

*Leave of Absence*

*Tuesday, July 09, 1996*

**HOUSE OF REPRESENTATIVES**

*Tuesday, July 09, 1996.*

The House met at 10.30 a.m.

**PRAYERS**

[MR. SPEAKER *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. Speaker:** Hon. Members, I have had communication from the Member for Port of Spain North/St. Ann's West (Mr. Gordon Draper) to the effect that he would be out of the country today and continuing to Friday, July 12, 1996. Leave of absence has, accordingly, been granted to him.

**GIRL GUIDES ASSOCIATION OF TRINIDAD AND TOBAGO (INC'N) BILL**

Bill for the incorporation of the Girl Guides Association of Trinidad and Tobago and for matters incidental thereto, brought from the Senate [*The Member for Laventille East/Morvant*]; read the first time.

**PAPERS LAID**

1. Report of the Auditor General on the Accounts and Financial Statements of the National Settlements Programme for the year ended December 31, 1993 as required by Loan Contract 584/OC-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. [*The Attorney General (Hon. Ramesh Lawrence Maharaj)*]
2. Report of the Auditor General on the Accounts and Financial Statements of the National Settlements Programme for the year ended December 31, 1994 as required by Loan Contract 584/OC-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. [*Hon. R. L. Maharaj*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Technical Assistance Loan Project for the year ended December 31, 1995 as required by Loan Contract No. 3153-TR between the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. [*Hon. R. L. Maharaj*]

4. Report of the Auditor General on the accounts of the San Fernando Corporation for the year ended December 31, 1982. [*Hon. R. L. Maharaj*]
5. Report of the Auditor General on the accounts of the San Fernando Corporation for the year ended December 31, 1983. [*Hon. R. L. Maharaj*]

*Papers 1—5 to be referred to the Public Accounts Committee*

6. Report of the Auditor General on the Accounts of the Trinidad and Tobago Solid Waste Management Company Limited for the year ended December 31, 1986. [*Hon. R. L. Maharaj*]
7. Report of the Auditor General on the Accounts of the Trinidad and Tobago Solid Waste Management Company Limited for the year ended December 31, 1987. [*Hon. R. L. Maharaj*]

*Papers 6 and 7 to be referred to the Public Accounts (Enterprises) Committee*

8. Loan Contract No. 881/OC-TT between the Republic of Trinidad and Tobago and the Inter-American Development Bank Agricultural Sector Reform Programme—June 11, 1996. [*The Minister of Planning and Development (Hon. Trevor Sudama)*]
9. Reimbursable Technical Co-operation Agreement No. 882/OC-TT between the Republic of Trinidad and Tobago and the Inter-American Development Bank - June 11, 1996. [*Hon. T. Sudama*]

#### ORAL ANSWER TO QUESTION

#### **Praedial Larceny (Wallerfield)**

20. **Dr. Rupert Griffith** (*Arima*) asked the Minister of National Security:
  - (a) Is the Minister aware that there is a high incidence of praedial larceny in Wallerfield, Arima?
  - (b) If the answer is in the affirmative, would the Minister please state:
    - (i) what measures will be put in place to curb the high incidence of praedial larceny; and
    - (ii) when will these measures be implemented?

**The Minister of National Security (Sen. The Hon. Brig. Joseph Theodore):** Mr. Speaker, in answer to the question, I wish to state that the Commissioner of Police has advised that there are police reports of incidents of larceny taking place at Wallerfield, Arima. Among the items targeted by thieves are livestock such as cattle and pigs, and agricultural produce.

With the assistance of the Service Support Unit located at Mausica and the recent provision of a number of additional vehicles, a regular system of day and night patrols to the affected area has been implemented. Police surveillance activities are also under way to determine the exact timing of the thefts so as to enable a more informed system of patrol. These measures are expected to significantly curb incidents of praedial larceny in Wallerfield. We have found that similar problems also plague the Carlsen Field area. The Chaguanas police have an ongoing system of day and night mobile patrols, a measure which it is anticipated will continue to result in a reduction of the incidence of praedial larceny in the Carlsen Field area.

**Dr. Griffith:** Mr. Speaker, the hon. Member said that a system has been implemented. Could he state what date, or when that system was implemented?

**Hon. Brig. J. Theodore:** I do not have an exact date, but I do know that during the course of this year, Mr. Bernard, the Commissioner of Police, who is presently on leave, indicated that a system had been put in place.

#### ARRANGEMENT OF BUSINESS

**The Attorney General (Hon. Ramesh. Lawrence. Maharaj):** Mr. Speaker, I beg to move that this House proceed to Bills Second Reading.

*Agreed to.*

**10.40 a.m.**

#### PROTECTIVE SERVICES (COMPENSATION) (AMDT.) BILL

[SECOND DAY]

*Order read for resuming adjourned debate on question [June 21, 1996]:*

That the Bill be now read a second time.

*Question again proposed.*

**Mr. Speaker:** Hon. Members, on that occasion, the hon. Attorney General was in fact making his contribution. He had spoken for 30 minutes when the Motion to adjourn the House was taken, he therefore has 15 minutes more to complete.

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, you would recall when the House was adjourned we on this side were demonstrating that this Bill would, in effect, give to a member of the protective services a legally enforceable right to get compensation in case of permanent injury or in case of death, his estate or his nominees would be entitled to compensation. We had indicated that these measures were long overdue.

I must mention, for the record of this House, that the provisions of this Bill embody the terms of certain agreements which were arrived at between the Chief Personnel Officer and the Government and the respective associations representing the different branches of the protective services. There are six associations: the First Division and Second Division Police Service Associations; the First Division and Second Division Fire Service Associations and the First and Second Divisions of the Prison Service referred to as the First Schedule and Second Schedule Associations. The provisions of this Bill, in effect, reflect the agreement arrived at between the Government and the associations.

