genuine consultation and appreciation of the ramifications that would be caused by the introduction of the Bill. I think that this is one of the occasions where we should factor that as it relates, not only to the cost aspects and the novelty of that, but by sight of the regulations which will guide us through that.

There is a very interesting phenomenon of the use of summonses in the Bill to compel people to attend to give evidence and to punish them for not giving evidence or cooperating unless there is lawful excuse. That, by itself, is also another reason for a three-fifths majority because, as we know, the right against self-incrimination is a fundamental right in our Constitution and even though we have the due process argument attached onto the words “without lawful excuse”, the fact is that we still have to factor the derogation of those fundamental rights in section 4 of the Constitution.

We come now to the electronic filing and I am now going to blur into some of the operational issues, not having much time obviously. Do you know that we passed two very important pieces of law in Trinidad and Tobago? In 2011, we passed the Data Protection Act and the Electronic Transactions Act. It is important for us to bear in mind that notwithstanding the passage of four years, the heart and soul of the Electronic Transactions Act and the Data Protection Act, both of which articulate with the intention to do e-commerce and to have data managed, they have not been proclaimed yet. And the question is: why? Why did we as a Parliament sit down in 2011, as we did, with Bills No. 4 and 5—the Electronic Transactions Act and the Data Protection Act, why did we pass those laws if we cannot proclaim the laws?

When we look to the proclamation of the Data Protection Act, we note that the protection of data by public bodies, the protection of data by private sector, the contravention and enforcement procedures, the jurisdiction of the court, employee protection, none of those things have been proclaimed. When you look to the Electronic Transactions Act, the electronic authorization of service providers, the intermediaries and telecommunication service providers, consumer protection, the contravention and enforcement provisions of the Electronic Transactions Act, No. 6 of 2011, assented to April 28, 2011, has not been proclaimed. Are we going to suffer a similar fate on this occasion? Will the Minister tell us why this law has not been proclaimed because this law articulates with that and is essential for consumer protection? What about the implementation of the Exchequer and Audit Act and terms of e-commerce and provisions there?

My humble submission is that the operationalization has to be factored and there can be no better operationalization than ensuring that the Intellectual Property Office, as a subset of the Ministry of Legal Affairs, moves instead to an intellectual property authority. Because if the literature and learning as conducted in relation to copyright by Vanus James is correct and if our GDP is affected positively by 4.5 per cent contribution from copyright as opposed to trademark, then it is useful for us to give the Ministry of Legal Affairs some relief by creating an intellectual property authority and I will tell you why.

The Ministry of Legal Affairs has received in total for 2010, 2011, 2012, 2013, 2014 and 2015, \$701,569,800. The Intellectual Property Office for those same years has received \$39,933,970. We are now well aware in Trinidad and Tobago that the kind of expenditure that is required to birth an industry is quite serious. When one compares the expenditure in the Ministry of the Attorney General, we know that external lawyers alone have received over \$100 million a year from the Government.

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But the Intellectual Property Office has received under \$40 million in total for five years. And the question for us as a nation now is: are we being serious in birthing a comprehensive intellectual property environment by under-financing and under-resourcing some of our critical institutions?

2.10 p.m.

Not only the Intellectual Property Office, but let us look at Customs. Customs is an important articulating entity to this law. Do you know that there is a dramatic shortfall in the number of officers and security personnel in the Customs Division? We do not have enough officers for enforcement and officers are required to work overtime without sight of their family and without any form of perspective of the human experience and life by working overtime constantly. Whilst they may be paid and be beneficiaries of money for that, the quality of human life is equally important. My humble submission is that it is time for us as a country to begin to look at birthing an intellectual property authority, as opposed to a subdivision of the Ministry of Legal Affairs because it is under-financed and it is desperately in need of resources.

The Minister may be able to tell me that the Intellectual Property Office is able, by generation of revenue, to run at a surplus. That should be the experience. That, however, depends upon the efficiency of management and the continuity of the ability to attract the right kind of people.

And I wish to put a plug in for lawyers in particular and for service providers in particular and for information technology experts in particular, that you have to pay appropriately to get the kind of talent that you want. We have already had the discussion as a Parliament, in relation to how parliamentarians, or judges are paid or pensions rule, without pegging to RPI indices, for instance, so that pensions become worthless over time because they are not pegged to the increase and escalating costs over time.

But, Madam President, I think that an authority would do well as a better creature and that we can elevate the intellectual property controller out of the Patents Act, Chap. 82:71, I think it is or 81:72, if I remember the name. We can elevate that position out of the Patents Act and go, instead, into an authority.

Madam President, there is a whole lot more that I intend to contribute to because the clauses, clause by clause, are worthy of deep consideration. There are 141 of them. I rarely think that we would make useful enterprise, and positive results would be achieved if we were to put this, if not to a joint select committee of both Houses, instead to a special select committee so that some of the Members

can rely upon, not only the work in the Special Select or Joint Select Committee, but the fact that that work would have been recorded, that a report would be produced, that the minutes of meetings would be produced, that the consultation would be evidenced and that therefore the law can withstand better scrutiny so that we do not make a nonsense of the law by passing laws, as we did with the Electronic Transactions Act and the Data Protection Act, and not implementing them. That is a tragedy. That is an approach which we should frown upon because that is a tick-the-box approach, which is not something to be favoured by any Government in Trinidad and Tobago.

Madam President, I urge fellow Senators to have the intellectual courage to stand up and to say that they want some deeper thought or perspective. There may be some who are immediately ready to deal with it, having had the benefit of great inspection and knowledge in the area. I myself, notwithstanding my penchant for the area of the law, find myself wanting some more time to digest the ramifications. And I say so most respectfully because I am wearing a different hat today. The hat that I wear today is worn as a legislator and I want to know that in giving support for this kind of legislation, that I have done so responsibly and with proper reflection.

I thank you for the opportunity to contribute. [*Desk thumping*]

Sen. Anthony Vieira: Thank you, Madam President. This is important and necessary legislation for all who have commercial interest in Trinidad and Tobago, whether one is in manufacturing, business or the entertainment sector.

More often than not, debates in this honourable Chamber relate to things of general concern for the ordinary citizen, things he or she can identify with: anti-crime measures, matters pertaining to finance and the economy or the protection of children. At first glance, while there may appear to be a disconnect between the concerns of the ordinary citizen and this technical legal document dealing with what are essentially intellectual property rights, there is in fact a very real connection.

Among the things I would like to heighten in my contribution is the importance of this legislation, the positive impact it can have and why trademarks matter. In a publication entitled *Trademarks: The Fingerprints of Commerce*, produced by the United States Patent and Trademark Office in 2001, it is noted, and I quote:

“The average American encounters about 1,500 trademarks each day - from the closet, to the bathroom, to the kitchen, on the way to school, to work, in newspapers and magazines, on television and radio, in supermarkets, in

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arcades, in restaurants and shopping malls. We are literally surrounded by trademarks. Trademarks provide us with valuable information. They are source indicators which allow us as consumers to know what to expect in the quality of a product or service. They allow us to buy with the assurance that we are getting products or services which we liked in the past. Likewise, trademarks allow us to avoid those products or services we did not like.”

The same applies here in Trinidad and Tobago, whether it is Universal cornflakes or Kiss bread you have at your breakfast, whether your children drink Chubby or Solo at school, whether you munched on Bermudez or Devon biscuits or Tea Time, or you fill your gas tank with gas from Unipet or NP, we are surrounded by, constantly referring to and making decisions, whether consciously or unconsciously, based on trademarks. Which deodorant you choose, whether you take Panadol or Tylenol for your headache, whether you prefer Colgate, Crest or Sensodyne as your toothpaste, these choices are informed by trademarks. They speak to quality. They may be associated with memories and good feelings and they can give us comfort. That is the reach and the influence of trademarks and it is not just in Trinidad and Tobago. It is a global phenomenon.

The fact of the matter is that in today’s world, trademarks have become one of the key elements for business success. Trademarks guarantee the source and quality of goods and services. They allow companies to distinguish their goods and services from those of their competitors and they cement customer loyalty.

Whether we like it or not, we live in a materialistic age and our economies are fuelled by consumerism. We live in a world of brands and trademark law is fundamental to branding. Our brands and trademarks are important, not just locally but regionally and internationally. And when we register our trademarks abroad, we identify goods and services coming proudly from our country. They serve as indicators of quality and they help create an image for Trinidad and Tobago.

Now, as we have heard, most of the world’s well-known trademarks and service marks are already operating here in Trinidad and Tobago or you see them on the Internet. But the reverse is yet to be achieved. It is hoped that this legislation will enable our goods and services to go global.

Now, it is well recognized that, in terms of personalities and certain products, the English-speaking Caribbean in general and Trinidad and Tobago in particular we punch way above our weight. Take for example sportsmen like Dwight Yorke, Brian Lara, Usain Bolt, George Bovell, Keshorn Walcott; entertainers like Machel Montano, Rihanna, Nicki Minaj and brands like Angostura Bitters, KC Confectionary, Chubby soft drinks and Air Caribbean.

In last week's Monday *Express*, I think it was, I read at page 10 that rum producer Angostura Holdings Limited posted an after tax profit of over \$153 million last year. Company chairman and former Senator Gerald Yetming observed that:

“Our brands continue to grow profitably...despite the many challenges in the domestic market and in some of our international export markets,”

Personally I believe that with this trademark legislation we can do even better. Can you imagine the demand for Angostura's rum and other products when its trademarks are registered worldwide? Demand will exceed supply. But I believe that the present trademark regime, as we have heard, a system going back to the 1950s and which has not kept pace with the developments and the demands of the 21st Century, that is under-serving us and is in need of overhaul.

Earlier, we heard the hon. Minister Douglas talking about promoting and marketing Trinidad Carnival across the globe. Well if our burgeoning film, fashion, music, Carnival and entertainment sectors are to have any real prospects for success, much will depend on our IP legislation and infrastructure and the comprehensiveness and robustness of this legislation.

However, before proceeding further, I should disclose that this is legislation that I worked on as a member of the ministerial committee that was appointed in 2010. Minister Ramadhar mentioned it in his contribution. We were appointed in 2010 to implement a Draft National Intellectual Property Policy and I am on record going back some years now as one of the proponents favouring this legislation. I should also disclose that my law firm Mair and Company is a member of the International Trade Mark Association called INTA. That is a body which strongly supports and encourages governments of WIPO member countries to take all action necessary to adhere to the Madrid Protocol. As a lawyer and practitioner, I am engaged in litigation involving trademarks and my firm routinely handles trademark matters.

And last but not least, I should also disclose that I have long enjoyed an association with the World Intellectual Property Organization, their representatives over the years. WIPO is a specialized agency of the United Nations and the body which has developed and which administers the Madrid system. In fact, I am currently engaged as a consultant by WIPO for the purpose of amending the Copyright Act to incorporate the Beijing Treaty on Audiovisual Performances and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

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But I wish to make it quite clear, I have not done any work for WIPO in respect of trademarks. I hold no brief for anyone, in respect of the Trade Marks Bill and I have no pecuniary or vested interest in this piece of legislation.

I support this Bill as every responsible intellectual property lawyer should do because of the important role it can play in bringing Trinidad and Tobago up to speed internationally, both in terms of addressing our obligations under the international treaties, including, as we have heard, our obligations under the CARIFORUM, European Community/Economic Partnership Agreements and as a means towards spurring economic development. But most importantly I support this Trade Mark Bill because I believe it will redound to the benefit of the people of Trinidad and Tobago. [*Desk thumping*]

Madam President, trademarks are a specialized area of legal and commercial practice and because it is making a tremendous leap from the 20th into the 21st Century, by necessity, this legislation has to cover many different things including the standards for the registrability of trademarks, what can and cannot be protected, the best practices and methods to be used when making trademark applications, the need for the Intellectual Property Offices, administration arm to be updated and expanded; provision for the registration of collective and certification marks; the handling of opposition proceedings; the rights of trademarks proprietors in civil proceedings for infringement; the powers of the various law enforcement agencies, such as the police, customs and excise, in relation to enforcement proceedings against counterfeit trademarks; accession to the Madrid Protocol, which will allow citizens to obtain international registration, in WIPO's global application process; the use of the trademarks on the Internet and challenges posed for brands operating within that medium; and the need for a registrar of trademarks, and to allow for trademarks to be kept in electronic form at that registry.

2.25 p.m.

In the event—and as we are all aware, the Bill makes some very heavy reading; 141 clauses, 107 pages long, and wide and extensive coverage, but that is unavoidable. Further, since this legislation is overhauling and replacing a trademark regime which has been around since the mid-20th Century, the provisions have had to be very carefully crafted, so that they can dovetail with each other, and properly address the specific and oftentimes complex matters, which are likely to arise in practice.

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So in the event, this is involved legislation, and in terms of intellectual property and trade law, it is a big deal indeed. I can attest from personal experience that this Bill has been many years in the making. All of its provisions, in fact, every single clause of this Bill, has been carefully weighed, crafted and calibrated by panels of experts, both here and abroad. [*Desk thumping*]

The original draft Trade Marks Bill was prepared some years ago by the World Intellectual Property Organization. That draft was then extensively reviewed by the experts at our local intellectual property office. I recognize them all across there, [*Looks to the front of the Chamber, to the right of Madam President*] Mr. Asgarali and his team. [*Desk thumping*] It was revised in conjunction with stakeholders, and then there were extensive consultations with the Office of the Chief Parliamentary Counsel. Again, there is a representative from the Parliamentary Counsel's Chambers—various law enforcement agencies, and the local Intellectual Property Bar. And at the conclusion of all those various consultations, an amended version was then re-sent to the World Intellectual Property Organization for final vetting.

So this is the Bill we are being called upon to consider today. It is a document which has gone through numerous screenings at different levels over a protracted period. It is sophisticated legislation, which must comply not just with our local laws, practices and systems. This Bill also has to comply with international norms and best practices as well. To give you an idea of the international dimension of trademark law, let me tell you, the International Trademark Association, INTA, will be having its 137th Annual Meeting in San Diego during the first week of May this year. At that meeting there will be over 9,110 registrants, from at least 146 jurisdictions. This necessitates INTA having to book several large hotels, fleets of buses to cater for the trademark lawyers, brand owner organizations and representatives from government offices, who will be attending. To put in context, in Trinidad and Tobago we have about 6,000 hotel rooms. So they could not have that convention here even if they wanted to.

In this country, we tend to think of lawyers in terms of litigators, and in particular criminal trial lawyers. But I can think of no other occasion where lawyers and trademark practitioners would be willing to gather at the same time, and in the same place. More than:

- 1,100 registrants from Latin America and the Caribbean will be present;
- 1,749 registrants from Asia Pacific;
- 2,499 registrants from Europe;
- 3,432 registrants from North America, and counting.

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That is the importance of intellectual property, and that is the power of trademarks in the global community.

I think it bears noting—and I say this most respectfully, and with all due difference, this is not legislation that one would want to lightly tinker with. When one is dealing with highly technical and carefully calibrated machines, one needs to be careful when pulling things out, and putting things in. My deceased father loved tinkering, [*Laughter*] and that was back in the day before we had digital and computerized machines, [*Laughter*] but today's machines, and in particular today's cars, they are too sophisticated for the average "tinkerer" like my dad was. Playing around with parts you do not really understand can have negative consequences. [*Interruption*]

Hon. Senator: "Faris, doh be ah tinkerer." [*Laughter*]

Sen. A. Vieira: Among other things, there is the risk of impairing the machine, incurring unnecessary expense, and even inadvertently putting yourself in danger, that situation may be analogous with this legislation.

This Trade Marks Bill is in many respects a carefully, calibrated piece of complex machinery. Clumsy adjustments, even though well intentioned, can have unintended consequences, and may even prove counterproductive. I have no doubt that points can and will arise at committee stage, but when it comes to terms of art, and when it comes to the technical aspects, I would very respectfully suggest that we proceed gingerly. Be that as it may, and mindful of the constraints of time, I am only able to highlight certain aspects of the legislation, but I think they are important.

First, it may be worth noting that this Bill as we have heard, is modelled after two of the most progressive pieces of trademark legislation in the world. Specifically, the Singapore Trade Marks Act, which followed the UK Trade Marks Act, and it may also be useful to observe that Singapore has made intellectual property, one of its key pillars for development, as it strives towards being an innovation-driven economy.

Singapore has cast itself as the intellectual property hub of Asia, and even has since February 2002, a specialized Intellectual Property Court. Singapore has an IP Academy, which is committed to developing manpower expertise across the IP value chain throughout the country. Singapore has an IP steering committee which has developed an IP hub master plan, to guide the next phase of that country's efforts towards developing itself as an international IP hub, using two key thrusts.

First, the development of a vibrant market place to transact and commercialize intellectual property; and secondly, to build world class capabilities and infrastructure. Singapore, the United Kingdom, and as we have heard Cuba, all these regimes regard having an up-to-date and comprehensive intellectual property regime as an essential ingredient for success. Not just something nice to have, but as a key pillar. The intellectual property regimes and support systems in both countries, are regarded as fundamental for their economic development. And their updated trademark legislation upon which this Bill is modelled, is regarded as a major component of both regimes.

So, in a world driven by trade and consumerism, we in Trinidad and Tobago have tended to be users and consumers, rather than the creators of products and brands; this notwithstanding an abundance of natural and human resource; this notwithstanding our great potential which often goes begging, potential which is often stymied because of outdated laws and systems, and a lack of what has been called patient, long-term investment capital.

Earlier I motioned that the current trademark regime may be under performing and not serving us as well as it could, but I should just add that if we hope to successfully develop brands at the global level, if local business is to flourish, then we need new forms of economic activity. We need to invest in research and development. We need to make capital more readily available for our innovators and entrepreneurs. We should consider—as Sen. Al-Rawi has rightly said—converting the Intellectual Property Office into an autonomous authority, like the Telecommunications Authority, the Airports Authority. [*Desk thumping*] We need an up-to-date and comprehensive IPO regime including this new trademark legislation, this does not sit in a vacuum, this part of an interconnected web.

Consider on the one hand, a prominent entertainer, one of my law firm's entertainment clients, who had ambitions to develop a brand and to make it world famous, he cancelled the entire project in frustration, because the IP office at the time, had problems in allowing him to register his initials, and certain numerals. Well, happily that situation will be resolved under this legislation, because as we have heard, one of the significant changes is that under this Bill, protectable signs have been expanded significantly to include personal names, designs, letters and numerals. You may say, what is the big deal about numerals? You just watch football players, and the numbers that they carry on the back of their jerseys. It will also permit the registration of non-traditional signs and new type of marks comprised of sounds, scents, tastes and texture once they are capable of being graphically represented.

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Consider on the other hand, a story recently broadcast on television about a woman who started sewing clothes for her two young daughters, because she did not like what she was getting in the stores. Friends and neighbours started seeing her children wearing these clothes, and they asked her to make similar clothes for them. She did so, and then she started putting her designs online. In no time at all, her sales mushroomed into a million-dollar industry. So what started off with an old sewing machine in a garage, became a large factory and the major employer of the townspeople in her area.

In India, fashion designers are adapting traditional skills of textiles artists, to produce new products in the form of Indian-fusion clothing, and repositioning those handicraft/handiwork skills and products for upscale international markets, that appreciate and are willing to pay premium for handcrafted quality and character. Many women in India at home are making clothes and in groups, and selling their products online via Snapdeal, and that is projected to earn millions of dollars for new entrepreneurs working from home rather than in factories.

The Internet, online marketers like Amazon and eBay and the new technologies, offer opportunities today that were previously unimaginable. An intellectual property protection is an important ingredient for success in this brave new world. Whether it is in the fashion industry, music, sports, and like so many other of those industries and sectors, trademarks are valuable assets, strategically developed and protected over time as a means towards attracting customers, and having the ability to generate profits and cash flow.

One of the most important features of this legislation, is that it will overcome the difficulty faced by our manufacturers and service providers under the current regime, in having to apply in each country separately in order to file their trademarks there. That means hiring a separate set of lawyers or trademark agents in each and every country, and then paying the applicable costs and the charges for each application in that jurisdiction. While that may be good for trademark practitioners, it does not necessarily serve the best interest of the business community.

2.40 p.m.

If a local entrepreneur or designer has ambitions of launching a fashion house and developing a portfolio of strong brands and trademarks, she would have to register her designer name, brand, and distinctive logo here and in every country where she hopes to sell her clothing, accessories and other products, but the time and cost involved could well prove counterproductive. Happily, however, and as

you have heard, the Madrid Protocol offers an international filing system for trademarks administered by the World Intellectual Property Organization. The main aim of which is trademark globalization.

The Madrid System is a one-stop solution for registering and managing marks in multiple territories. It allows users to file a single application for a trademark in multiple countries without retaining local counsel in the designated member countries. Under the Madrid Protocol a trademark owner in another member country, such as the United States, Singapore or England, will also be able to file an international trademark application in their respective national registries and nominate Trinidad and Tobago for registration, and that application would be treated as if it were filed directly in our Intellectual Property Office.

There are many benefits to the Madrid System, but the most important, so far as I am concerned, is that it would make it easier for our goods and services to obtain trademark protection globally. Because filing a single international application is equivalent to filing a bundle of national applications, the Madrid System simplifies the registration of trademarks in multiple jurisdictions, it saves trademark proprietors time and money, and it offers a simple and efficient way for them to manage their trademarks' portfolios through one centralized system.

The Madrid System offers the best solution. It is the antidote against our budding entrepreneur and fashion designer having to file separately in each and every jurisdiction. And besides being extremely cost effective, the Madrid System, as you have heard, cuts down considerably on the burden of administrative paperwork by simplifying the application process, worldwide, and through offering protection in multiple jurisdictions by one single application in a specified language, and in one currency. International registration can also be renewed in all countries to which protection extends simply by paying the renewal fees without further formalities.

If our ambition is to become export oriented, and if we genuinely want to diversify this economy, then our producers and service providers need to be filing a lot more trademark applications abroad, and implementation of the Madrid System will facilitate this. It should also be noted that the member states of the Madrid union currently represent more than 80 per cent of international trade, including Trinidad and Tobago's main trading partners, such as the United States, the United Kingdom, the countries of the European Union and China. So, if we miss this opportunity to get on board with the Madrid Protocol, we actually run the risk of isolating ourselves from the international business community, bearing in mind that the Madrid Protocol has become a centralized—a central instrument of policy for economies which are trade oriented.

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It should also be noted that the Madrid System will work in tandem with our local trademark registration system. The Madrid System offers an additional alternative process. While it enables the citizens to get protection in our major markets of trade by obtaining an international registration, it does not seek to replace what is already here. The Madrid Protocol simply introduces a parallel procedure to what obtains already under our national law. It provides an option, but it is, by no means, the only requirement for registration. The Madrid Protocol offers no one law firm, or any particular trademark agent, any particular advantage over any other law firm or trademark agent.

The big gainer, if there is one, will be the Intellectual Property Office for the work that it will perform with respect to each international application that is filed. In 2010, the IP Office collected nearly TT \$1.5 million with respect to trademarks, but that figure is going to jump substantially when the Madrid System is implemented. First, because the individual fees collected by the International Bureau of WIPO will be remitted to the IP Office here, and, secondly, because when the International Bureau closes its biannual accounts with a profit, those profits are then in turn distributed amongst the contracting parties of the Madrid System.

Now that might sound like gobbledygook, let me put some figures for you. In 1996, the Bureau distributed 22,692,309 Swiss Francs among the contracting parties, exclusive of the individual fees, and during the period 2005 to 2010, the Bureau distributed over 830 million Swiss Francs. That is approximately US \$1.1 billion among the contracting parties, exclusive of the individual fees. Indeed, our Intellectual Property Office estimates that its annual revenue can grow from \$5.4 million to \$8.4 million, and, upon implementation of the Madrid System, the IPO estimates it can earn revenue of around TT \$300,000 a month via international filings.

Now, we are talking about being underfunded, if they are earning that kind of money and you put them as an authority, I am telling you, our intellectual property system can get up and running. [*Desk thumping*] For those who would suggest that the IP Office is not yet ready for the Madrid System, all I will say is that such apprehensions are entirely misplaced and inaccurate. Being in regular contact with that office, I am aware that their Madrid Processing Unit has undertaken staff training. There are at least two dedicated officers who have been trained in the Madrid System. The office has secured the necessary IT infrastructure, which is up and running. There were several WIPO missions and training workshops, both here and in Geneva, and all that remains now is for a

final audit to be conducted by WIPO, which, if satisfactory, will constitute that organization's official seal of approval. I am entirely confident that our Intellectual Property Office is not just ready, but they are willing, ready and anxious to proceed. [*Desk thumping*]

I turn now to some of the other key provisions in the legislation. Clause 7 of the Bill will allow applicants to utilize the current edition of the Nice Classification System for goods and services. The Nice Classification System is based on a treaty for the international classification of trademarks and it guides the wording of all trademark applications. Each trademark that is registered has to be in relation to specific goods and services according to the Nice System, but the problem which arises under our current regime is that we lack the speed and flexibility to keep up with the changes in the Nice Classification System. They revise that system every five years to take into account changes in the names of the goods and services that are used in the marketplace and the appropriate classifications. So at this moment, our IP Office is constrained to rely on the seventh edition of the Nice Classification System instead of the current tenth edition. So, we are three versions behind what most of our trading partners are using, and this puts the users of our system at considerable disadvantage.

Being able to utilize the current version of the Nice Classification System will allow us to harmonize the classification of goods and services with our most important international trading partners. Another thing that we heard about was the well-known marks. This legislation introduces special protection for well-known trademarks. Now, what are well-known trademarks? Internationally, there are marks like Coca-Cola, Polo, McDonald's, Nike's swoosh. They are usually protected whether or not the proprietor carries on business or has goodwill in Trinidad and Tobago, right. Now, at the moment, our law does speak to protection of well-known marks, but it does so in a defensive, not in a proactive or prospective way. Section 13A of the Trade Marks Act allows the IP Office to protect marks whether they are registered or not, but what this legislation is going to do is that it is going to bring statutory consistency and compliance with international practice by allowing the well-known mark to be protected here whether or not the owner carries on business or has goodwill here, and it also incorporates the globally accepted criteria for determining whether a mark is well-known.

Clause 48 provides for the circumstances where the use of a sign on the Internet shall constitute use in Trinidad and Tobago. This will be of great benefit to proprietors of marks who have a presence in the country via the Internet, given that, under current law, such presence, per se, cannot be taken into account. The

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legislation will also facilitate the electronic filing of trademark applications, and I really do not think anyone can seriously dispute that this would be of enormous use and benefit to practitioners who, under the current system, are only permitted to file applications in paper form.

I would just like to deal with two other concerns that were raised by my friend, Sen. Al-Rawi. One was regarding parallel imports and the other one about comparative advertising. Clause 30 deals with the exhaustion of rights, and this allows for the parallel importation from foreign sources, that is it allows for the free circulation of trademark products. Well, all that clause is doing is regularizing something that already obtains here in practice. Okay? Let me explain to you what it means, some businesses may have a distributorship agreement with a particular brand, this particular type of car or machine, and what it means is that the businessman who goes up to Florida and buys seconds or foreign-used vehicles with respect to that brand or machine would not be permitted. You could stop him, because that is a parallel import, it is not a counterfeit good, but you are bringing in something where the distributor has a particular lock on the product. So, what this is saying is, “Hear what, once you are dealing with legitimate goods we will allow for the free flow and circulation of these goods and services in our community”, and that will help small businesses in Trinidad and Tobago, and it is in fact the reality of the situation. *[Interruption]*

Sen. Dr. Tewarie: It is a monopoly clause.

Sen. A. Vieira: That is right. In fact, that is—yes—it breaks monopolies and it breaks anticompetitive behaviour. Absolutely.

The other point that my friend spoke about was comparative advertising. I agree with Sen. Al-Rawi that this represents a change in the law, but I do not see this as a negative at all. First, let me remind this honourable House that there are already a number of checks and balances in place. The advertising agencies already have a code of conduct, which is a standard regulated by the Bureau of Standards, that specifically speaks against negative advertising, knocking each other’s products and services. So there is that line in place. We also have an Act against unfair competition, which specifically deals with any attempts to disparage and engage in dishonest trading practices with other person’s goods, so there is that. What this Bill also does is that it allows an advertiser to draw a proper comparison between his goods and services, and those of the trademark proprietor, so as to balance the interest of consumers in being provided with information to facilitate a choice between the goods and services of the various proprietors. But is also respects the rights of the trademark owner to ensure that his mark is not used in such a way as to diminish its reputation or goodwill.

We live in a world today where people need to be able to make informed decisions, so by being able to engage in comparative advertising in an honest way, I do not see as a negative thing at all, I think that will redound to the benefit of our consumers.

So, in conclusion, and to answer the questions posed earlier, I think this legislation matters. It matters a lot because trademarks are an extremely valuable form of intellectual property which is commonly used by companies, businesses, and others across the world, and we do ourselves a disservice if our laws are not congruent with international best practice.

2.55 p.m.

This legislation will increase our competitive edge in the global marketplace. This legislation will allow us to participate in the international Madrid Protocol trademarks system with one application in one place, one set of documents in one language, with one fee in one currency resulting in one registration with one number and one renewal date covering more than one country.

This legislation will enlarge the capacity and capabilities of our Intellectual Property Office. This legislation will facilitate the ease of doing business in Trinidad and Tobago, and last but not least, this legislation will offer better protection and will make it easier for the global community to know and appreciate better the quality goods and services produced by our local manufacturers, service providers and brands.

There will always be naysayers and voices declaring we are not ready for reform. And while they have every right to be heard, and for their views to be properly taken into account, my personal view is that we should not allow ourselves to be derailed or misdirected by those who would oppose change just for the sake of opposing change, or for self-serving purposes or because persons may be prone to engage in fearmongering. I want to make that clear. I am not in any way referring to my friend Sen. Al-Rawi. Sen. Al-Rawi said something that I wish to adopt. He said, this Bill is an excellent Bill. [*Desk thumping*] He said, it is well drafted. It will provide harmony. It is forward looking. He is right on every point and I wish to adopt his words. [*Desk thumping*]

Madam President, I support Trinidad and Tobago's brands and I support this legislation. I thank you. [*Desk thumping*]

The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. Bhoendradatt Tewarie): Thank you very much, [*Desk thumping*] Madam President. It is a pleasure and an honour to stand here this afternoon to support

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“an Act to repeal and replace the Trade Marks Act, Chap. 82:81 and to provide for the law relating to trademarks and related matters.” It is also a joy to follow that very sterling contribution by Independent Sen. Anthony Vieira.

The work of the Intellectual Property Office has been acknowledged by both Sen. Al-Rawi and Sen. Vieira and of course the hon. Minister who is piloting this Bill, the Ministry of Legal Affairs and Justice. But I do want to use a document that they have on their website and that is in my possession in print to show how this Intellectual Property world is changing even here in Trinidad and Tobago, and how very important this piece of legislation is.

So for instance, they give in this document and it is entitled “*Statistical Trends, Intellectual Property Office: Ministry of Legal Affairs*” and basically what I—the first part of what I am reading is a summary of patent applications and grants by sector during the reporting period 2013/2014. So that is just a few months ago over a 12-month period, and it is presented in a table here. It outlines the industries and I will just read those: “Organic, chemistry, pharmaceuticals, oil and gas exploration, gas processing, desalination, metals, construction, electronic” and then a miscellaneous section. Then they list the patent applications and there were 178 applications. For that period, 2013/2014, there were 37 patents actually granted. Then they gave the statistics on trademarks. They say:

Trademark applications are also mainly filed by foreign applicants and most of the patent applications were, in fact by foreigners, but there is a much higher proportion of local applicants.