Mr. Speaker, it should be made clear, and as the hon. Minister of National Security mentioned, this Bill would not cover members of the defence force. That is being dealt with separately. We attempted to bring the members of the defence force within the purview of this Bill but there were certain considerations and the members of the defence force are aware that other measures are now being put in place. As a matter of fact, the entire Defence Act is being looked at so that very shortly this administration would obviously bring those measures before the Parliament.

The existing law had provided a machinery whereby special reserve police officers could have benefited, but having regard to the fact that this legislation is now being dealt with, it would therefore mean that the administration in the reforms that are taking place would shortly bring appropriate regulations before this House, if they are necessary, in order to deal with the special reserve police officers.

If I may refer to the Special Reserve Police Act, Chap. 15:03, one sees that section 19 states:

"Members of the Special Reserve Police shall not be regarded as workmen for the purposes of the Workmen's Compensation Act, but the principles of that Act may be followed in computing compensation granted under this Act in respect of permanent disability or death."

One sees that in respect of computing the amount, the principles of the Workmen's Compensation Act would apply. If one looks at section 22 of the Act, one sees:

"(1) The Minister may make regulations generally for giving effect to the provisions of the Act."

Under section 22(2) it says that:

"Without prejudice to the generality of the power conferred by subsection (1), regulations made under that subsection may provide for:

- (j) the grant to members of the Special Reserve Police who are injured in the execution of their duty of sick benefit..."
- (k) the grant to members of the Special Reserve Police who consequent upon injuries received in the course of their duty as such are permanently incapacitated from following their normal employment or whose earning power in such employment is impaired, pensions or gratuities and the conditions upon which and the rates at which such pensions or gratuities may be granted to different ranks of the Special Reserve Police;"

Mr. Speaker, one sees that there was existing legislation with which the last administration could have dealt if it wanted to, with the question of compensation for special reserve police officers in the context of the matter we are discussing now. Therefore, I do not understand why, if the last administration was so interested in providing compensation for special reserve police officers, it did not make the necessary regulations. They could have drafted a bill, come to Parliament, passed this Bill, because it also deals with special reserve police officers by making the appropriate regulation.

I am sure that the expert in law on the other side, the Member for Diego Martin East, would have known of these provisions. He seems to be the lawyer on that side and they could have made this law.

The same applies to the auxiliary fire service. Under the Auxiliary Fire Service Act, Chap. 35:54, if one looks at section 15 one sees that:

"(1) The Minister may make such regulations as he considers necessary for giving effect to the provisions of this Act, for prescribing anything that is required by this Act to be prescribed and by such regulations may provide for—

- (f) the grant of benefits to members who are injured while in the execution of their duties and the rates at which and the conditions upon which such benefits shall be granted to members of the different ranks;"

One sees that even in respect of the auxiliary fire service if there was a commitment of the last administration—one could see quite clearly that it was in 1991 when that administration took office that it recognized, according to the members of that administration, that something had to be done about this matter. From 1991 to 1995 until it demitted office, that administration did not make regulations under these two Acts to provide for compensation, in these circumstances, for special reserve police officers, or for auxiliary fire officers.

It is now history that they did nothing about the members of the defence force. The defence force has been knocking at their door; they did nothing about it and they did nothing about the protective services.

Mr. Speaker, this administration is also looking at the whole question of similar injuries to public servants in the course of their duties. One must understand that what we have now is a situation where the SRPs would be dealt with—the Minister of National Security stated that he is taking steps about that—the auxiliary fire officers would be dealt with and members of the defence force would be dealt with.

**10.50 a.m.**

This Bill deals with members of the protective services. There are also public servants but there is no protection for them. This administration is looking to give similar protection to public servants so that if members of the teaching service and people who are employed with the state are injured or killed in similar circumstances as covered by this Bill, their families can benefit.

One sees the importance of law. If one lives in a society committed to the rule of law, one needs law to effect change. One cannot effect change without law. Law reform is used to bring about that change. The law is not static. The law moves with a changing society. A government must be committed to bring about

that change. It can only bring about that change by effecting laws. Any notion that there can be change in these circumstances without laws, or that there is too much law when a government is committed to law, merely has to be rejected. When an injustice is being done to any particular group in a society, it is an injustice against the whole society. This is an area of the law which has been left untouched and unreformed. The point is that this administration is looking at these matters.

It must be remembered that the principles of workmen's compensation are separate and apart from any entitlement a person may have to file an action at common law, for damages for negligence committed by an employer or by an employer's inaction. Although a police officer is entitled to get protection under the Act if he is permanently or partially disabled, that does not prevent him from filing an action for negligence if his employer is negligent.

The principle of the law if a certain amount of money is already collected for the same injury, is that the court or the committee would take those factors into consideration, so that the person would not be paid twice for the same injury. If an ordinary person—that is one who does not fall within the protection of this Bill—is injured in an accident whilst he is in the course of his employment and files an action for workmen's compensation, he would recover money under the Workmen's Compensation Act. Under that Act he does not have to prove that his employer was negligent because it is a statutory means of payment. As long as he was injured in the course of his employment he is entitled to get the money allotted under the Act. He could file an action for negligence saying that his employer was negligent by not keeping the staircase clear enough or having oil on the staircase and as a result he fell. When the person files that action for negligence in common law, the court must take into consideration the amount of money which he received under the Workmen's Compensation Act and deduct it from the amount of money to which he is entitled. There is that principle of ensuring that people do not get money twice. This piece of legislation is not intended to take away any such right.

A particular section was raised by the hon. Member for Laventille East/Morvant. Clause 17 states:

“Where after the coming into operation of this Act, a person commences proceedings before a Court for negligence or under the Compensation for Injuries Act, in which he makes any claim that is within the jurisdiction of the

Committee, such a person shall not thereafter, make a claim before the Committee unless the proceedings before the Court are discontinued.”

The hon. Member advocated that this clause can give the impression that he would have to discontinue his claim under common law. I have looked at this and I think that I would like it to be quite clear. I wish to give the assurance to the hon. Member that I have instructed that this clause be redrafted so that it would be equated with the situation under the Workmen’s Compensation Act. Under that Act, Chap. 88:05, section 4 (4) deals with a similar situation. It states:

“In awarding compensation for injury under this Act a Commissioner shall take into account any damages recovered by a workman in respect of the same injury.”