—for trademarks as opposed to patents. And they list the percentage as 15 to 25. I will simply read from the document that I have in my hand.

In 2013/2014, 1,482 trademark applications were filed at the IPO. This is virtually the same as the previous years so it is quite consistent and it is relatively high. Consistent with previous years, the majority of applications were filed by none nationals through local attorneys-at-law. The proportion of local applicants increased from 21 per cent in the previous year. The highest number of applications and registrations were in the pharmaceutical class with 302 applications representing 20.38 of the total applications filed at the IPO.

Then they give the tables. I would not list them here, but what I do want to say is that, for instance, in the area of—well I gave the numbers already—1,482 trademark applications were actually filed. It shows you not only that things are changing around the world, but that in Trinidad and Tobago itself there is a certain buoyancy that demands that we address the issue of the management of intellectual property, [*Desk thumping*] and also of course, together with the issue of trademarks.

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I want to tell a little story. When I was Principal of the University of the West Indies and this, in a way, is related to the Madrid Protocol and what it offers, there was a person in the department of engineering who in the conduct of his research for a PhD degree, developed a certain product that he wanted to patent. While he could do it in Trinidad, it was not enough because it had global implications, and the cost of filing for these patents in other countries was extremely prohibitive.

What this legislation will do, given what the legislation is doing in harmonizing with the Madrid Protocol, is to make it very easy for someone like that to be able to access the other opportunities that are available in almost 100 countries in the world—just under 100 countries.

Now that is one aspect of it. I know that we are focusing here on trademarks and not on patents, but I am simply establishing the principle and the fact that, what we are doing in the legislation is really to the benefit not only of the intellectual property owner, and I want to show as well that it is also to the benefit of the citizens, the ordinary citizen as consumer as well.

Now there were a number of issues raised by Sen. Al-Rawi that I was going to address, but having heard Sen. Vieira, there is really very little need to address some of those things, and I will do so therefore, only in passing. Because many of the issues that he raised really were very effectively dealt with by Sen. Vieira. But I do want to acknowledge what he said. I mean, he talked about intellectual property as being—you might say, intellectual property rights—the new frontier of opportunity, and that it is a goldmine. Maybe it is. I would not like to think of it like that, but I do think of it as the new frontier. I do think of it as an opportunity, and we are seeing that in Trinidad and Tobago people are beginning to take advantage of it already.

I want to say that, you know, this Government goes through the process of management of the business of this country very, very carefully. And very early in the game just as when we got the population census, we also did an assessment of what was the human condition in 14 regions of the country. One of the things we did very early on as we focused on innovation for lasting prosperity as our theme was that we did a survey, a piece of research. The local consultant was Vanus James, but the World Intellectual Property Office was, in fact, the consulting body. So it was Vanus James together with other people from WIPO, and they did a thorough study of those sections of the economy that had intellectual property power and potential. It looked at how these particular industries might be developed in order to increase their contribution to the GDP. So, we were always very active.

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If you look, as you know, we had seven pillars identified although we focused on five priorities for budgeting purposes. But if you look at Pillar 5 of the Government's policy, you will see that Pillar 5 relates to a more diversified, knowledge-intensive economy building on the native genius of our people. [*Desk thumping*] This is at the heart of the creative, the entrepreneurial process, understanding that we live in an information age. That we are building a knowledge economy and that innovation was the critical factor together with entrepreneurship that would make the development and diversification of the country possible. Therefore, this part of the thinking behind policy is very important.

This legislation is a very important anchor in the diversification process, in the intellectual property development process, and the development of the diversified sectors that have intellectual property power and potential. They have to do with a number of industries, the creative industries, of course, recommend themselves. The publishing industry is part of that. We have a literary fair that is a book fair that is going to take place pretty soon and that will help the publishing industry a good deal. But there are other creative sectors. There are the fashion sectors. The growth of film is quite significant in the country. We are beginning to see, if you looked at the last report for the entire year of an economy in the country, you will see that most of the growth came, not from the energy sector which continues to develop and to be buoyant, but from the non-energy sector. You are beginning to see shifts and changes in Trinidad and Tobago.

So this business of intellectual property rights does represent a new frontier and we are very aware of it. I do agree with Sen. Al-Rawi that it does focus on the intelligent production of work, and that this trademarks element is very important in this process.

Now, this Bill is intended to repeal and to replace the Trade Marks Act of 1955. So that means that what?—we are doing 60 years—60 years. Sixty years and we are moving away from the old legislation. So if I explain to you the things that are happening globally, in brief as I just did, and the things that are happening in our own domain in Trinidad and Tobago now, today, and you realize that 60 years have passed since the last piece of legislation governing this business, you will see what a dire need there is, in fact, to do this and to do it well.

Now with the passage of the Trade Marks Bill, Trinidad and Tobago will, in fact, accede to the Madrid Protocol, in addition to meeting our obligations under the CARIFORUM European Community Economic Partnership Agreement.

3.10 p.m.

Now this is important. We have signed this agreement with the EU for some time now as part of Cariforum, that is, all the Caricom countries plus the Dominican Republic, and we have had this legislation since 1995 and by and large we cannot really capitalize on the fact that we have a partnership with the European Union. This Bill gives us an opportunity now to take advantage of that. And one of the things that has real access to the European Union, because of the economic partnership, has to do with all the things that have to do with intellectual property rights, the creative industries, et cetera, in which we have a fair amount of available space and opportunity under that particular arrangement that we have made through the European community, the economic partnership agreement.

And the Madrid Protocol, as Sen. Vieira pointed out and the Minister pointed out in his presentation, it really gives us the opportunity with one filing in Trinidad and Tobago to be able to access all of these countries, and therefore in a fundamental way, although that is not the immediate intent of it, it does open all of these markets as well because you now have your trademark, you now have your brand registered in markets that you did not even have access to before, they would not have known if you filed it in Trinidad and Tobago, they just would not know.

Now the other thing about this Bill is that the Trade Marks Bill also permits customs and excise and the Trinidad and Tobago Police Service to carry out their duties as outlined in existing law in the area of trademarks as outlined in this Bill, is neither party is conferred through this Bill with additional powers. It is the same power that they have but it does empower them to, in fact, enforce the law. Now you know this is an issue that is pretty big in Trinidad and Tobago, enforcement of the law, detection, enforcement of the law, we have the laws but we do not enforce them, and this is a very important part of the Bill that you are able to in fact provide the remedy when something is not done as it is supposed to or when the law is violated.

Now, Sen. Vieira dealt pretty adequately with the issue of comparative advertising, and I want to say that when you look at intellectual property law or the issues of trademarks and so on, obviously it is to protect intellectual property and it is to protect the brand or the trademark of the company that owns it. But part of this whole business of developing these things is to promote the areas of investment and trade and to cause development to happen. And part of that development has to do with consumer choice. And, in a way, comparative

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advertising really creates the conditions for truth in advertising. It allows you to say that brand x indicates that their benefits are so and so and so. But our brand y, in addition to these things can give you, w, z, a, b and c, and there is nothing wrong with that if you do not denigrate the brand of the other. At the end of the day the real beneficiary is the consumer.

And the second issue was the issue of parallel importation. Again to me, there is nothing wrong with that because ultimately the beneficiary is the consumer, because the consumer has choice and it allows a new player in the business game to enter, thereby challenging the monopoly status of those who may have control of a certain importation market. And therefore it is good at the end of the day for the ordinary citizen to be able to benefit from parallel importation and be able to benefit from comparative advertising.

He also mentioned some concerns about the use of the Internet. I think the hon. Minister dealt with that. This is going to bring the Internet under the legislation, I mean, we are in the 21st Century. This is part of what we are doing. This is part of what we are living. The Central Bank has given statistics to indicate the extent to which shopping takes place in Trinidad and Tobago on the Internet. This is a reality of life and therefore we need to cover these kinds of things. Those were the three that I remember that were seen as things to be objected to in the legislation, and I do not feel that they are worthy of the kind of considerations that were presented by Sen. Al-Rawi, because I think that the position that he presented was really quite conservative and not looking at both sides of the issue which is, why do you do this. It is not just to protect the particular company alone but to create the conditions in which you have the free interplay of forces in a relatively free market situation.

Now, there are other things that are worth mentioning, that I think are very important in terms of the legislation. First of all, a person seeking to register a trademark in Trinidad and Tobago would have had in the past to file individual applications in each jurisdiction for which they would like to have their trademark protected. And I mentioned an example of that before, and because of the Madrid Protocol, persons registering their trademark in Trinidad and Tobago will automatically gain protection in as many countries as they choose, but also gain, in my estimation, markets as well.

The Bill, Sen. Vieira mentioned this, is based on the Singapore Trade Marks Act which is based primarily on the UK Trade Marks Act of 1994 and there is similar legislation from other parts of the Commonwealth which were reviewed in the preparation of this legislation from my information here and that includes the

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Canadian Bill, the New Zealand Bill and the Australian Bill. And Sen. Vieira mentioned as well the extent of consultation that took place in order to finalize this Bill.

Now, we are in a very, very transformative situation here in the global economy and in Trinidad and Tobago itself. Within recent times here, in Trinidad and Tobago, we are seeing what is happening in the energy sector abroad and how that is impacting on our energy sector here in Trinidad and Tobago. With the change of ownership, with decisions that are made in other countries by very large companies that have their footprint here, you can see a dramatic change in an industry of a kind that you did not anticipate a month before. We are seeing as well, we have witnessed within recent times what has happened with the energy economy globally and from a situation in which we had oil at the level of \$100 a barrel and with an equivalent high price for gas and other commodities. You also had a situation in which you had a significant drop and the country has had to adjust, many countries have had to adjust, and the situation of consumer nation versus producer nation has changed dramatically.

We are seeing a world going through, basically, a sea change, economically and we do not know where all of these things are going to lead. What we know that we have to do though, is that the world is headed in a certain direction, which is that the sustainable development agenda has become real for the world.

Someone is coming to see me in a couple of weeks associated with the Secretary General of the United Nations, and the main focus of that is going to be the post-millennium development goals, the post-2015 millennium development goals, the chief of which is sustainable development. Sustainability is a very difficult thing, because it really begs the question: how do you keep development positive and going and going and going? And part of that sustainable development is driven by the ability of the human mind to create and to innovate.

I have often said that sustainable development is not possible without perpetual innovation. The societies that are able to achieve sustainable development are those societies, which, through the deployment of the imaginative capacity of their people will keep perpetually innovating and therefore keep development sustainable. [*Desk thumping*] To keep that innovation going you have to create the climate in which ideas are protected, in which new thinking is protected, in which new creations are protected, and this is what this trademark legislation and intellectual property legislation which we need to continue to strengthen, this is where these things are at.

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Now we have been trying in many ways to make the link between ideas and business creation. We have a number of institutions that we have created in order to propel that idea and in order to support and nurture these ideas. One of them is the Idea to Innovation programme in which by the end of two weeks from now we will have funded approximately 200 people, most of them young on the basis of good ideas that are convertible either into new businesses or into new innovations that can be used by businesses. And this is what we have done over the last three years or so, funding these young people.

We have also created together with CARIRI, the Centre for Enterprise Development. They do a lot of things there but three of the things that they do is, first of all they bring in young people to work with software in order to create apps and they are doing this every day, day after day, that is what they are working on. They have also established a relationship with Microsoft to establish the 131st Microsoft Innovation Centre in Trinidad and Tobago. [*Desk thumping*] And what they do there is they work with Microsoft software to bring innovations to Microsoft software. So, that is a separate and distinct thing. One is apps with any kind of software including software that they create and the other one is apps with Microsoft software because Microsoft has this global market and when you do it, it has global reach at the time that you do it.

The other thing that they are doing is that at this centre as well, and this is Caribbean-wide, through a grant from the World Bank they are inviting people to come up with solutions to climate change problems.

3.25 p.m.

For those solutions, if they are good ideas, again they are funded, so that we can deal with something that is very close to the development of islands, that is very important in climate change development because there are islands all over the world that can benefit from a solution that is done in Trinidad and Tobago or Dominica or Jamaica, and therefore these are very important things. So we are, in fact, putting in place the kind of infrastructure and climate to allow people to understand the significance of thought, the significance of ideas, the importance of creativity, the significance of innovation and the vital importance of acts of creation.

I keep saying that while we need to understand all the economics and the economic books and the economic strategy and economic theory, we need to understand three fundamental things about development: development happens because somebody makes something; people do something, or they make

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something happen, and we must not forget those things. You have to make something, you have to do something, or you have to make something happen if you want development to happen. And therefore, the creative power in the human population, in the imagination of the population, becomes essential in that.

I want to say, as well, in the last budget we made a commitment to grants for innovation to industry in Trinidad and Tobago. We have worked with industry to determine the terms and conditions under which these grants will be given, and as long as industry has an idea for an innovation, or they come to us with an idea that can make a difference in their business, they can get a grant to do that and they can draw any researcher that they want, either from universities in Trinidad and Tobago or elsewhere, in order to make that happen. And, again, it is trying to create the link between ideas and knowledge and innovation and creation, which is what will give us that intellectual property power that we need in Trinidad and Tobago.

I want to close by saying, very simply, that this is a very, very good Bill. It is a timely Bill. We need it badly. The last Bill that precedes this one, which is being altered by this Bill, is 60 years old, and we need this Bill for the 21st Century. I have indicated, by the information provided by the intellectual property office, how change is already taking place in terms of patents and in terms of trademarks in Trinidad and Tobago, and how more people in Trinidad and Tobago are becoming involved in these things.

I have also indicated, as well, some of the things that we are doing to foster a very active climate of engagement and inducement to the idea of idea to innovation and also from idea to creation and understanding the links between entrepreneurship and the creation that is involved in that, on the one hand, and innovation and how it can be created to impact, on the other.

I have also pointed out that this intellectual property-driven law is not only for the company which benefits, but ultimately in the package of things on which such laws impact. They impact on consumer choice, consumer behaviour and a more even playing field in terms of consumer benefits in the country.

This is very progressive law that we ought to support, and I want to indicate that you need to have the legislative basis as well as the infrastructure if you want to get the country to the point of innovation, creation and faster levels of development.

Thank you very much, Madam President. [*Desk thumping*]

Madam President: Sen. Baldeo-Chadeesingh. [*Desk thumping*]

Sen. Diane Baldeo-Chadeesingh: Thank you very much, Madam President, for the opportunity to contribute to this debate, an Act to repeal and replace the Trade Marks Act, Chap. 82:81 and to provide for the law relating to trademarks and related matters.

I intend to be quite brief to this rather exciting Bill [*Laughter*] that has captured the attention of all in this House. Madam President, the sky is no longer the limit. We have a whole universe to explore with innovative minds, continuously developing intellectual properties as new processes and products are added to new innovations. Within this global system, as inventions and innovations develop and as a consequence of taking ownership of one's product, the trademark concept evolved, and I wish to look at the example of Singapore as another Senator did, and the benefits of registering a trademark in that jurisdiction.

In that jurisdiction, it is not compulsory to register trademarks in Singapore. For a trademark that is not registered, you may rely on your rights under the common law action of passing off to protect your mark against imitation or infringement. However, if you register a trademark in relation to your goods and services, you are effectively gaining a statutory monopoly of your mark.

A trademark can add value to your business because it can be used to protect your market share. You can licence it to third parties, such as a franchisee, or you can sell it outright for a specified value. You can also use a trademark to help you to raise equity for the development of your business, even. And in Singapore, it is interesting because they use the international classification of goods and services under the Nice to classify trademark registrations, and this classification sets out 34 different classes of goods and 11 classes of services that a trader can register in relation to the mark.

Further, in Singapore, there are some common examples, even, of marks that cannot be registered as a trademark, and I will just give an example from the many: marks that are descriptive, for instance marks that say “super”, or “best”, or “cheap”; marks that are common to your trade, for instance, and a whole host of them. But you can check whether the mark you wish to register is similar or identical to an earlier mark via something that is called e-filing, and Singapore is a country ready for the business of intellectual property management—Singapore is.

But in Singapore, there is a system and an aware public who can function within a robust environment. The system monitors and ensures that any infringement or breach of the registered trademark results in real consequences

for such illegal actions. The IP trademark laws of Singapore and system of trade and protection is proactive and effective to reduce and penalize those who breach such laws.

But, Madam President, this Bill now seeks to align the current Act that we have got by amending it so it will be consistent with the Madrid Protocol which is a treaty that would enhance the protection of trademarks and related intellectual property imperatives, as innovations and inventions are registered. And we are talking about repealing and replacing the current Act with expanding definitions, even, like smell and sound, like the Minister explained. For instance, the customized roar of the lion in the Metro Goldwyn Mayer film production, and that is almost 100 years old.

The smell, even, of items, as described, can also be trademarked in this new 2014 Bill. But what we see is that there is an expanding definition of trademarks as the culture evolves, and innovations are involved in not only communication, but also in the opening up of new markets, globally.

Association of new trademarks with original marks can be challenging since the process of linking will be tedious for the IP staff and legal officers who will be responsible for the registrations required, and clients who will require legal administrative work to merge these associated trademarks may find the process a tedious one and may opt for a separate registration or, in fact, an entirely new registration.

These are issues that will arise and will challenge the process of implementation. If the preparedness of the individuals has not been thorough, or the environment at the registry not an enabling one, the success of this Bill to be implemented will remain a challenge and can actually stymie the efforts to enhance the protection of our trademarks.

The Bill which aligns itself with the Madrid Protocol allows the trademark filing in many more languages, while the Madrid Agreement allows filing of the trademark only in French. So signing on to the Madrid Protocol will allow the exporter to register and file the trademark in any jurisdiction.

Further, I trust, in anticipation of such a legislative change as we see in the Bill, that consultations were, indeed, conducted with the legal fraternity and exporters to ensure an awareness of the proposed Bill and the impact it would have on the business sector. We must always be aware of the business interests in such legal registrations as well as monitoring compliance and enforcement which should be provided by national security and customs. One cannot ignore the

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challenge Trinidad and Tobago faces with enforcement and the creation of an enabling environment in which this Bill will need to ensure that a dedicated phase for specialized training for our public officers, as well as those departments I mentioned earlier, is actually done.

Verification, even, of such capacity, must be mandatory and the system to support enforcement, robust. If the preparedness of the sector is to be undertaken and the consultations to be inclusive, I am concerned that a Bill will be passed with no system ready to support for ease of implementation. This can impact on the confidence of the public. Even public sharing methodologies can also be worked out to prevent any trust issues on implementation.

Madam President, in order to debate this Bill effectively, one has to consider the intent and content as it relates to our citizens, and the applicants. The Government has not developed the systems required to offer assured trademark protection to the citizens of Trinidad and Tobago. The business sector will require additional monitoring in all jurisdictions the Madrid Protocol offers.

Trinidad and Tobago is not a member of the 95 countries that have signed on to the Madrid Protocol now, and I have in front of me, of recent—this week—Trinidad and Tobago is not amongst the list of the WIPO-administered treaties or the contracted parties to the Madrid Protocol, and this is statistics as of December 11, 2014. Which brings me to ask: can the Ministry, the IPO office, affirm the effective management system to implement the proposed amendments in this Bill? Where and how will these monitoring units for both locally registered trademark and those registered outside of this jurisdiction function and serve our citizens effectively? How will citizens navigate the legal system in other jurisdictions to effectively prosecute offending infringement? This is another question I have.

The good intention, perhaps, of the proposed Bill, has become clouded, but a lack of enforcement structure to serve our citizens is what we might end up having. Implementation can only be considered after thorough, in-depth sessions with all stakeholders and enforcement providers. These are the many variations and combinations of circumstances that will arise and may even exist at this time, but with no robust system of compliance or enforcement our citizens will receive no protection.

3.40 p.m.

There is in the Bill Essentials a list of benefits that are stated in the proposed amendments or what it will offer, but with no inclusion of a system to support these amendments one must be very cautious in proposed amendments.

Now, the Madrid Protocol is one of two treaties comprising the Madrid System for international registration of trademarks. The Protocol is a filing treaty and not a substantive harmonization treaty. It provides a cost-effective and efficient way for trademark holders, individuals and businesses to ensure protection of their marks in multiple countries through the filing of one application with a single office in one language, with one set of fees in one currency. But moreover, no local agent is needed for the filing of this application, and while an international registration may be issued, it remains the right of each country or contracting party designated for protection to determine whether or not protection for a mark may be granted.

[MR. VICE-PRESIDENT *in the Chair*]

There are processes that are enabled. For example, once the trademark office in a designated country grants protection, the mark is protected in that country just as if that office had registered it.

Mr. Vice-President, the Madrid Protocol also simplifies a subsequent management of the mark, since a simple single procedural step serves to record subsequent changes in ownership or in the name or address of the holder with World Intellectual Property Organization's International Bureau. The amendments of the current Act have not been effectively analysed and no data was presented to support the amendments. A large volume of the clauses in the current Act requires robust analysis and cost benefit exercise for legal representation when breaches do occur. Mr. Vice-President, scientific evidence-based information is what should drive the exercise requirement.

In conclusion—I did say this was a brief contribution—Trinidad and Tobago has been evolving over the last five decades, and as we seek to offer more effective filing of trademarks this must be guided by effective governance that evolves from an implementation plan which must cover all relevant checks and balances in the area of intellectual property in Trinidad and Tobago. At this time, Mr. Vice-President, there are several areas requiring our focus in our discussions, and as my colleague, Sen. Faris Al-Rawi, indicated, a JSC is an appropriate forum to which this should be referred. In addition, there must be a well-advertised public education programme in the critical aspects of intellectual property protection for our citizens. Trinidad and Tobago must progress with well-developed planning with checks and balances to enable effective trademark registration and complementary monitoring for breaches with legal options for breaches.

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The Bill is at a stage where many questions have not been answered and the environment needs enablers to have robust engagement with all stakeholders. A return of the Bill, as Sen. Al-Rawi suggested after a JSC review, would possibly provide the Senate with legislation that would be approved to take Trinidad and Tobago to another level of development.

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

Mr. Vice-President: Sen. Dr. Mahabir.

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Mr. Vice-President. I rise to support this Bill—[*Interruption*] [*Desk thumping*]

Hon. Ramadhar: Thank you very much.

Sen. Dr. D. Mahabir:—although I do have a considerable amount of sympathy for the position advanced by colleague, Sen. Al-Rawi. The reason is that this Bill is very similar in complexity to the insurance legislation which is to come, and also to the securities, and as a member of the committee, together with Sen. Al-Rawi on the insurance legislation, I did see the benefit of a more detailed examination of this highly complex piece of legislation.

However, I say I support although there are items in this Bill that I do not fully understand myself. I support on the basis that I am sitting next to an expert on intellectual property, my colleague, Sen. Vieira. [*Desk thumping*] So, I know that he would have examined these complex areas and satisfied himself that the complexities, while they may not be understood by all in this Chamber, are really in the interest of the people of Trinidad and Tobago.

Mr. Vice-President, the basis of this piece of legislation is—I know, my colleague, Sen. Abdul-Mohan will say I am getting into her space again—it is said in one of the commandments, “Thou shalt not steal”. I do not know which one, but my colleague, Senator, will know exactly which one. We know “Thou shalt not steal” and we know that theft usually involves physical things. We cannot steal someone’s pen, we cannot steal someone’s item, a toy or something as children, and we later learned that we should not steal items that we can see. However, we now know that as economies advanced there is the creation, the intellectual creation of someone that can be easily stolen, and the creator can be robbed of his creation.

In the academic world we are always told and we tell our students, we must not plagiarize. Plagiarism in the academic world is a capital offence. That is the most serious of offences and so we are given rules. When we use someone else’s

work we must acknowledge, even if we do not know where our ideas came from, cite all the books that we have read, just in case our ideas that we think are our own came from somewhere, we have a full citation and we also ensure that we acknowledge our sources. In that way, we cover our tracks at least in the world of academia. But we know in the business world—in the world of academia all we are looking for is reputation and professional enhancement, but in the business world individuals are after profits and profits are going to be earned either legitimately or illegitimately.

When an organization, a firm or an individual builds his brand, he has to expend resources, time, effort, and behind that brand he must be able to innovate to such an extent that he can assure quality over an extended period of time. The brand is associated with a certain amount of investment on the part of the individual owning the brand. But, Mr. Vice-President, we know one thing, a successful brand is going to be copied. We have seen some brands out there that cannot be copied though people would like to have a copy of them. Mercedes-Benz is one.

I am sure there are manufacturers who would love to imitate a Mercedes-Benz, put on that symbol and sell the car as a Mercedes-Benz. Not very easy. The same with an Audi and the same with a Porsche. And the reason, Mr. Vice-President, is that it would be easy to identify a factory making this automobile since it is not a small-scale operation. But when we look at the economics of stealing other people's brands, the economics of counterfeiting, what we see is this, it is estimated that the trade in the world in counterfeit goods is estimated at \$1.7 trillion, more than the international narcotics industry.

We were supposed to be looking at the precursor chemicals, so I see similarities because international narcotics trade has an estimate of some \$1 trillion and the trade in counterfeit is said to be some \$1.7 trillion, and we look at the trade in counterfeit goods and out of the \$1.7 trillion we know that a lot of it could be sold in Trinidad and Tobago because it is a global trade. Let us see what are some of the items which could be sold here, and I will come to a particular section in the Bill which addresses this particular concern.

When we look at say, items which can be produced in relatively small establishments, high in value, low in bulk, we see something like perfumes, Calvin Klein perfume—and we were told that Trinidad tonka beans constitute an important ingredient in high-end better perfumes in the world. There should be a huge tonka bean industry in Trinidad. There is a market out there, but not if individuals are counterfeiting Calvin Klein and the other types of perfumes and

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not using the tonka bean, using some other artificial chemical which means that the profits which ought to go to that company—Sen. Maharaj, you should be looking at the tonka bean industry. I hope—[*Interruption*]

Sen. Maharaj: I will invest in it.

Sen. Dr. D. Mahabir: He is looking at the tonka bean industry now. It is an essential ingredient in high-end perfumes, and a bottle of perfume now can easily be US \$100. So you can see a small-scale operator can easily try to replicate this. How much of that is sold in Trinidad? We do not know.

What I am looking at, Mr. Vice-President, is how this particular complex piece of legislation which addresses a range of issues can at this point in time be used to protect the public interest of our Republic. When we look at a high value item like watches, Rolex watches are perhaps the most counterfeited. Counterfeit is this, it is not an imitation, it says Rolex, it looks like a Rolex, it ticks like a Rolex, it functions like a Rolex, but it is not that item.

Sen. G. Singh: And it priced like a Rolex.

Sen. Dr. D. Mahabir: Oh, but Sen. Singh, I am coming to address that issue, the issue of price. When we look at footwear, the hon. Minister of Legal Affairs said that you can get a Nike T-shirt for \$50, or \$400, or an imitation one somewhere on the street. But when you look at the Nike footwear itself for \$1,000 you could be sure that there is an incentive for some manufacturer in some small shop to produce the item with the same quality specification and to market that internationally.

You see, the \$1.7 trillion in the world of trade in goods is huge. We normally think of some countries in the Far East. In fact, not long ago on the TV ads there was this particular shirt manufacturer going to a Far East country asking the manufacturer to replicate the shirt. He could not do it. I think it was a Van Heusen or something, but we normally thought of some countries in the Far East as the havens for counterfeiting. It is not so. There are manufacturing centres across the world and they seem to shift from place to place.

When you look at items sold in this country, like valuable handbags, there is the valuable handbag of the Guess handbag, the Michael Kors handbag, Louis Vuitton, many of those things—[*Interruption*]

Hon. Senator: You know those things?

Sen. Dr. D. Mahabir: Yes, I know of these things.

Sen. Ramnarine: You buy them?

Sen. Dr. D. Mahabir: Of course, Sen. Ramnarine, I buy them and I do not buy them in Trinidad, and the reason is I do not trust what I buy. I do not buy them for myself, though some of them are so attractive, I wish I could use it. *[Laughter]* But the reality, Mr. Vice-President, is this, we have in clause 52 that the hon. Minister has kindly introduced in the Bill. It says it addresses the:

Importation—“...or selling of goods with falsely applied trademark

...a person who—

(a) imports into Trinidad and Tobago for the purpose of trade or manufacture;

(b) sells or offers or exposes for sale; or

(c) has in his possession for the purpose of trade or manufacture,

any goods to which a registered trademark is falsely applied, commits an offence and is liable on conviction...to a fine of two hundred and fifty thousand dollars, and to imprisonment for...ten years.”—service.

I think Trinidad and Tobago should set the stage in this part of the world that we are serious about this counterfeiting business.

3.55 p.m.

We cannot allow our stores to sell these items, passing them off as the original merchandise and not charging prices which are imitation, but charging prices which just appear to be about 75 per cent of the prices, making it appear that what you are getting is a bargain on a real deal, and we simply cannot trust in this country whether we are getting the authentic merchandise or whether we are getting a counterfeit product, part of this \$1.7 trillion, and the consumer in this country is being exploited. The merchants will make the money, the importers will make the profit, and the bona fide manufacturers are being denied the profits due to their own research and development experiences and expenses. So, I think what we could do in this particular law immediately is address this low-hanging fruit.

And the Government of this Republic, I have seen on billboards, advertise the fines that you are going to face if you exceed the speed limit. I have seen motorists being cautioned, that the motor vehicles Act was assented to and that there are certain penalties. We are being educated on a daily basis. I think that the Minister, the Government, as an executive action in implementing and enforcing this law, should co-opt the Ministry of consumer affairs, in particular, the division

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which deals with the Bureau of Standards. So that, if consumers hold the view that they are being sold counterfeit items, this particular section 52 addresses that; and invoking section 52, I think an agency such as the Bureau of Standards should be able to take one of these items from the stores, send them on to the bona fide manufacturer, determine whether the product being sold is counterfeit or genuine. If it is proved to be counterfeit, then the necessary actions will be taken.

You see, if we were to rely on Customs alone or the police alone, I think a lot of the wrongdoing will fall through the cracks and the reason is this. Many of these items are so well-imitated, so perfectly copied, that it is impossible for a customs officer to look at this and say, "I think this is a counterfeit product". It will have to be the technical expertise in the Ministry of consumer affairs looking at the product, even sending it for further testing, examining serial numbers, knowing how, in fact, the bona fide manufacturers are labelling their products and identifying them so that we could identify the real from the fake. I think if we are to get the Ministry of consumer affairs involved here, we have low-hanging fruits in this legislation where we can begin to enforce this piece of legislation, and begin to change the mindset, sending a signal to importers and retailers that there is a fine of \$250,000 for selling someone a counterfeit product.

Once in Trinidad and Tobago, I think, importers, tradesmen and individuals in business know that this particular penalty exists, gradually we will see this particular tendency towards participating in the international counterfeiting trade is going to gradually, gradually decrease. Because just as how we do not want the international community making something that tastes like Angostura Bitters but it is not Angostura Bitters and marketing it as Angostura; we do not want outsiders or anyone copying a brand in Trinidad like Chief curry, putting the Chief on the bag and making the curry. The curry might be very similar but it is not Chief curry. We do not want people counterfeiting our products because as we expand in the next little while, as Sen. Dr. Tewarie said, as we make it happen, and we produce more and more goods, goods that we identify via brands with a unique Trinidad background, intellectual property that we identify, we need to send a signal to the international community that we will protect their brands, they must protect ours and respect ours, and at the same time, we need to protect the consumers of Trinidad and Tobago. And there are many complex things in this law but clause 52 and the penalties should send a clear signal to unscrupulous traders in this country that we are not, as a country, going to facilitate the trade in pirated goods, in counterfeited goods and in goods which are meant to deceive the customer and increase their own profits.