We would have a similar amendment and delete this clause. We would substitute a clause to the effect that in awarding compensation for death or injury under this Act, the committee shall take into account any damages recovered by an officer in respect of the death or the same injury. That would deal with that aspect of it. If I may mention, under the Compensation for Injuries Act, Chap. 8:05, the law has developed; that is to say, as I mentioned before, when anyone is claiming damages as a result of a motor vehicle accident or death. Section 8 states:

“In assessing damages in respect of a person’s death in any action under this Act . . . no account shall be taken of any of the following moneys paid or payable on the death of such persons...”

It gives the specific instances such as payments under contract insurance; benefits under the National Insurance Act; payment from a friendly society and payment by way of pension.

The court has already interpreted this in several cases. It is the existing practice that in any claim under the Compensation for Injuries Act—since it is specified what should not be taken out—if one gets money for the same injury, those moneys can be deducted from the particular set of money. There is no need to amend that to include it. I am indebted to the hon. Member for Laventille East/Morvant. I think that it was not quite clear and we should make it clear. I hope that would satisfy the hon. Member for Laventille East/ Morvant.

There is another issue with which I would like to deal since I am on that matter. The Member also raised the issue of the Second Schedule which specified instances where the compensation would be excluded such as war, invasion, act of



foreign enemy, hostilities, whether war be declared or not, civil war, rebellion and revolution. This is related to section 13 of the Bill.

**11.00 a.m.**

Clause 13(2) of the Bill specified the functions of the committee:

“Where it is proved that an officer suffered personal injury or died in circumstances arising out of and in the course of his employment with the State, the Committee shall, subject to subsections (3) and (4), make an order for the award of compensation in accordance with the Second Schedule and shall give reason in writing for the award of, or refusal..”

The Second Schedule states that these are claims in respect of benefits for death or injury which should not come under the jurisdiction of the committee.

**Mr. Speaker:** The hon. Member’s speaking time has expired.

*Motion made,* That the hon. Member’s speaking time be extended by 30 minutes. [*Hon. K. Persad-Bissessar*]

*Question put and agreed to.*

**Hon. R. L. Maharaj:** The Act therefore provides instances where the family of a member of the protective services would not get compensation even if he is injured or dies in the course of his duty. It is stated there that this happens in circumstances such as war, invasion, acts of foreign enemies, hostilities whether war had been declared or not, and so forth.

The intention of the Act was really to exempt the payment of compensation in respect of Trinidad and Tobago being invaded by a foreign enemy. We recognize that other countries have also not provided for compensation in circumstances where there is attack from inside. Other countries have not provided for compensation in circumstances of insurrection, mutiny and rebellion. The rationale for that is that in times of war, mutiny and insurrection the protective services take that risk and give their lives to the state. This administration has decided to make a break and not go along with that concept. I may mention that the agreement which was arrived at between the Chief Personnel Officer, all the associations and the Government is that in cases mentioned there, and additionally in cases of insurrection, mutiny, military or usurped power, military or popular uprising, there would be no question of compensation.

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When we drafted this Bill, the policy was that we would do better than the agreement. We would give to officers of the protective services compensation for attack from inside and we would leave untouched situations of attack from outside because when there is attack from outside, not only protective officers give their lives, but other members of the population. The policy of this Bill therefore is to ensure that when there is attack from within, if members of the protective services suffer injury or die, the state would pay compensation. To give effect to that policy and to ensure that there is no doubt whatsoever, we would, at the committee stage, seek to amend the Schedule to limit it to war, invasion and act of foreign enemy. We will delete “hostilities (whether war be declared or not) civil war, rebellion, revolution”. We will just have “war, invasion, act of foreign enemy” so that there can be no doubt whatsoever that we are limiting this to an attack from outside.

**Mr. Hinds:** I thank the Member for giving way. I applaud the fact that the Member for Couva South would take on board the recommendation, but I am just mindful of the fact that the way in which he is delivering it lends the impression that it is something that he proposes to do.

**Hon. R. L. Maharaj:** I gave way for the Member to ask a question.

**Mr. Hinds:** All right. The question therefore is—*[Interruption]* Mr. Speaker, permit me. It is interesting to note that the Minister is prepared to respond to the suggestion that we made from this side. That is the question.

**Hon. R. L. Maharaj:** Mr. Speaker, I think I will have to take the advice given on the last occasion, that when I have to give way I should be very careful. I thought that my Friend would have known the difference between a question and an assertion.

We do not look at matters so narrowly. We do not look at them on the basis of personalities. We believe that legislation is in the national interest so it really does not matter whether it is our idea or yours. The fact is that we come here to pass laws for the benefit of the public and to protect the members of the protective services, which is a matter of high priority with this administration.

There has also been the suggestion that the Government should look at the whole question of the statutory period in which these claims are to be made, in particular clause 4(3). This was another point raised by the hon. Member for Laventille East/Morvant. According to the Bill, in cases of death, the statutory

period is four years and that is in keeping with the existing law with respect to matters against private individuals. In respect of personal injury, the period is one year and that is a matter which, I assure the Member, has troubled us.

There is the Limitation Act which makes claims against the state limited to one year. When it came to this particular clause we had to decide whether, in respect of death and injury, it would be one year. We decided to put in respect of death, a time limit of four years and, in respect of injury, we are in the process of drafting a new Limitation (Amdt.) Bill.

**11.10 a.m.**

It was passed by the Parliament, but it was not proclaimed. In that Limitation Act there were other provisions entwined with other matters. We have looked at that piece of legislation, and a new Limitation (Amdt.) Bill has been drafted in order to put persons who are making claims against the state on the same basis as those who are making claims against private individuals. And there would be the situation where, as you know in the United Kingdom, there would be a discretion given to the court in extenuating circumstances where the injury could not have been discerned at the particular time, but it can be shown that it related to the particular act. The court will have a discretion and we are looking at that kind of legislation. I want to tell the hon. Member that in respect of that aspect, shortly before this Parliament, there will be matters to redress that and we will obviously take that matter into consideration in the Limitation Act.