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

Sen. Shamfa Cudjoe: Thank you, Mr. Vice-President, for the opportunity to make a very short contribution to this Bill. I would like to join my colleagues in placing on the record my support for this piece of legislation in principle. I do believe that, as simple as it seems, this is a very important piece of legislation. It has some 140 clauses and I think it touches on a wide range of issues as it relates to entrepreneurship, innovation and business development in Trinidad and Tobago.

For the most part, the objective of this piece of legislation is to move Trinidad and Tobago closer and closer to acceding to the Madrid Protocol. I am pleased to see that Trinidad and Tobago is taking the whole issue of international property and wealth generation through innovation more seriously. In the year 2010, I was an employee—or even prior to that, 2009—of the Division of Planning and Development in Tobago and I was a part of the team that was involved in negotiating the issue of international property with Caricom, also along with the Ministry of Trade and the Ministry of Planning in Trinidad.

Our focus, at that time, was on traditional knowledge and folklore, but we also touched on the issues of other areas of intellectual property like geographical indications. So I am pleased that the Government has accepted its responsibility in carrying on the work that was started by the previous administration. However, I do believe that there need to be much more widespread consultation and contributions from the private sector and the practitioners of this field.

I want to raise that issue because for the most part, when the Minister laid the Bill in the Lower House, he spoke about Chubby and SM Jaleel and some of the other major—[*Interruption*]

Hon. Senator: Solo.

Sen. S. Cudjoe: Solo—and some of the other major players in the business community here in Trinidad and Tobago. But, as a Tobagonian, I could place on the record that we do not have such a sophisticated manufacturing sector but we are, for the most part, a service industry and we are involved also in some light manufacturing that is basically run by small and medium enterprises.

I want to say this issue of intellectual property is a wealth generator; it is a very critical issue for small and medium enterprises, and acceding to the Madrid Protocol presents a number of benefits as described by the contributors who would have spoken before my contribution today but there are also some

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challenges, as it relates to costs and the various fees that the small and medium enterprises will be required to pay, in order to be in compliance with this piece of legislation, and in order to benefit to the full potential of this new piece of legislation and the Madrid Protocol.

So I want to just spend a little time, I want to place on the record the importance to pay some attention, to focus on the small and medium industries, especially coming from a Tobago perspective. I think that the Government ought to—before I go to that. Sen. Dr. Tewarie would have provided some statistics as it relates to the number of applications for patents and the number of applications for trademarks in Trinidad and Tobago from the year 2013 to 2014, and he mentioned that the majority of applications for trademarks and for patents came from foreigners, came from outsiders. I think that from an outsider looking in, it may seem like the business community or innovation is not alive and kicking in Trinidad and Tobago when you look at the number of applications coming from the local business community, but, in fact, we are all aware of the creative capacity and potential of our people.

You see, people making all kinds of new products that you know are worthy of being patented and worthy of having their own trademarks. For instance, Minister Ramadhar would have spoken about the person with the curry sauce and I can speak about—[*Interruption*]

Hon. Senator: His wife.

Sen. S. Cudjoe: His wife? Or, your wife [*Laughter*] and her famous very unique curry sauce. I can speak about people who make the best seasoning and pepper sauce. I can speak for Ted Arthur, a Tobago craftsman who makes sandals and purses and had the opportunity to make a purse for the Queen in the year 2010. In my own village, there is a craftsman by the name of Nolan Bobb who runs Culture House. And I think that these small and medium, sometimes businesses run by one person, some attention ought to be placed on these smaller businesses to bring them up to par so we can become more competitive, and make them equal players on the local and international stage.

So I would like to recommend that the Government considers financial assistance for SMEs to assist them with registration of their trademarks both locally and especially abroad as it relates to the Madrid Protocol, and even being in compliance with the current trade agreements that we have, because we boast day in, day out, about having access; through these regional trade agreements, we have access to new markets, but we are often hindered by our ability or should I

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say inability to actually, in reality, access these markets or enter these markets due to non-trade measures and phytosanitary measures and requirements related to packaging and labelling and trademarks and so on. So, developing the product is one thing but meeting the requirements as it relates to accessing the European market or the American market is very critical.

I say that to speak to the issue of the Economic Partnership Agreement that was mentioned by Sen. Dr. Tewarie. This is a very stringent, very comprehensive, wide-reaching trade agreement. We would have made concessions in all areas in the Economic Partnership Agreement that go beyond our WTO responsibilities and concessions, especially as it relates to intellectual property. This, we have made WTO-plus or TRIPS-plus concessions under intellectual property and people like Norman Girvan, while we were negotiating, the EPA would have warned the Caribbean in 2008 against making too many or too deep concessions as it relates to intellectual property.

But I think Trinidad and Tobago is in a good place because we have been strengthening our capacity in this area since 2006, 2005, when we were getting ready for the EPA negotiations.

4.10 p.m.

So that brings me back to the small man, the smaller companies, financial assistance to help them in registering their trademark. And I think we need to go national. When I say national I mean a Trinidad and Tobago-based campaign to boost capacity-building and awareness in this issue.

I know that the Minister would have spoken about negotiations and consultations with the major players but I am not aware of the Tobago House of Assembly being consulted in the first instance and I hope that can happen very soon because it is a major challenge for us.

I am hoping we can have an intellectual property training centre because for the most part, the people or the stakeholders, the players, in the business community ought to be aware as to what kinds of intellectual property protection are required for their line of business. When do you use copyright? When do you use patent? When do you use a geographical indication, as opposed to a trademark, or when could it be combined? So there needs to be some handholding because this has not traditionally been our way of operation. We pretty much focus on goods and services and the world has moved and the region is moving towards a more sophisticated level and nature of trade development and trade operations.

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I also want to recommend seminars with the different SMEs to disseminate information and also include the Chambers of Commerce in Trinidad and in Tobago to disseminate information on intellectual property.

Now, a major part of the implementation of this piece of legislation calls on the Trinidad and Tobago Police Service and the Customs and Excise Division to play a very active and critical role in the enforcement. I think for the most part, we can all agree that there needs to be some training of our police officers or a specific unit of police officers and Customs and Excise workers in treating with the issue of intellectual property, identifying trademarks, identifying counterfeit products and issues of that nature and also, description of goods and services.

We all know the Madrid Protocol for lingua franca or the languages of business are English, French and Spanish but you may have, for instance, other signatories who do not speak these three languages. So when our local people are doing the translations, as it relates to the description of goods and services, as simple as it seems, they face the major difficulties in filling out the part of the form that speaks to description of their products and services.

[MADAM PRESIDENT *in the Chair*]

My contribution is basically about making this thing a national initiative so that the people of Trinidad and the people of Tobago, the business community of both islands, can benefit from this initiative.

There are no offices or desks in Tobago where you can register your trademark. For the most part, you could simply register your business in Tobago, but as recent as this morning, the registrar's office in Tobago reported that you cannot process this kind of business, as it relates to registering trademarks or doing anything related to trademarks in Tobago. And that is for standards, for packaging, for marketing, if somebody would have come up with a new blend of granola, any new product. These entrepreneurs and people from the business community have to constantly travel to Trinidad and face the offices here in Trinidad to do any and every little thing. And that is a major problem for the small man. Because you have to leave your operations in Tobago, so you are leaving your business, to get up and come to Trinidad. You go to the airport and these days—not these days, this is a decade-long problem of inter-island transportation.

So, a couple of weeks ago we had the problem due to labour, some kind of labour issue where the boat circled in the ocean for about five hours and passengers were stranded in Trinidad and Tobago. I can speak also for the lady who does my massages and facials and so on, masseuse, the lady at the spa, the

owner of the spa that I go to. She mixes some products from the UK, along with some local products to do facial masks and things of that nature and she has a container on the port since February. So there is this back and forth. You come to Trinidad she has to pay a fee, you have to pay a broker and you have to wait for a call. So after she pays customs she has to wait for a phone call to come to pay some duties and it is that back and forth. And this is not just in her case but in the case of many other Tobagonians.

Madam President, one of the promises of this Government and governments past is that we would bring the institutions in Trinidad and in Tobago side by side so that we can all benefit from this enabling environment that fosters wealth generation and economic promotion and all the wonderful things that Trinidad enjoys.

The inter-island transport, as it relates to the air bridge and the sea bridge, fixing these problems are critical to Tobago's economic advancement. It is as important as a highway that connects the north or connects Port of Spain to San Fernando. So, while Trinidad develops, we want to be a part of this also and to walk side by side. This is the kind of role that the Ministry of Tobago Development should be playing, but, however, it has segued into other areas.

But Madam President, I just want to call for capacity building, financial incentives and assistance for the small and medium stakeholders in the business community.

Finally, the presence or the provision of protection for intellectual property and different strategies to improve business is only as good as the structures that are responsible for implementation and facilitation. We must do better at the Intellectual Property Office.

I went to the Registrar's office in Tobago and asked about the process or the steps to be taken for trademarks registration. The young lady was given six phone numbers and from 10 o'clock in the morning to 4 o'clock this afternoon she called those six numbers and nobody answered. I do not know if they are probably in the room here today listening to the debate but there was no one answering the numbers. We ought to do better. In this day of communication and Internet, and so on, we should be able to shoot an email, send an email to the people in the Registrar's office in Tobago, trying to connect with the Intellectual Property Office in Trinidad to find out the steps for Tobagonians or a Tobago entity applying for trademarks. There are some low-hanging fruits that we can pick, that we can develop to make this thing, to make business development and entrepreneurship innovation more accessible and more beneficial to all of us.

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Madam President, I support this in principle. However, I would like to also join my colleague, Sen. Faris Al-Rawi, in recommending that there be some sort of joint select committee or special select committee to further consider how these provisions would interfere or impact our relations, as they relate to the Economic Partnership Agreement, the Panama Partial Scope Agreement that we have just adopted here in the Parliament and other trade agreements. Because the concessions that we make today and the legal framework that we develop today would have some kind of implication on our ability to engage in other concessions and in other agreements as we continue to promote regional trade.

Even the Minister would have mentioned the Caricom Agreement of—what is it?—the 1970s or the 1960s. We as a region need to review this piece of legislation or framework that many refer to as “teethless” but we need to do better. We need to do better in Caricom, as it relates to harmonizing trade relations and trade measures and so on.

So with those few words, Madam President, I want to just encourage us as a nation moving forward to economic diversification and wealth-generation through entrepreneurship that we focus some more on the small and medium enterprises and remember to keep Tobago in your mind and in your heart. Pay us some attention so that we can enjoy and be a part of this new drive to economic development. Thank you. [*Desk thumping*]

The Minister of Legal Affairs and Justice (Hon. Prakash Ramadhar): Madam President, it is truly refreshing to have been here today. I leave the Senate today in a better frame of mind than when I arrived, and it is because of the enormously wealthy in-substance contributions I have heard from the most noble and learned Senators here today.

Let me begin first by congratulating the contribution of the Senator from Tobago, Miss Shamfa Cudjoe, for her utterly charming contribution. And let me put on the record that this administration and this Minister in particular is extremely sensitive to the needs and the wants of Tobago. Indeed, to be reminded that for years, issues of property titles in Tobago was left unattended.

One of the first things we did as a Government was to put in place a regime, for the first time in the history of Trinidad and Tobago, for the provision of land titles to the citizens of Tobago. [*Desk thumping*] As an effort to ensure that the hardships of our brothers and sisters in Tobago were in some way ameliorated, one of the first things this administration did also was to open a registration office in Scarborough to ensure the registration of births and deaths in electronic form, one of the first things. It is right across from the High and Magistrates’ Courts in Scarborough.

We have already furnished the Ministry of Legal Affairs as a full operational Ministry office there. And standing as Minister today, to Sen. Cudjoe, I give this undertaking—Miss Cudjoe, you may want to hear this—that two weeks from today you will have an IPO presence in Tobago. [*Desk thumping*] And to be reminded that we cannot use old rules in a new game but saying that is very simple. But what is even more simple is this, the understanding that an idea can change this world, you need not have major manufacturing input as such but Tobago itself is a jewel of the Caribbean, indeed of this world, and a simple thing when we purchase in our supermarkets here water from Fiji, I always wonder why it is that we were not able to market simple spring-borne water from Tobago. It has the mystique and the allure of the island that those in the North American and in fact European nations have a wonderment for. And simple things like that could enrich the citizens of Tobago, in fact every part of Trinidad and Tobago.

So, Madam President, today we have heard a lot. In fact I, sitting as I was here today, on reflection, remembered a friend of my late father. His name is Tano Mungal. I was about four years old and he was a very comical kind of fella. He was a contractor. You probably know him, Senator. He said to everyone and I overheard the conversation, anytime he had anything difficult to do as a contractor he would chose his laziest worker to do it. Do you know why? Because somehow or the other this laziest of workers will find the easiest, quickest, most efficient way to get it done so that less time is spent and less energy is spent. [*Laughter*]

4.25 p.m.

As a four-year-old, that struck me, and today I am remembering it, that innovation comes from need and necessity, and sometimes—[*Interruption*]

Hon. Senator: From laziness. [*Laughter*]

Hon. P. Ramadhar:—from laziness, [*Laughter*] but whatever it is, that humankind from our first moment on this earth, has been moving and innovating, improving with the discovery of fire, to the discovery of the wheel, to the Internet and to the Senate today to get the ideas of many. Life as Minister Dr. Tewarie reminded us, is about eternal innovation and improvement, and that is what this simple, but yet extraordinarily important bit of understanding that an idea is property, and that property has ownership, and it could bring real life, financial benefits and real world practical value to us all. When the Steve Jobs went and innovated and created Apple, many had thought that he was just a dreamer, but his dream has become a reality, and many of us today dream of sometimes coming with that single idea, that could change the world.

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I remember reading not long ago, if you wish to be a billionaire, because the money of the world is what really runs it today. Sometimes creation is driven by financial lust. I use that term, because nothing is wrong with wanting more to secure yourself financially and economically. I read online just a couple weeks ago that said:

“If you wish to become a billionaire...help a billion people.”

To that I ask all of us to reflect on, remembering what I said, one idea can change the world. An idea is not limited in space or in time, or to any geographical location. That is why to have heard the Senator from Tobago speak about the need for us to engage the wider population. Maybe we needed to do it more loudly, but since I became Minister of Legal Affairs, and, in fact, with responsibility for intellectual property, I knew full well that this country needed to transform its economy and working in tandem with other colleagues, Minister Dr. Tewarie and others, we have engendered to change the economy, by allowing innovation and the knowledge of the enrichment that it will bring to us as a people and to the economy.

The Intellectual Property Office, we saw as really a diamond in the Ministry, a jewel in the Ministry of Legal Affairs, amongst others. To that end, it was painful to have heard the one part of the contribution of my friend, Sen. Al-Rawi, that the IPO has been under-resourced. Nothing could be further from the truth. In fact, that Intellectual Property Office is now recognized, and has been for some time, but more so in the recent past, as possibly the most well respected Intellectual Property Office in the entire region. Some have even dared to suggest, in this hemisphere, and that is a fact because I had spoken to high World Intellectual Property Office officers, indeed the head Mr. Gurry, had visited Trinidad about two years ago. He was so well impressed with the work that we have been able to do here.

Madam President, let me just say that since I became Minister, the Intellectual Property Office, we have dramatically improved on the staffing and on the training levels, and indeed in anticipation of this legislation. We have already put in place all that is required—once this law becomes law, that we could start immediately to deal with the Madrid Protocol, and to deal with all of the attendant requirements. We did not wait to bring the law and then look to the resources to be prepared. We prepared first, and then brought the law.

To have heard my learned friend Anthony Vieira—I want to say, it was not just a sterling contribution, but a brilliant one [*Desk thumping*] because in a very short—in his very short period that he spoke, he encapsulated the totality of the

essence of intellectual property. You know, he made it very well clear to all, that he participated in the development of this legislation. It was in December 2010 that I appointed that committee. And what we did? We chose the best of the best locally, and—Sir, you were a patriot to have contributed—*[Interrupted]*

Sen. Lambert: Who is that, Al-Rawi?

Hon. P. Ramadhar: No, Sen. Vieira. You were a patriot to have contributed like others on your committee, your time, effort and your experience to the work product that we have today. I am hearing repeated along the PNM line, that they support in principle, “but we should not make it law”. We should not make it law here today. We should put it to a joint select committee, for what purpose?

I am never afraid, but I am concerned deeply, because I know one of the most important bits of legislation to have seen the doors of Parliament, and then the halls of Parliament, and then to have articulated in this hall here, was procurement legislation. I remember the bitter experience of the Joint Select Committee, when the world, that is, the world of Trinidad and Tobago expected this Joint Select Committee to have dealt with the matter in a quick period, having regard to the importance that we had all placed on it. “Meh friends”, the party on that other side, stayed away for I think, almost a year, and delayed it. When it was under the stewardship of the Chairman, Sen. Dr. Tewarie, we said we will take a decision, you know. We will go forward with or without you, and public pressure was brought to bear and they returned, but the delay was there, but we now have that as law.

The issue of the Joint Select Committee, with all due respect, I mean, I appreciate sometimes when—and I hear the heartfelt contributions of the Member from Tobago, and indeed Sen. Baldeo-Chadeesingh, they spoke that the legislation is not driven by evidence. Nothing, once again, could be further from the truth. This legislation did not just start today. It started more than a decade ago. More than a decade ago work has been done on this, tweaking, tinkering, and doing all sort of things to the point where it was so brilliantly described by Sen. Vieira, as a highly calibrated, sophisticated technical machine. This came from, as I said, the best of the best locally, and the best of the best internationally.

So, that why is it then that a joint select committee would be able to add—maybe it could, maybe it would not but, we have possibly two of the best IP practitioners sitting with us here today. I have not heard any real condemnation from Sen. Al-Rawi as to any defect in the legislation. I have not heard that. What I have heard, in essence, is a phobia that we should not go far into an international realm, because there is a possibility of this or the other. We have no need to

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reinvent the wheel. Other societies, other countries have been there, they have done it, and we have studied them. We have worked with WIPO, the international authority on this. They have guided us step by step together with our local expertise, to insure that our local conditions are well catered for, in the development of this legislation. Yes, it is 140-odd paragraphs. Yes, it is a heavy Bill in terms of the technical language and so, but it was worked on for years to the point where we cannot make everything perfect, but it is as close to perfect as we could possibly get, and there comes a time—you know, the old saying that too much analysis leads to paralysis. There comes a time for action, and the action is the vote today on this. [*Desk thumping*]

You see, Madam President, to suggest that we put this to a joint select committee, really will serve no useful purpose, because who then would populate the Joint Select Committee? Who then other than the experts who are amongst us, and possibly the others who we have already spoken with, because the consultations have not been as limited as might have been suggested, you know? This consultation has been as wide as it possibly could go, and for as long as it possibly should go.

So, Madam President, all I could do is to ask that we put this Bill to a vote today, and to say that Trinidad and Tobago has a great future, but only if we channel our resources, and our intellectual capacity to ensure that we make things more efficient and better than they are today. As one of the practitioners in the area had mentioned some years ago to me, and I use it all the time, this language, he said, when there is a shortage of land space, we must use our head space, and from the head we shall take our guidance, and from the heart, we shall take our courage to go forward today. With these few words, Madam President, 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.

Madam Chairman: Hon. Senators, we would like to proceed by taking this Bill in parts, there are 14 parts. Do we have your agreement?

Sen. Al-Rawi: Madam Chair, I regret that I am not in a position to consent to that immediately. If there are perhaps positions where we could accelerate by taking as many as we can together. I could perhaps indicate those that I do not

have issues with to assist the Parliament, of course. May I also ask—perhaps this may speed things up completely, would the Government be entertaining amendments today?

Mr. Ramadhar: Fundamentally, we will not.

Sen. Al-Rawi: You will not? Okay.

Mr. Ramadhar: No.

Sen. Al-Rawi: So, may I ask—[*Interruption*] I am echoing Sen. Dr. Balgobin behind me. May I ask, why?

Mr. Ramadhar: As has been very stated by Sen. Vieira—right?—this legislation has gone through the mill, and it is as we say, the interference with one clause could very well interfere “unawaredly”.

4.40 p.m.

Sen. Al-Rawi: May I ask the hon. Minister, through you, Madam Chair, why then this is being discussed at Committee stage in the Parliament?

Mr. Ramadhar: Sorry?

Sen. Al-Rawi: Why then are we sitting as a Committee of the Parliament to consider this clause by clause?

Mr. Ramadhar: Well, if there is something fundamental, of course we would be open, but I am saying now, as you stand, I could see no basis. If you bring something of fundamental issue then we would listen.

Madam Chair: Sen. Balgobin.

Sen. Dr. Balgobin: Thank you, Chair. I think we should tread carefully here, because we ought not to say that we are not taking amendments because it has been through the mill already, because the Senate, of course, is not a rubber stamp.

Mr. Ramadhar: We appreciate that, of course.

Sen. Dr. Balgobin: Remember your team has said that you do not want to go to a Select Committee or a Joint Select Committee, so the only place really to work out whatever differences we have is here and now. So, are you sure you want so stay with that—?

Mr. Ramadhar: Senator, let me just say, I am open. Also—

Sen. Dr. Balgobin: Once you are open then we are okay.

Mr. Ramadhar: Yeah. No amendments were presented in writing in any form or fashion.

Sen. Dr. Balgobin: Okay, but once you are open—

Mr. Ramadhar: I am always open.

Sen. Dr. Balgobin: Well, we are okay then.

Mr. Ramadhar: Yes, but let me just—thank you very much.

Sen. Dr. Balgobin: Right. Once you are open we good.

Madam Chair: Hon. Senators—

Sen. Al-Rawi: Madam Chair, if you would just permit me, again, to assist the Parliament in moving as quickly as we can, if I could, just for the record, let the hon. Minister know that we received a notification yesterday from the Office of the Parliament that we would be reprioritizing Bills today and that we would not be doing the Precursor Chemicals Committee stage, which we had catered to do today, and we have all read the Bill overnight to be ready to participate today. So—

Hon. Senator: No—

Sen. Al-Rawi: Hold on, just to put it here. So that, unfortunately—I can only speak for myself—would not have had the luxury to put in effect amendments for circulation.

Sen. G. Singh: But this is—I mean, I just want to place things in context, Madam Chair. This Bill was supposed to be debated prior. I indicated that we would only go with the Precursor Bill, on the previous occasion, in order to facilitate the presence of Sen. Al-Rawi, by virtue of the fact that I knew he had a technical competence, and also, Sen. Vieira, by agreement, that we will do this Bill subsequently.

On the last occasion when the Senate sat, the Attorney General was about to wind up—continue his winding up of the Precursor Bill, and he was not feeling well. When it was indicated, we stopped the debate in that area. On the last occasion, I indicated that we would be dealing with the Precursor Bill and the Trade Marks Bill, so sufficient notice was given for both. Subsequently, the Attorney General is not in the country so that, therefore, we came to deal only with the Trade Marks Bill. That is the factual basis. That is the complete picture.

Sen. Al-Rawi: Yeah, sure. Perhaps wires were a bit crossed. I would not want to contradict what my learned friend had said. I, certainly, did not understand the picture that way, but I do not think that we are at cross purposes today. So, I thank the hon. Minister for putting it on the record.

Madam Chairman: May we proceed?

Clause 1.

Question proposed: That clause 1 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, may I ask the hon. Minister what the intended date of proclamation of this legislation is going to be and if there are any undertakings in respect of matters prior to proclamation for the record?

Mr. Ramadhar: We will not be able to give a fixed date because there are, of course, international requirements that we need to have sorted out also, but we also undertake to ensure that the regulations are prepared before the proclamation.

Sen. Al-Rawi: Thank you. Madam Chair, just to let you know, I have a question on clause 3. So, clauses 1 and 2, I have—now that that has been asked there, but I do have a question on clause 3, if it would help you in terms of how you could jump.

Question put and agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Sen. Lambert: Madam Chair, in the beginning of the Committee stage you did and in fact pose a question pertaining to how we are going to proceed, and, in light of that, I did not get the answer. I heard an objection from one of the Senators and we just continued singularly. So I would like to find out how we are proceeding, because the Minister of Legal Affairs, who has tabled the Bill, did and in fact indicate that he is open, and, therefore, I thought that based on the number of clauses there is—wherever, when he takes in block or whatever number—you are willing to go at and there is an objection or question to be posed, it would have been done, because I do not expect that we will go from clauses 1 to 141. So, I would just like to know what is going on.

Madam Chairman: Thank you, hon. Senator. Do we have an agreement then that we take it according to parts?

Hon. Senator: Agree.

Sen. Al-Rawi: I disagree, because there is no other way to go through the Bill other than clause by clause. You could put it to a division, Madam Chair. I do not want to detain the Parliament unnecessarily, but—

Sen. G. Singh: Are you objecting that you go along?—or do you have clear areas in which you want to—the ones you have concerns.

Sen. Al-Rawi: There are a few areas that I have some concerns and—

Sen. G. Singh: But perhaps you could flag that and we would be able to deal with that as we proceed.

Sen. Al-Rawi: That is why I started off by saying, look, 1, I had a question; 2, no issue; clause 3 is the next question, and then we could jump, quite quickly, beyond a few of those sections there.

Sen. G. Singh: Okay. Let us see how we proceed this way, Madam Chair, and then we will see what we will take subsequently if we need to take other measures.

Clause 3.

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

Sen. Al-Rawi: Madam Chair, thank you. Madam Chair, if I may ask the hon. Minister, through you, the definition of “business identifier” in clause 3, in the interpretation section, is specifically set out as meaning:

“any sign capable of being represented graphically which is used to identify any business;”

Under the rules of interpretation, the term “business identifier” would therefore, by way of constructive amendments, amend, specifically, the Protection Against Unfair Competition Act, Chap. 82:36, which has a specific definition of business identifier itself. That being said, we therefore have two definitions in law of related pieces of legislation: one, the Trade Marks Bill, as we have now; and, two, the Protection Against Unfair Competition Act. The rules of interpretation say that this later piece of legislation will constructively amend the former piece of legislation, may I ask what is intended by this amendment in that circumstance?

Mr. Ramadhar: Thank you, Senator. When one reads clause 3(1) it says:

“In this Act, unless the context otherwise requires”—

so it is specifically limited to this Act.

Sen. Al-Rawi: I beg to differ, hon. Minister. I am reading, now, from the learning that comes out of the Interpretation Act, and, specifically, insofar as it is normal in litigation to have these two pieces of law stand side by side in the same suit, and the definition comes up time and time again, so we could have an unforeseen circumstance of modifying the interpretation of business identifier in the other legislation.

Mr. Ramadhar: Without complicating it too much, any action brought in relation to this legislation this would be the definition, and any action brought anywhere else—

Sen. Al-Rawi: Okay. So, perhaps, I could assist by saying that—is it the intention of Parliament that what we are intending specifically not to do is to affect the definition of business identifier in the Protection Against Unfair Competition Act?—

Mr. Ramadhar: Yes.

Sen. Al-Rawi:—and that in the event that there is a dispute, the *Hansard* would now speak under the *Pepper v Hart* rule—

Mr. Ramadhar: Thank you very much.

Sen. Al-Rawi:—to assist us in that regard?

Mr. Ramadhar: Yes, indeed.

Sen. Al-Rawi: Thank you, hon. Minister.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Sen. Al-Rawi: If you would just give me one moment, Madam Chair, just to flip through a little bit ahead so I could, perhaps, indicate if there are some clauses that you may take in a block?

Madam Chair: In part I?

Sen. Al-Rawi: Yes, please, Ma'am. Sorry. Sorry. Well, that is the end of part I with clause 3, so I am just going to flip, very quickly, to part II. Just permit me one moment, please.

Madam Chair: Part II then?

Sen. Maharaj: Is the Senator assuming that there is no other changes by any other Senator?

Sen. Al-Rawi: Well, we have just dealt with clause 3, so that is part I finished, so we are now in part II, and everyone else can, of course, look—I am sure Sen. Singh has a few that he may wish to put forward.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Sen. Al-Rawi: Madam Chair, and go down to 23, inclusive.

Mr. Ramadhar: Thank you very much.

Clauses 5 to 23 ordered to stand part of the Bill.

Clause 24.

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

Sen. Al-Rawi: Madam Chair, may I invite the Minister's attention to clause 24(4).

“The registration of a trademark may be declared invalid on the ground of fraud in the registration or on the ground that the registration was obtained by misrepresentation.”

I was somewhat concerned by how low the standard of misrepresentation stated there was as opposed to the higher standard. It is usually, if we go from the law of mistake, misrepresentation in and of itself at that standard seems rather low because, on the one hand, we have fraud, which is a heavy and high burden.

Mr. Ramadhar: But, as you would well appreciate, misrepresentation will negate, or could easily, and rightly so, negate the registration, because the decision would win based on a false premise.

Sen. Al-Rawi: Not in the case of an innocent misrepresentation though.

Mr. Ramadhar: Well, it is always the discretion of the Comptroller to go forward or not based on these matters.

Sen. Al-Rawi: Okay, well, thank you for the explanation but—

Mr. Ramadhar: I appreciate it.

Sen. Al-Rawi: May I also ask what the thinking behind subclause (7) was, (7)(a) in particular, that the:

“...application for a declaration of invalidity of the....mark on the ground that...an earlier trademark”—was there— “shall not be made after the expiration of five years from the commencement of this Act or the date of completion of the registration procedure, whichever is the later...”

Mr. Ramadhar: Yeah, as you might well be aware, the practice is if after five years there is non-usage, it will basically wane.

Sen. Al-Rawi: That is not what this clause speaks to, because you may have non-usage and not have tackled it within the first five years, but after five years of continued non-usage without a tackle, it still persists. So what it does is that it cuts off the point of non-usage and says, “Look, if you did not tackle it before five years, well then you are stuck with it”.

Mr. Ramadhar: Yeah. Could you give me one moment—

Sen. Al-Rawi: Sure.

Mr. Ramadhar:—so I would take advice from the experts on this side?

4.55 p.m.

Sen. Al-Rawi: Sure.

Mr. Ramadhar: I am advised this is really a continuation of the existing practice and just codified here.

Sen. Al-Rawi: Thank you. Hon. Minister, may I also ask you to look at clause—subclause (11):

“Subsection (10) shall not affect transaction past and closed.”

Could I have an understanding as to what that means?

Mr. Ramadhar: I think it is self-explanatory. Forgive me, but it appears self-explanatory to me. The:

“Subsection (10) shall not affect transactions past and closed.”

I could hardly put it simpler.

Sen. Al-Rawi: You see, I have a problem with the conjunctive, “past and closed”. I did not mean it as simple as that. I meant that it may be past but not closed, and therefore, worthy of a certain type of treatment. But it may be past and closed and worthy of a certain other type of treatment.

Mr. Ramadhar: I am reminded that “and” includes “or”.

Sen. Al-Rawi: Thank you. So, we will go with the Interpretation Act position.

Mr. Ramadhar: Yes. Of course.

Sen. Al-Rawi: Thank you, Madam Chairman.

Question put and agreed to.

Clause 24 ordered to stand part of the Bill.

Clauses 25 to 37.

Question proposed: That clauses 25 to 37 stand part of the Bill.