Mr. Speaker, the other matter raised was in respect of clause 19, and in particular with respect to members of the protective services who were injured or who died in these circumstances to be covered by the Act before it comes into operation. My information is that apart from about two or three cases where persons have been killed in the course of duty, all other persons have been paid the necessary compensation. There is an undertaking given by the state, and it will be given also in a letter, that in any matter where the compensation was not in accordance with the principles set out in the Act, in other words, if compensation was paid and it did not meet the amount as set out in the Act, the state would remedy that situation and pay the compensation as computed under the Act and agreement.

In respect of officers who were injured however, it is a different story because it was not the practice of the Government to pay to officers who were permanently injured any compensation in these circumstances. What happened, was that in

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those circumstances, the disability would be considered in a sort of premature retirement but it still did not benefit the officer as it should, because in effect, it was minimal and not in keeping with the injury at all. So that there would be a situation where there was a grave injustice, and something which we are committed to remedy, that over the years from 1960 officers who were permanently or partially disabled were not compensated for the injury and that is why in clause 19 we have mentioned that all claims in respect of personal injury or death of an officer occurring prior to the coming into operation of this Act shall be treated in accordance with the agreement executed. In effect, we are saying here that the same principles are to be applicable before coming into operation of the Act where there were no such agreements.

As the Attorney General of Trinidad and Tobago, I am giving the undertaking on behalf of the state in respect of all officers who were injured in the course of duty and fall under the protection of the Act, that the same principles of computation would apply so that they would not be treated unequally in respect of the injury. *[Desk thumping]* I have also given instructions for the necessary undertakings to be put in writing and to be given to the relevant associations.

I think that I have dealt with the responses made from the Opposition Benches and what I would ask them to do despite the fact that the Opposition when in Government did not bring this measure, despite the fact that it did not take the necessary step in order to protect these families and the officers of the protective services, we should not regard this as a partisan matter but as a national one, and we should give credit where credit is due. The whole purpose of Parliament is to make laws for the peace, order and good Government of Trinidad and Tobago and this is a measure that the Opposition would want to see passed very quickly. This should be a measure where there should be a change of policy and strategy of the Opposition to have it passed very quickly because it has been delayed so long that they should be very happy to see it passed.

I beg to move.

**Mr. Colm Imbert** (*Diego Martin East*): Mr. Speaker, following on the last point made by the Member for Couva South that one should give credit where credit is due, I wish to give credit to the Members on this side who spoke in the debate for pointing out to the Government the nonsense that occurs in (d) of the Second Schedule where the words “civil war”, “rebellion” and “revolution” are included. You see, the hon. Minister of Legal Affairs was at pains during the last

session to make the point that the Government had deleted the words “popular uprising”, “military intervention” and so forth, and had left in the words “rebellion” “revolution” and “civil war” specifically so that persons affected in the attempted coup of 1990 would now be able to claim compensation and she was cheered and applauded by the Members on the other side for that interpretation and intervention.

Now the Attorney General has come and proven that that was a piece of nonsense. In fact, this morning I asked the *Hansard* for the smallest dictionary that they have—I did not even call for the unabridged *Oxford*, or the complete *Webster*, or something of that nature—to see what was the definition of “rebellion”, “revolution”, and “insurrection”. In this dictionary, one sees that an insurrection is defined as an incipient rebellion; a rebellion is described as an insurrection, and so is a revolution. How could the hon. Member for Siparia state that they took out “insurrection”, “popular uprising” but left “rebellion” and “revolution” so that members of the protective services who were injured in the coup could get compensation? It is complete ignorance of the law, of the English language, and a demonstration of a total lack of preparation.

What one finds, is that Members on the other side come into this House and bramble and are not prepared for the debate. They make nonsensical statements and they have to come and eat humble pie on a later occasion when they are advised in their private domain and in their quiet moments that they are really talking foolishness. So I wish to give credit to the Member for Laventille East/Morvant, and the Member for Arouca South for pointing out that there is essentially no difference between an “insurrection”, a “revolution” an “uprising” an “intervention” or a “civil war”.

### **11.20 a.m.**

I am pleased that the Attorney General has admitted today that his deputy in the ministry has not made any sense and that they are now removing, beyond a shadow of a doubt, the words “civil war, rebellion and revolution”. Really, Mr. Speaker, the tremendous arrogance that was demonstrated by the Member for Siparia—and I am sorry to say the incipient arrogance that is coming from the hon. Minister of National Security, and I wish he would revert to his former self in the polite and humble manner. I really wish he would not take example from the Member for Couva South because he is demonstrating incipient arrogance which, if not nipped in the bud, could reduce the respect that many people have for him.

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Now that the Government has accepted the recommendations of the Opposition with regard to the interpretation in (d) of the Second Schedule, we on this side fully support this legislation. I wish to indicate that in keeping with the call of the Attorney General that on important matters, all Members of this Parliament should put aside partisan differences, that in this particular case, we fully support this legislation in its amended form.

Well, you listened to us, so no problem at all. On subsequent occasions when we raise points, I ask the Member for Couva South not to trivialize these points, not to be so arrogant, but to listen to what we have to say. He can adjourn the House, as he did on that occasion, come back the following week, think about it, and then present amendments which we can all accept, so that we would not get involved in contentious debate about aspects of the legislation.

Mr. Speaker, I must also comment on some other statements made by the hon. Member for Couva South on the last occasion, on the eve of an election when he was giving vent to his emotions, and literally screaming in this Parliament about the approach to crime by the former administration, and by the present administration, ranting and raving as it were.