Sen. Al-Rawi: Sorry. Sorry. That is really a large jump. I am still trying to read ahead. Madam Chair, I have a question in respect of clause 29 of the Bill. Should it please you?

Madam Chairman: Clause 29?

Sen. Al-Rawi: Yes, Madam Chairman. If I may ask specifically in relation to 29(4) which is on page 32 of the Bill. This is the comparative commercial advertising, promotion exception. Is there intended to be any upgrade of the comparative advertising codes or practice, voluntary—right now we operate on voluntary codes of practice for comparative advertising, as opposed to mandatory codes. Is there intended to be any consequential amendments to that in making it mandatory?

Mr. Ramadhar: I appreciate that being a problem to the consumer but as the country itself improves all its legislative aspects, I imagine that too will be dealt with in time.

Sen. Al-Rawi: So the Ministry will look at it?

Mr. Ramadhar: It is no longer in my Ministry, but certainly—

Sen. Al-Rawi: Oh. Sorry.

Mr. Ramadhar: We will make efforts—

Sen. Al-Rawi: Where is it, hon. Minister?

Mr. Ramadhar: It is at the Ministry of Trade, Industry, Investment and Communications.

Sen. Al-Rawi: Minister of Trade, Industry, Investment and Communications.

Mr. Ramadhar: Yes.

Sen. Al-Rawi: Okay. Well I hope the Minister of Trade, Industry, Investment and Communications is taking a mental note.

Mr. Ramadhar: I shall communicate it to him.

Sen. Al-Rawi: Thank you, Madam Chair.

Sen. Lalla: Where is that up to?

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Sen. Al-Rawi: Up to 38.

Question put and agreed to.

Clauses 25 to 37 now stand part of the Bill.

Clause 38 ordered to stand part of the Bill.

Clause 39.

Question proposed: That clause 39 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, if I could invite perhaps a short explanation from the hon. Minister in relation to 39 and co-ownership either in joint tenancy or tenancy in common. The issue of consent in subclause (4):

“One co-proprietor”—thank you, third attempt—“shall not, without the consent of the other or others—

(a) grant a licence...

(b) assign...”

Is this intended to be a codification of both the prior position and the common law position in practice as it relates to personal property?

Mr. Ramadhar: No. I am advised that it deals specifically with trademarks and that it allows for the co-ownership of the registered trademarks where each co-owner is entitled to an equal undivided share, subject to any contrary agreement.

Sen. Al-Rawi: So it is specifically to modify the position of law where someone can move off and sell something without consent. Is it intended that we require consent at all points in time?

Sen. Vieira: May I suggest you also look at clause 59 which talks further about permitted use and dovetails with 58.

Sen. Al-Rawi: That is in the context of well-known marks. I was looking at the issue of co-ownership and when we are looking at the situation of a tenancy in common versus a joint tenancy. I was contemplating an act of severance in a joint tenancy, two separate owners therefore in one aspect of property and whether one was required to always have the consent in the co-ownership position. If that is the specific intention or is there any circumstance where a part owner can move off and sell without the consent of the other part owner particularly because it is a co-tenancy in common arrangement? I would just like to state it that way. [*Crosstalk*]

Mr. Ramadhar: Just one moment, please. If it is you should require the consent, you must require the consent of the co-owner.

Sen. Al-Rawi: Okay. Thank you. I just wanted to have it on the record, hon. Minister, because subclauses (3) and (4) are at odds with each other and I can understand if it is purposefully so.

Mr. Ramadhar: Yeah. Well it was quite simple, but out of respect for your expert knowledge in this area, we thought it was something a bit further. Okay?

Sen. Al-Rawi: Well, it does go to the disposition aspects on licensing arrangements. But thank you, hon. Minister.

Question put and agreed to.

Clause 39 ordered to stand part the Bill.

Sen. Al-Rawi: I have another question at clause 42, Madam Chairman.

Clauses 40 and 41.

Question proposed: That clauses 40 and 41 stand part of the Bill.

Sen. Al-Rawi: I am sorry, Madam Chair. On 41 itself. Forgive me. I miscalculated, but I can put the question nonetheless. In 41, subclause (3):

“Until an application has been made for the registration of the prescribed particulars of a registrable transaction referred to...the transaction is ineffective as against a person acquiring a conflicting interest in or under the registered trademark in ignorance of the transaction.”

I am sort of concerned how we are affecting the equitable right to the transaction as opposed to the legal right. Is this—because as I understand it, let us assume under a live circumstance in subclause (3) someone had paid for it. A person has paid for the transaction and is not yet registered, has acquired an interest, albeit an equitable interest only in the transaction. Are we specifically prohibiting the vesting of that right by virtue of the non-registration of the matter?

Mr. Ramadhar: I think it was in your contribution that you referred to the equity trumping the legal right.

Sen. Al-Rawi: Yeah. But—

Mr. Ramadhar: I did not see any deviation.

Sen. Al-Rawi: This puts it in a clearer form to the existing law which is the registration of deeds and other—registration of deeds as has been interpreted in case law falls subsidiary to the equitable principle. But this language is a little bit different. I think it was Mr. Justice Stollmeyer in a case brought by M.G. Daly

and Company actually at first instance, but it went to the Court of Appeal, that looked at this issue and then it fell down to the actual wording of the registration requirement.

Mr. Ramadhar: Yes.

Sen. Al-Rawi: But this clause, subclause (3) in 41 does not appear to be in the similar position to the registration of deeds aspect. So, I just wanted to know about the equitable owner's interest in light of subclause (3)?

Mr. Ramadhar: The equitable rights are not extinguished in any event, and the court will be able to interpret in the circumstances what equity requires.

Sen. Al-Rawi: Okay. So, with that statement on the record, the position will be that you leave it to the court to decide the priority aspect.

Mr. Ramadhar: One always must.

Sen. Al-Rawi: Unless, of course, Parliament specifically declares otherwise. So what you are saying is that we are not specifically affecting that right—

Mr. Ramadhar: No. We are not.

Sen. Al-Rawi:—on the statement now. Thank you.

Question put and agreed to.

Clauses 40 and 41 now stand part of the Bill.

Clause 42.

Question proposed: That clause 42 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, may I enquire as to the continuation of the exclusion of trusts into this particular clause?

Sen. Vieira: If I could help you?

Sen. Al-Rawi: Sure. And if I could let you know where my concern lay.

Mr. Ramadhar: Yes.

Sen. Al-Rawi: It lay in the context of a security and any form of trading in as valuable a property as a trademark.

Sen. Vieira: All right. I am going to quote from the—

Sen. Al-Rawi: Existing Act.

Sen. Vieira:—*Kerly's Law of Trade Marks and Trade Names*. It deals with the—because this is drawn from the English Legislature. It says by section 26(1) of the 1994 Act:

“No notice of any trust...shall be entered on the register, and the registrar is not affected by trust...”—even if notified of them.

But this does not prevent a trust being created and as between the parties to it enforced but only their legal interest will be entered on the registrar.

Sen. Lalla: That makes total sense.

Sen. Al-Rawi: Yeah. It is the need to put the legal interest on the trust that I was looking at. So, I wonder now, I know that the previous Act also has a similar term. But what I was looking at in light of our amendment to the securities legislation in particular, and insofar as one could find oneself involved in a trading of a type of security in relation to trust, you could bundle all of these assets under a trust, and then the individual trusts would not be recorded. So, thank you, Sen. Vieira. You are confirming that the legal interest in the trust would still be recorded, but the beneficial interest in the trust need not be recorded. Is that is what you are saying?

Sen. Vieira: I am saying that you can record, you could enter your legal interest on the registrar, but the registrar does not have to take into account as clause 42 says, by notice of a trust. But that does not mean that the trust may not exist or be enforceable between the persons affected by the trust.

Sen. Lalla: Yeah. From what Sen. Vieira read, apparently it is a policy decision only to record the legal interest. The equitable interest is a matter to be decided upon on a party and party basis.

Sen. Al-Rawi: Okay.

Sen. Vieira: In fact, I can give you an instance. Right now there is a matter engaging before the court on trademark where two people had applied for the same trademark. In one instance there, an issue of trust has arisen and the trademark Controller suspended the application. He said, you guys work it out or go to the court. Let the court determine whether or not there is a trust that exists and then when that is resolved, come back to me. I think that is how it will play out.

Sen. Al-Rawi: Which is sort of exactly where the question comes up as to why one would not want to put the trust into the public domain by way of notice, by way of registration. So, there is a benefit to having the trust identified as we do

in securities laws. But the consequence of the non-registration of the trust is that you end up with exactly the situation referred to by my learned colleague which is where you say, well hold on, I cannot decide this. Go to court.

5.10 p.m.

So if there was a positive requirement for the registration and notification of the trust, when in simple the order of priorities would prevail and then there is no dispute. So the property interest could be better exploited.

Sen. Vieira: Yeah, and just to add to that, Senator, do not forget, when it comes to these applications for the registration of marks the Controller when he is sitting as a tribunal he has limited jurisdiction.

Sen. Al-Rawi: Correct.

Sen. Vieira: He can only deal with the small matters that appear before him in the context of the trademark law and regulation. So matters of deeper law really should probably be dealt with by the courts.

Sen. Al-Rawi: Yeah. I was just trying to understand the prohibition. I should say, the continuation of the prohibition against trust registration.

Mr. Ramadhar: I think we can hardly put it better than Sen. Vieira, that the Controller ought not to get involved with those issues.

Sen. Al-Rawi: No, the Controller does not get involved. It is a procedural requirement of notification. So there is no quasi-determination, judicial determination or invocation of his jurisdiction for that purpose.

Mr. Ramadhar: And let us not forget there is a subsection (2) of it.

Sen. Al-Rawi: The equities.

Mr. Ramadhar: Yeah.

Sen. Al-Rawi: Okay, I mean, I would be fine with you saying that it was a matter of policy that you wanted to continue the position, but I just wanted to understand the rationale behind it.

Mr. Ramadhar: "If it ain't broke doh fix it."

Sen. Al-Rawi: Thank you.

Question put and agreed to.

Clause 42 ordered to stand part of the Bill.

Clause 43 ordered to stand part of the Bill.

Sen. Al-Rawi: The next question is at clause 48, should it please you.

Clauses 44 to 47 ordered to stand part of the Bill.

Clause 48.

Question proposed: That clause 48 stand part of the Bill.

Sen. Al-Rawi: If I could just ask about being technologically specific as to the Internet, where this clause came from? Is there a mirror image of this clause from any other model legislation, Singapore, et cetera?

Mr. Ramadhar: This was actually given directly by WIPO.

Sen. Al-Rawi: By WIPO?

Mr. Ramadhar: Yes.

Sen. Al-Rawi: Okay, thank you.

Question put and agreed to.

Clause 48 ordered to stand part of the Bill.

Sen. Al-Rawi: Next question is at clause 56, Madam Chair.

Clauses 49 to 55 ordered to stand part of the Bill.

Clause 56.

Question proposed: That clause 56 stand part of the Bill.

Sen. Al-Rawi: May I, Madam Chair, just enquire from the hon. Minister, with respect to 56(1), “arrest without a warrant”. Is that posed insofar as it is exclusively in the public space?

Mr. Ramadhar: “...in any street or public place—”

Sen. Al-Rawi: So that once it is on private premises or even business premises we then stick to warrant per magistrate, right?

[Consultant responds in the affirmative]

Sen. Al-Rawi: Yes. And then relative to warrant per magistrate. Is it intended to mirror the copyright approach for warrants which is not High Court level but instead just magisterial, yeah?

Mr. Ramadhar: Yes.

Sen. Al-Rawi: Okay. And then did we want to necessarily put in the six-month limitation in subclause (4) which is a summary court limitation, no proceedings are instituted:

“If any goods, material, article or document has been seized under subsection (3) and—

(a) in proceedings”—so and so.

“(b) no such proceedings are instituted within six months of the seizure, the goods, material, article or document shall be..”

That is an unusually—and we know it is a careful balancing act, but in light of the backlog and difficulties in management in our system, are we comfortable with the limitation of six months?

Mr. Ramadhar: Well the proceedings, once it is instituted as distinct from taking of evidence as in relation to bail. So it is the normal course of things. The proceedings are the laying of the charge.

Sen. Al-Rawi: It is exactly that point. Did we want to codify it in the legislation? Are we comfortable with that time frame?

Mr. Ramadhar: I think you hit the nail on the head when you said it is a good balance, six months in any event under the summary courts. If for instance you do not bring a charge for a summary offence within a certain period, then you cannot.

Sen. Al-Rawi: Sure. Okay, thank you for that statement. May I ask relative to subclause (5), this is a standard clause, I call it the section 44E Central Bank type clause, the exculpation of liability. What I was concerned with hon. Minister was, where in this legislation, and in legislation in general, we put some kind of positive obligation for good faith, in that, persons who have acted in bad circumstances can be prosecuted? In other words, for mala fides, not in the confines of this clause.

In the Planning and Facilitation of Development Bill we introduced a very interesting clause which said that, basically, anybody who had participated in any corrupt activity, et cetera, would be prosecuted, would suffer certain fines and penalties, et cetera. I was wondering about that because we are putting all of the obligations in relation to the users of the system, but it is sometimes useful to put some obligations upon the persons who manage the system to act honestly. And the two things that come up there are whistle-blowing protection and also punitive measures to corrupt persons within the system. And I was wondering if this was an appropriate time to think outside of the box in legislation such as this.

Mr. Ramadhar: Well, in this particular legislation we cannot close our eyes to the common law, presumption of regularity in the actions of any state office. And if there is any evidence otherwise, of course, there are procedures which could be taken. So we do not think it is prudent to interfere with that.

Sen. Al-Rawi: My difficulty in having litigated on these types of provisions before is that the limit is so very high that negligence factors, beyond negligence factors, are never ever caught off, and that the population is generally done out of justice because of a very lackadaisical and nonchalant attitude or approach. I am not saying that this is true of every institution and certainly not the IPO, but I was wondering whether any consideration was given to that kind of “a whistle-blower” position because there can be deregistration of mark and disentitlement of property in the event of misrepresentation or other factors. Did we want to consider putting in a positive obligation upon the officers?

Mr. Ramadhar: No. The normal remedies are still available, access to the High Court to deal with any issue of your loss.

Sen. Al-Rawi: Okay, I would like you to mark the spot and think about it in the future. I think it is useful. Thank you, hon. Minister.

Sen. Vieira: While we are on subclause (4), I like this clause and I also like clauses 102 and 103, in light of what we were debating with the Precursor Chemicals Bill, because in the Precursor Chemicals Bill, goods could have been seized and then they were just forfeited to the state and disposed of. Here is a lovely example of how to balance the rights of the innocent person—*[Interruption]*

Hon. Senators: Yes.

Sen. Vieira:—whose goods have been taken, getting back his goods without having to apply to the court for it, and in clause 104, that the law now lets him have:

“...a person aggrieved by such seizure may apply to the Court for an order of compensation against...”

So, I actually think that this is actually helpful legislation for the Precursor Chemicals Bill, but that is to flag that.

Sen. Al-Rawi: I am sure the Leader of Government Business is noting that one. Thank you, hon. Minister. Thank you, Madam Chair.

Sen. Dr. Mahabir: Before we proceed, Madam Chair, something on clause 56. Clause 56(1), hon. Minister, it says that:

“Any police officer may arrest without a warrant any person who...”

And it goes on:

“sells or offers or exposes for sale...

any goods to which a registered trademark is falsely applied.”

Now it is very clear. However, I am pondering on the enforceability of this very important part of the law, in that is it that the law—and I am not clear on whether the law contemplates that a police officer will obtain the technical expertise of another arm of the State before he proceeds to arrest someone. Because to know whether a registered trademark is falsely applied is not normal policing work. That is something that is more technical, it is more detailed and it involves the level of expertise which would be contained in agencies of the State other than the police service. So I am simply wondering for the operability of the law, whether in fact, the law contemplates that the police officer, and will it come in regulations, that the police officer will have the technical expertise before he actually takes this course of action.

Mr. Ramadhar: In anticipation of the legislation, we begun discussions with the police in terms of training along this aspect. And we shall continue that effort as we proceed. So that discussion has already begun.

Question put and agreed to.

Clause 56 ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, may we take clauses 57 to 63?

Sen. Al-Rawi: Madam Chair, I have a question on clause 57 and one on 58.

Clause 57.

Question proposed: That clause 57 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, may I, through you, ask the hon. Minister whether there will be room to have the regulations made by the Minister under clause 57 for the Madrid Protocol put for, at the very least, negative resolution of the Parliament?

Mr. Ramadhar: Yeah, that is no problem. We do not have a difficulty with that.

Sen. Al-Rawi: Thank you, hon. Minister.

Question put—[Interruption]

Mr. Ramadhar: Madam Chair—[*Interruption*]

Sen. Al-Rawi: Treaty obligations.

Mr. Ramadhar: Yeah. On reflection, I do not believe that we will be able to facilitate that at this point in time.

Sen. Al-Rawi: May I just, without detaining the Parliament too much, just put for the record that our own preference on this end would be, notwithstanding treaty obligations which are always subject to *lex loci*, the local law and our systems and requirements that I think that the Parliament ought to have sight of this and that negative resolution is certainly not an intrusive mechanism. I am sure that the treaty requires us to allow it.

Mr. Ramadhar: We will give the undertaking to circulate and to make public before the regulations are brought. So that is the undertaking we give.

Sen. Al-Rawi: Thank you, I beg to differ.

Question put and agreed to.

Clause 57 ordered to stand part of the Bill.

Clause 58.

Question proposed: That clause 58 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, my question in relation to clause 58 has to do with the position in 58(1)(b):

“...whether or not the—

proprietor of the trademark carries on business, or has any goodwill, in Trinidad and Tobago.”

May I ask, from which jurisdiction this was considered?

Mr. Ramadhar: Both the United Kingdom and Singapore reflect this.

Sen. Al-Rawi: Okay. And it is that clause in particular that I made the exception that I consider that I had to make a declaration of interest in respect of ongoing litigation on things to deal with matters on well-known marks.

Question put and agreed to.

Clause 58 ordered to stand part of the Bill.

Madam Chairman: Senator, do you have any concerns.

Sen. Al-Rawi: I am flipping now well past clauses 75, 81. Madam Chair, up to clause 82.

Clauses 59 to 82 ordered to stand part of the Bill.

5.25 p.m.

Clause 83.

Question proposed: That clause 83 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, may I enquire, insofar as this Register may be kept in electronic form and there is data as well, whether the hon. Minister can assist us with the keep back to the articulation of two other pieces of legislation, the Data Protection Act and the Electronic Transactions Act; as to why we have had the delay in full proclamation of those two from 2011 onward?

Mr. Ramadhar: I am in no position at this point to answer it, but we will get back to you on that matter.

Sen. Al-Rawi: Okay, fine. And I would just like to underscore that it would be critical for the consumer protection side.

Mr. Ramadhar: Absolutely.

Sen. Al-Rawi: Thank you, Madam Chair.

Sen. Vieira: May I, also, on this clause, draw to attention that this is the antidote to the concern raised by Sen. Cudjoe. So that whether you are in Tobago or you are in Point Fortin or Sangre Grande, you do not physically have to come to Port of Spain to access the registrar.

Mr. Ramadhar: We are grateful for that insight. Thank you.

Question put and agreed to.

Clause 83 ordered to stand part of the Bill.

Clauses 84 and 85 ordered to stand part of the Bill.

Clause 86.

Question proposed: That clause 86 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, my question in relation to clause 86, costs are not a novel concept as a power and consideration for the Controller. However, it is usual for there to be a limitation in respect of the pursuit of costs. If I could draw out the analogy in the Legal Profession Act, if you want to pursue your costs on a client/attorney basis, you have to obtain the leave of the court to pursue the

matter after one year. There is no similar restriction in this event here, and I was wondering whether that is to be factored in the regulations, or whether it ought to be in the substantive law as it is in the Legal Profession Act. *[Interruption]*

No, but the method of applying—and I am speaking about the prescription for leave, and I am borrowing from the example in the Legal Profession Act, which is in that parent Act as opposed to regulation.

Mr. Ramadhar: I am advised that the regulations will specifically deal with that issue in relation to the High Court process.

Sen. Al-Rawi: Thank you.

Mr. Ramadhar: And it is in keeping with standing operating procedure.

Sen. Al-Rawi: And while we are on regulations in general, hon. Minister, I have not seen in this Bill a prescription for a consequence—a pecuniary consequence—for a breach of a regulation. Now, there are several types of regulations that we may have: regulations in the order of rules; regulations which attract fines. When we look to the Companies Act, for instance, we have a very, very useful and potent fine which we have amended from time to time to ensure compliance. It used to be \$100 per month, \$100 per year, \$500 per year, and the Government actually ensured two things: compliance and a significant source of revenue to ensure compliance.

I noted that we do not have a provision in this body of the Bill for a pecuniary consequence for a breach of a regulation, which may be of different types. That means that we would fall to reliance upon section 16, I think it is, of the Interpretation Act, which is that you have a maximum of \$500 fine where the law does not specify what the consequence of a breach of subsidiary legislation is. Is that something that we wanted to be the position?

Mr. Ramadhar: I believe that we will continue with that interpretation.

Sen. Al-Rawi: Because then the golden rule of legislative-making falls into question. Apart from the sanction of not having your mark registered, how else do you ensure faithful compliance with regulations?

Sen. Vieira: But that is the answer to the question there because the whole purpose of trademark application and registration is to have your mark, and you would not want to do anything that—

Sen. Al-Rawi: But I am thinking beyond just the mark. You could have your mark registered and then there could be other aspects: the return of your submissions; your registration of interest where your mark is still registered but there is no penalty for non-registration of an assignment, and therefore notice is

not provided. So there are loads of circumstances beyond the registration of the mark itself, and I was wondering if we wanted—because we have not seen the regulations, so I do not know whether they include rules and procedures beyond civil court-type rules of court, where you do not need sanctions but which Mr. Justice Jamadhar was most inventive to come up with relief from sanction penalties which the Privy Council eventually shut down.

So I am trying to think of whether the legislation, insofar as we are doing it for the first time—we have a host of regulations here—did we want to empower the prescription within a range category of what a breach of regulations would involve in the event that we wanted to use? Because otherwise, the Minister would be confined to a \$500 limit.

Mr. Ramadhar: We will leave it as it is. Thank you.

Question put and agreed to.

Clause 86 ordered to stand part of the Bill.

Madam Chairman: Members, do we have any comments for—

Sen. Al-Rawi: Just on clause 89, Madam Chair.

Clauses 87 and 88 ordered to stand part of the Bill.

Clause 89.

Question proposed: That clause 89 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, the language in clause 89:

“If a person who neither resides nor carries on business in Trinidad and Tobago—

(a) gives notice of opposition...or

(b) applies to the Controller...for the registration of a trademark to be revoked...as the case may be,

the Controller may require the person to give security for the costs for the proceedings and may, if security is not given, dismiss the proceedings.”

Now, I am well familiar with the concept of “security for costs” in the civil arena. However, residence is something which, if it is in a corporate vehicle, is done just by way of residence under the register, which is either through local incorporation or by Part X, incorporation, under the Companies Act. Can one

escape this? In other words then, can one have a shelf company simply obviate the entire process by engaging in a Part X registration under the Companies Act, and therefore make this clause meaningless?

Mr. Ramadhar: This is a policy consistent with the UK, Singapore and Jamaica.

Sen. Al-Rawi: Okay, I am just flagging—

Mr. Ramadhar: Under the existing laws.

Sen. Vieira: Could I help again, by reading the Kerley's?

Sen. Al-Rawi: Sure. Thank you.

Sen. Vieira: Security for costs: The registrar may require any person who is a party to any proceedings before her...to give security for costs in relation to those proceedings; and she may require security for the costs of any appeal from her decision. Security can be ordered against the applicant or an opponent. Security will only be awarded on application and not on the registry's own initiative. The amount of the award is determined on a case by case basis and proportionately to the estimated cost likely to be awarded at the conclusion of the proceedings.

Now, this is an important provision, I think, because we have been involved in situations where people have filed objections but when you turn around to find who to put your response on, you cannot find the lawyers, so-called, acting for them. As you say, they could be a shelf company and a sham and in the meantime your things are being affected. So I think "security for costs" measure is a way of keeping people honest.

Sen. Al-Rawi: I thank Sen. Vieira, as usual, for his excellent intervention, but may I just say that not only do I agree that the security for costs is a good measure, but what I am pointing out, and what he read from Kerley's are two different things. Kerley's, actually, is exactly where my mind is. So on a much broader platform, it is not only the opponent to the application but includes both parties, and it is not confined to a residency requirement prescription in law.

So saying that you may order security for costs simply, is very, very different from saying that it is pegged to a residency requirement. So I am concerned that you could sidestep this provision very, very easily and that it is only one-sided. So the Kerley's that was just read is spot on. Anybody, applicant or opponent, may be required to give security for costs.

Sen. Vieira: Any party to a proceedings.

Sen. Al-Rawi: That is my point. You see, what was just read by Sen. Vieira is exactly the zone that we ought to be in. It is where it is in the discretion of the Controller, which is a decision which is reviewable, of course, in court, but it is a discretion of the Controller to say, well, any party to any proceeding, not just the person who gives a notice of opposition. Because somebody may have a legitimate claim for opposition. It may be a fledgling company which cannot afford certain aspects and he is fighting a big corporation and the corporation is dancing him around through a shelf company which is given the benefit of an assignment of the interest.

So it is quite easy to obviate the circumstances of protection which the security for costs gives here. A mega company can incorporate a shelf company in Trinidad and Tobago which has no assets, limited in liability and has only the benefit of an assignment to the mark on a limited purpose and, therefore, cheat the entire system.

Mr. Ramadhar: While we appreciate your point, it is consistent with existing practice and case law, I understand.

Sen. Al-Rawi: Thank you, hon. Minister. Existing practice where? Sorry.

Mr. Ramadhar: Singapore, Jamaica and the United Kingdom.

Sen. Al-Rawi: That is my point. Our legislative matrix behind it is different. Kerley's is, in fact, the text which we all go to in respect of the practice in England, but what was just read out by Sen. Vieira is very different from what we have here. So I understand the practice and I understand the concept, and I agree with it, and I like it, but I think that we fall short.

Mr. Ramadhar: It is the policy decision and we move forward, please.

Sen. Al-Rawi: Sure, thank you.

Question put and agreed to.

Clause 89 ordered to stand part of the Bill.

Madam Chairman: Are there any comments from clauses 90 to 95?

Sen. Al-Rawi: Madam Chair, I am good up to clause 107.

Clauses 90 to 107 ordered to stand part of the Bill.

Clause 108.

Question proposed: That clause 108 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, may I just enquire in the last line in clause 108(1):

“...or the amount of the security given, under section 98, the amount of the excess is a debt due to the State.”

Did we want to say that it is a debt due to the State, or is a debt recoverable as if it were a debt? And the reason why I am asking is that, then you have to go through a different matrix for a debt due to the State.

Mr. Ramadhar: Our position, it really is a matter of semantics. It amounts to the very same thing, what you are saying and what is reflected here.

Sen. Al-Rawi: Well, I was trying to simplify the process of State proceedings and leave and the administrative difficulties involved behind it.

Mr. Ramadhar: We appreciate your efforts, though. Thank you.

Question put and agreed to.

Clause 108 ordered to stand part of the Bill.

Clauses 109 to 116 ordered to stand part of the Bill.

Clause 117.

Question proposed: That clause 117 stand part of the Bill.

5.40 p.m.

Sen. Al-Rawi: Madam Chair, if I may just ask? My question was on 116. Without going back to it, perhaps the Minister could give me the information that I was looking at. In 116, hon. Minister, I was looking at the issue of “Practice Directions”.

Mr. Ramadhar: It is already existent to have practice directions issued by the Controller to continue that effort.

Sen. Al-Rawi: So it is similar to the type of practice directions in the—was there any model that was preferred in terms of an update insofar as we are moving from Nice seventh to Nice tenth, et cetera?

Mr. Ramadhar: In substance, it would not have changed.

Sen. Al-Rawi: Okay. Thank you. Thank you, Madam Chair.

Question put and agreed to.

Clause 117 ordered to stand part of the Bill.

Clauses 118 to 122 ordered to stand part of the Bill.

Clause 123.

Question proposed: That clause 123 stand part of the Bill.

Sen. Al-Rawi: Through you, Madam Chair, hon. Minister, again, 123 is the section by which the Minister may make regulations, but there is no prescription in here for those regulations to be seen by the Parliament which could allow for amendment or interest group representation or other factors, and I was wondering whether the Government would consider allowing for the regulations to be adopted by negative resolution of the Parliament.

Mr. Ramadhar: As we have indicated earlier, we have undertaken and we have shown in the past, and we will circulate the regulations widely.

Sen. Al-Rawi: Okay. Minister, if I could just put it on the record without detaining us too much, that the rationale behind it would be so that the Parliament has the same form of sight as we do even with the Supreme Court of Judicature, where the amendments to the Civil Proceeding Rules, notwithstanding the separation of powers, section 90 of the Constitution, et cetera, still come to the Parliament. I find it unusual that a piece of legislation like this would not see the Parliament's desk when rules of court, with the separation of powers principle as we have, still come to the Parliament, and I would honestly prefer notwithstanding the undertaking, which I accept from you, that there will be circulation. I would honestly prefer that the regulations do see the Parliament's desk.

Sen. Vieira: And I would also add in just for the record, that the current Trade Marks Act, section 51, is worded that:

“(1) The Minister, subject to negative resolution of Parliament, may make such Rules as he considers expedient—”

So there is a change in the law on that point.

Mr. Ramadhar: We note your concerns.

Sen. Al-Rawi: Hon. Minister, is there no room for an important matter like this? I mean, the heart and soul of the operability of this Act is going to be in the regulations.

Mr. Ramadhar: The openness that we approach this with, I will be guided, and in terms of that we would have no objection for there to be negative resolution.

Sen. Al-Rawi: Thank you, hon. Minister.

Mr. Ramadhar: And we have a draft in any event prepared out of abundance of caution.

Madam Chairman: What is the amendment, please?

Mr. Ramadhar: At 123, My Lady, insert after the word “Regulations” the words “subject to negative resolution of Parliament”.

Madam Chairman: So the amendment is:

Insert after the word “Regulations” the words “subject to negative resolution of Parliament”.

Question put and agreed to.

Clause 123, as amended, ordered to stand part of the Bill.

Madam Chairman: Senators, are there any other comments?

Clauses 124 to 141 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

The Senate divided: Ayes 22

AYES

Singh, Hon. G.

Howai, Hon. L.

Alfonso, Hon. Brig. C.

Hadeed, Hon. G.

Newallo-Hosein, Hon. C

Karim, Hon. F.

Sancho, Hon. B.

Senate in Committee

Tuesday, April 14, 2015

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Lambert, J.

Maharaj, Hon. D.

Mutema, Hon. K.

Ramnarine, Hon. K.

Lalla, L.

Burke, Abp. B.

Drayton, Mrs. H.

Balgobin, Dr. R.

Wheeler, Dr. V.

Mahabir, Dr. D.

Vieira, A.

Abdul-Mohan, Rev. J.

Singh, Dr. K.

The following Senators abstained: F. Al-Rawi, Mrs. D. Baldeo-Chadeesingh and A. Singh.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Madam President. I beg to move that the Senate now adjourn to Tuesday, April 21, 2015 at 10.30 a.m. when we will continue the debate on the Precursor Chemicals (No. 2) Bill, 2014 and also begin debate on the Motor Vehicles and Road Traffic Bill, 2014.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.52 p.m.