Mr. Speaker, it pains me when I read in the newspapers every day on the front page that someone has been killed, someone has been murdered, someone has been chopped, someone has been wounded; or a burnt body has been found in a car somewhere. When I look at the official statistics, I cannot agree with some of the statements made by the Member for Couva South on the last occasion. There is no doubt that serious crimes are on the increase. There is no doubt about that. The police have come out and confirmed that a number of categories of serious crimes are on the increase. Perhaps the hon. Minister can correct me if I am wrong, but I am told that the number of murders is either almost the same as it was last year in the same period of study, or it is more than it was on the last occasion. So, how can this administration make the bold statement that they are fighting crime? I beg to differ. The facts do not support this argument.

What the present administration is doing is much gallerying and public relations. We are already seeing the effect of gallery and public relations in the administration of justice. I would not say any more on that, except that the public relations approach of the Member for Couva South to the administration of justice is already receiving diminishing returns in the administration of justice. It is self-evident to all those who are following justice proceedings at this time—the gallery

and public relations of the hon. Member for Couva South are already receiving diminishing returns and making a mockery of our court system, but I will say no more about that.

The fact of the matter is, Mr. Speaker, that the situation with crime is as grim or even more grim than it was in the last several years. There has been no dent in the crime situation. As a matter of fact, I am convinced that crime is now completely out of hand. When one looks at the types of crimes that are being committed, especially the types of murders that are being committed, it shows a brazen disregard for the sanctity of the person, a complete disregard for law and order in the country. It is all very well to have legislation on the books to compensate members of the protective services, and they should be compensated. They must be compensated. The irony of this Bill being brought by the Member for Couva South does not escape me. The irony of this piece of legislation being brought by someone who has made a life's work of defending criminals and persons who have caused injury and death to members of the protective services, and walked away free because of technicalities and inconsistencies in the administration of justice. The irony of the Member for Couva South, bringing this piece of legislation today does not escape me.

It is not correct to state that it has not been the policy of governments to compensate members of the protective services who were injured in the course of their duties. That is not so. The fact is that it is not enshrined in legislation. Governments for years—including the government of the Member for Tobago East, and that of the Member for San Fernando East—have taken measures and put in place arrangements to compensate members of the protective services and their families who have suffered loss as a result of executing their duties.

In the case of the coup of 1990, it was left to the administration of which I was a proud member to clean up the messy arrangements that had been left by the previous administration; the inadequate arrangements that had been made for the policeman who had lost his leg, and the families of other members of the protective services who had lost their lives during the attempted coup. It was left to us to clean up the messy arrangements that were left there, and to put in place compensatory arrangements for the children of some of the deceased persons, and compensation for the medical expenses of some of the members of the protective services.

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It is wrong to say that it has never been the policy of any government, to compensate members of the protective services who suffer injury or loss as a result of execution of their duties. It is absolutely wrong and false. The fact of the matter is that governments have always taken steps to deal with this. What this bill is doing is simply enshrining the present arrangement into law to remove the bureaucracy that exists, the loose and woolly arrangements such as those we found, and to give persons a constitutional right to compensation as the Attorney General has pointed out. This is what this is doing. But it is incorrect to say that governments have not, as a policy, sought to compensate members of the protective services. That is simply untrue. I find it amazing that of the hundred odd countries in the world, the Attorney General could have made a statement that this was the only country establishing a policy to compensate members of the protective services who are injured as a result of the execution of their duties, an uprising and so forth. Absolute nonsense, Mr. Speaker!

So while I reiterate that we on this side fully support this Bill, it is the political hypocrisy of the other side that I have difficulty with, the political hypocrisy of the Member for Couva South. As I said, he has spent his life defending criminals, working the loopholes in the legal system to make sure that murderers and criminals got off scot-free. He spent his life working the loopholes, and now comes here with a bill to compensate police officers. This is political hypocrisy!

**11.30 a.m.**

Really, Mr. Speaker, crime is not a game. The fight against crime is not a game. It is very dangerous to play with statistics; to come into this Parliament and say there were 127 murders in 1995, there were 126 in 1996, so crime has gone down. Tell that to the families of the 126 people who were murdered. It is very dangerous to play with statistics. And as far as I am concerned the crime situation is no better and it is in fact worse than it was 12 months ago. Even so, the apprehension among the citizens in the country, the fear, the increased acquisition of burglar alarm systems, the increase in personal security guards in peoples' homes—I mean those statistics would give you an indication of how people feel about the crime situation. Not, as I said, there were 127 murders last year and 126 this year so crime has gone down; or the police had 100 vehicles last month and now they have 113 so that things are better.

When citizens of this country can feel safe, when one can walk the streets without fear, when one can go out of one's home at 12.00 o'clock in the night



without fear of being ambushed, then a Government can truly say it has made a dent in the crime situation. So I am asking the administration not to play politics with the very serious matter of crime. Get on with your work! Get on with your work! All of these ribbon cuttings and receipt of vehicles and so forth, and photographs and public relations sessions and photo opportunities do nothing to stop the criminal who intends to kill someone, burn the body and leave it in a car. They do nothing to stop the criminal who intends to break into an old woman's home and rape and murder her.

Mr. Speaker, I do not wish to prolong this debate any further. I simply wish to make it absolutely clear that we in the PNM fully support this legislation—we fully support this legislation; and we are pleased that the Government has had the good sense to amend Schedule II, to remove any doubt whatsoever and to allow the victims of the 1990 coup and their families to receive compensation. We support this legislation on that basis. But I simply wish to place on record that I am fed up with the political hypocrisy, the “gallerying” and the “pappyshowing” from the other side with regard to this serious matter of crime. And I am asking the administration to get on with its work, and stop making a mockery of the whole question of administration of crime and justice.

I thank you, Mr. Speaker. [*Desk thumping*]

**The Minister Extraordinaire and The Minister for Tobago Affairs (Hon. A. N. R. Robinson):** Mr. Speaker, it has been said that the best method of teaching is by example and if we wanted a lesson in “gallerying” and “pappyshowing” we have had it from the Member for Diego Martin East. [*Laughter*] I think it is fortuitous that this debate is taking place at this time. It is also fortuitous that this Bill, for which the second reading is before the House, is supported fully by Members of both sides of the House. It is also fortuitous that it is a matter affecting the welfare of the protective services. But when it comes to the protective services, we are dealing with a matter of national importance; we are dealing with a matter which is a national issue and we are dealing with an area which is concerned with the protection and the safety of the nation.

I want to take this opportunity to pay tribute to the protective services for the work that they have been doing over the years, and in particular, the work that they do, not only in respect of the control of crime, but also in respect of the protection of the democratic institutions and the rule of law in Trinidad and Tobago. The rule of law is under siege in many countries and even though within

recent times there has been a proliferation of democratic states in areas which have been subject to dictatorial rule; those democracies are fledgling democracies. They are vulnerable and subject to all forms of attack, and it is absolutely necessary that countries which have been able to establish democratic practices, democratic principles and democratic norms should rally in support and in defence of those fledgling democracies all over the world. And Trinidad and Tobago, Mr. Speaker, which has had a varied history—if you like, a chequered history—has had experience from which not only our nationals should benefit, but nationals of other countries can benefit. And, in fact, we have been assisting other countries to establish their own democratic systems. We have done so in Africa, Namibia, and in Haiti, and we have done so in other countries in respect of their electoral systems.

So that Trinidad and Tobago occupies a very important position, not only in respect of the Caricom region in terms of the leadership that we have been endeavouring to give over the years. There has been, at times, some misunderstanding regarding the role of Caricom and Caricom leaders in this regard. At a later stage, I will have more to say about this in respect of Trinidad and Tobago's position in assisting other countries in the region.

But, I want to emphasize this, that what we are debating today is not only a matter of national concern but it also has implications for the region, and implications for democracies worldwide. Consequently, it is, to me, a cause of particular gratification that this debate takes place at this time, that it is approached in a bipartisan manner apart from the cut and thrust one expects in a debate of this kind. But, may I say while it is important to provide for the welfare of the protective services—and in that regard emphasize and strengthen the importance of the rule of law and our personal safety and the preservation of our democratic institutions—it is also important to observe and to appreciate the significance of events in our history.

So that the national memory should be enriched, the national psyche fertilised and a direction given to our society and in particular the young people in our country, regarding the future course that we take. I said it is fortuitous that the debate is taking place at this time because it takes place in the month in which this Parliament was violently assaulted and an attempt made at a violent overthrow of our democratic institutions. The best thing, the greatest thing that this Parliament can do is to observe that date as a Parliament and let the memory of the horrendous nature of that event be sunk into the national psyche.

So the country can rededicate itself in a very serious, very profound and very contemplative manner to the preservation of our freedoms, our democratic system and the principles and values which underlie the multicultural, multiracial, democratic system of government that we have.

**11.40 a.m.**

I make an appeal, today, to all parties represented in this Parliament, the Parliament as a whole, to observe July 27 in a significant way. But let it not be done in a partisan fashion as though it was a matter of party politics or a matter of particular individuals involved. It is the nation that was involved. It is our national system of government that was involved. It was our Constitution that was involved; our democratic system and values that were involved. This is what every citizen of this country, and particularly, our school children must understand, if there is to be a true and lasting appreciation of these values in our national life, and if the country is to rally in the future against any such attempt to destroy the very foundations of the society that we have come to accept as such. That is the appeal I make, that July 27 be an important date in the history of this country, recognized by all of us. [*Desk thumping*]

**Mr. Manning:** Mr. Speaker, I thank the hon. Member for Tobago East for giving way. There was a previous attempt in Trinidad and Tobago at violating the Constitution in a similar way. It was on April 22, 1970. Is the hon. Member for Tobago East also suggesting that date also be dealt with, in a special way, by this Parliament and by Trinidad and Tobago?

**Hon. A. N. R. Robinson:** Is the hon. Member for San Fernando East against regarding July 27, 1990 as an important date that should be regarded by all of us as having particular meaning for the society and for the nation? Is he against it? I want to know. I am attempting to adopt a very dispassionate impartial attitude in this matter. But if there are hon. Members who are against it, and particularly, the hon. Member for San Fernando East, then I shall have to adopt a different attitude in the future. I want to make it absolutely clear! I shall have to reconsider my whole position in the politics of this country, if there is objection to regarding July 27, 1990 as a date of special importance, and for special commemoration, and to which we attach special significance in the history of this country. [*Mr. Manning rose*] Yes, I give way.

**Mr. Manning:** Mr. Speaker, I thank the hon. Member for Tobago East for giving way for a second time. I merely want to reiterate what I said just now. Is

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the Member for Tobago East also suggesting, with the accent on also, Mr. Speaker, that April 22, 1970, an occasion on which the Constitution was similarly violated, be treated also as a special date in Trinidad and Tobago?

**Mr. Assam:** No.

**Mr. Manning:** I would like to know, Mr. Speaker. *[Interruption]* Please. I would like to know whether the hon. Member for Tobago East is against treating April 22, 1970 in the fashion in which he suggested that July 27, 1990 should be treated?

**Hon. A. N. R. Robinson:** I have raised the question of July 27, 1990, when this Parliament was violently assaulted, when the lives of all of the Members of Parliament were under threat; when a Member of this Parliament was killed; when Members of the protective services were killed.

**Mr. Assam:** Thirty-two people died!

**Hon. A. N. R. Robinson:** When employees going about their duties were killed. If that means nothing to the Member for San Fernando East, let him say it.

**Miss Nicholson:** He said it meant nothing to him.

**Hon. A. N. R. Robinson:** I am fully in support of this Bill, Mr. Speaker. I go no further at this stage. I am fully in support of this Bill.

It is not as simple as the Member for Diego Martin East may think, because in the context of world society and in the context of what frequently happens in democratic countries, one might find individuals who are not committed to the principles and the practices of democracy to which we are, and who might attempt and succeed, also in connivance with some members of the protective services. When they succeed, are they going to use this Act and say some of those members were killed in the line of duty because they were right to overthrow the Government? It is not as simple as the Member for Diego Martin East thinks.

**Mr. Imbert:** No, no, do not say that.

**Hon. A. N. R. Robinson:** It has happened. It happens, in different countries, that the normal method, virtually, of coming into power is by way of coup against the authorities of the state. So one has to consider very carefully the kind of amendment that is put into this Bill at this stage, which would protect the

democratic system and values, firstly from being attacked, and the citizens from having to pay afterwards for having had their system overthrown.

So much foresight must go into the passing of legislation. Situations that can occur must be provided against, once they can be foreseen. It is not true to say that it has been said on this side that members of the protective services have not been compensated in the past. What was said is, firstly, that they were not entitled as of right to compensation; and, secondly, in many if not most instances, persons who were injured or who died, were not compensated at all. *[Interruption]* That is the argument that was put forward. Not that nobody was ever compensated.

Firstly, it was not a matter of right; it was not enshrined in the law; there was no legislation which provided for it as a matter of right. Secondly, where there was compensation it applied to some and not to all.

**Mr. Imbert:** On a point of clarification. I am going back to your earlier point. Is the Member suggesting that the compensation would be involved only if the uprising was successful and was put down? I am just asking, because you made the point that there could be a successful coup, and then the Bill could be used against the citizens. They would have to pay. Are you saying that, should there be an unsuccessful coup, where revolution was overturned or something like that—

**Hon. A. N. R. Robinson:** I am glad that the honourable lecturer in law, for Diego Martin East has at least appreciated that he has not understood my point.

**Mr. Imbert:** Yes. I want to hear.

**Hon. A. N. R. Robinson:** The point that I was making is this. Not assuming the hon. Member for Diego Martin East, but assuming Mr. X who is an insurrectionist induces some members of the protective services on his side, some of whom are killed in the process of his rebellion, and now he gets into power and uses the resources of the state to pay compensation to the persons who are killed in the rebellion. That is the point I was making. I am saying that one has to foresee situations of that kind.

**Mr. Imbert:** You are quite right.

**Hon. A. N. R. Robinson:** Now, why is the hon. Member for Diego Martin East protesting so much?

**Mr. Imbert:** I am agreeing with you!

**Hon. A. N. R. Robinson:** The point I am making is not as simple as it may appear to be. So, I clarify the position in respect of that particular position from the point of view of argument.

I am sorry the Member for Arouca South is not here, because she has promise, but she is clearly in need of tutelage. *[Interruption]* Hon. Member for Diego Martin East is attempting to provide this.

**11.50 a.m.**

Let me emphasize that the point I am making is, firstly, that it was not a matter of right, and, secondly, even where compensation was paid it was paid to some and not to all. Is that now clear in the mind of the lecturer, the hon. Member for Diego Martin East?

**Mr. Imbert.** Yes, thank you. *[Interruption]*

**Hon. A. N. R. Robinson:** He was a good teacher in French which is a logical language.

Mr. Speaker, I now refer to the events of 1990 insofar as the treatment of the victims of that attempted coup is concerned. It was categorically said by the Member for Diego Martin East that nothing was done and he was glad to see that something is now being done in order to ground claims of those victims for relief. May I say that there is nothing which is further from the truth. I now have before me the Cabinet decisions regarding those matters. Firstly, that of August 16, 1990 which states:

"Cabinet agreed:

- (a) that Independence Day, 1990 be designated a Day of Thanksgiving emphasizing Family Life and Rededication to Nationhood, to be marked by religious services throughout the country in lieu of the traditional military parades;
- (b) that the Minister of Justice and National Security consider the ideas in Note YSCCA(90)53 in developing a Programme for Independence Day Celebrations;"

Let me go now to the more relevant part:

- “(e) in principle that an ex gratia award equivalent to three (3) years salary be paid to the Estate of those who lost their lives in the line of duty during and arising out of the attempts to forcefully overthrow the elected

Government of the Republic of Trinidad and Tobago on July 27, 1990, that is, Mr. Leo Des Vignes, Member of Parliament and Parliamentary Secretary in the Office of the Prime Minister, and those other persons who held office in the Public Service;

- (f) that with respect to its decision recorded at (e) above, the Minister of Health submit:
  - (i) a list showing the persons who lost their lives in the line of duty
  - (ii) the cost involved in meeting the payments and the source of funding."

On August 30, 1990, another decision was taken, and I read as follows:

"Cabinet, having noted that—

- (1) a number of persons in the service of the State, including Parliamentarians and public officers, such as members of the Civil Service and the Police Service, suffered physical injury, in the course of their duties, as a result of the events of July 27, 1990; some were also severely traumatized by those events;
- (2) while provision exists for public officers who suffer injury arising out of and in the course of their employment to receive free medical attention and the medicines at State institutions (or other approved institutions, where necessary), the Minister of Health considers that in the particular circumstances, all persons in the service of the State who, in the course of their duties, were injured and/or traumatized as a result of the events of July 27, 1990, should receive treatment at Government's expense as indicated in paragraph 3(a) to (d) of the Note; in addition the Minister was of the opinion that the period/s during which such persons are required to be away from their jobs as a consequence of the injuries/trauma suffered, should be granted as sick leave or extensions of sick leave with full pay;
- (3) the effects which the events of July 27, 1990 have had on a number of public officers and their families, have precipitated the need to consider the introduction of an Employee Assistance Programme (EAP) in the Public Service; such a Programme will be aimed at reducing problems in the work force, and will provide for

assessment, referral and counselling services to troubled employees with the aim to restoring those employees to full productivity; however, because of the size of the Service, it will be necessary to undertake a Needs Assessment in the first instance, in order to determine areas of priority,

agreed:

- (a) that persons in the service of the State, that is, persons paid from public funds who, in the course of their duties, suffered injury and/or were traumatized as a result of the events of July 27, 1990, should receive treatment at Government's expense, as indicated thereunder:
  - (i) medical and/or psychiatric treatment, including prescribed medicines, at a State or other health institution in Trinidad and Tobago
  - (ii) medical and/or psychiatric treatment, including prescribed medicines, by registered medical practitioners in Trinidad and Tobago
  - (iii) treatment at an institution or by registered medical practitioners abroad where the treatment at (i) and/or (ii) above is certified to be unavailable in Trinidad and Tobago
  - (iv) treatment abroad as recommended by the Ministry of Health panel of doctors;
- (b) that funds to meet the expenditure to be incurred in connection with the decision at (a) above be identified by the Ministry to which the relevant person is attached, in consultation with the Ministry of Finance;
- (c) that the period/s during which the affected persons are required to be away from their jobs as a consequence of the injuries/trauma suffered, be granted as sick leave/extensions or sick leave with full pay;
- (d) to the introduction of an Employee Assistance Programme for public officers;



- (e) that in the context of (d) above, the needs of all public officers as well as those persons in the Parliament Building who were affected by the events of July 27, 1990, be immediately addressed;
- (f) that the Minister of Health, in consultation with the acting Prime Minister, agree on an appropriate person for assignment to the Programme referred to at (d) above;
- (g) that an appropriate letter be issued to the employees at the Red House."

Mr. Speaker, one sees how far-reaching were those decisions taken, and, there were numerous others. I have documents to show follow-up action in effect: there is an Employee Assistance Programme which was started; people's medical expenses were paid and their children were educated. *[Interruption]* The Member is misrepresenting what was said; please do not at this stage. The Member should please listen to my contribution, and he would be enlightened by it. He should not try to misrepresent. The fact is that all this action was taken and the whole programme established which had to be followed through. Obviously, this was 1990, it did not end in 1990 or 1991. So, if the PNM came in and had some work to do then I think they should be proud that they were guided as to what they should do. Even then they did not do it so we have to come in and do it. *[Interruption]* Yes, the UNC/NAR Government is doing it. *[Desk thumping]* Has the Member heard the support I have? They had nothing like that. *[Desk thumping and laughter]*

### **12.00 noon**

This is really one of the finer moments in the life of this Parliament and it should be regarded as such. I hope Members opposite would rise to the occasion on which one would demonstrate one's patriotism. When one's country is under siege one does not turn one's back and say it is not one's business. My country is my country.

In the days I entered public life, those were the days of the height of the anti-colonial movement and one expected anything. One pledged one's life, fortunes and sacred honour in the service of one's country. One was fighting against an imperial power. There were no arms and physical power. One was prepared to march at Chaguaramas barehanded. That is the spirit of those of us of that era long before those gentlemen emerged from areas of darkness. Those of us of my

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generation had pledged everything which we had to build and achieve a nation and somewhere in the world that we can say belongs to us. We have somewhere we can build in our image.

On occasions, as St. Paul said, it is all right to play the fool but on occasions we must rise. We must rise and demonstrate a genuine spirit of nationhood that can give some lift and inspiration to the people whom we represent. This is the spirit in which I have joined this debate, very conscious of the far-reaching nature of the issues and the role of the men and women whom we honour today by providing in this manner. In fact, we recognize the nature of the services which they rendered to this country, and consequently and appropriately, it is these services which we honour.

I ask Members opposite in that spirit, for God's sake, the nation's sake, our children's sake and our future sake, rise to the occasion.

Thank you.

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Speaker, I thank hon. Members on both sides of the House for the contribution they made to this Bill. I thank particularly the Member for Laventille East/Morvant. It is a pity that he stepped out for a while. In his contribution he spoke proudly as an ex-member of the Trinidad and Tobago Police Service. There are not many of us who have served in the military or the police service. It is useful to have somebody on the Opposition Benches who understands what the police officers have been through and what they are to this country.

The Member for Laventille East/Morvant served for a number of years in the police service in the pre 1970 days when the police service was at a high level of its performance. The police service had been regarded virtually as securing the country and keeping problems at bay in 1970. I believe the Member for Laventille East/Morvant has fond memories of the police service, hence his positive approach towards the Bill, unlike the older Members of the Opposition Benches whom I trust would not lead the young man astray.

He seems to think that in my case I am under the influence of Members on this side. I have no problem with that because we are as one on this side and we are all interested in the people of this country. We are here to get results. They could take the claim if they wish. If it is that the Member for Diego Martin East wishes to take the credit, I have no problem with that. I am not here to take credit. I am here

to do a job and to get certain things done. Credit is not like a bank account. It does not help. *[Interruption]* For what it is worth I would find something new. If it is your constituency I would offer you some flowers.

I would like to continue with the experience that the Member for Laventille East/Morvant must have had in the police service which led to a very positive contribution. As you are aware in meeting with the Attorney General after the last sitting, we were able to address these concerns in a positive manner. When we get to the committee stage the necessary amendments would be made. As pointed out by the Member for Tobago East, this is the sort of Parliament where we contribute to getting the laws passed that would benefit the people of this country.

I would like to ask the Member for Laventille East/Morvant—somebody can pass it on to him—if he can recall his days in the barracks when he did drills. They marched up and down and performed various drills which instilled discipline in the trainees. They are the same policemen and women who serve us now. I would like to point out that in doing drills there is a certain movement called marking time. One stands in one place and lifts one's legs “left, right, left, right”. I caution him because the party to which he belongs seems to be stuck in time and marking time gets one nowhere. It keeps one in the same position. As a matter of fact, when everybody is going by in this day of change where the whole universe is moving towards the 21st Century, if one is marking time one could actually claim that one is going backwards. I simply caution my young Friend that marking time and being influenced by people who are perhaps stuck in time would not help him in his political career. I would really like to see him develop the potential which he obviously has.

**Mr. Valley:** We would not invite you back to our House.

**Brig. The Hon. J. Theodore:** If I have to be invited, so be it, Member for Diego Martin Central.

The point is I regret that the Member for Laventille East/Morvant is not here but we are impressed with his contribution. I am extremely pleased that the points he made could have been addressed and that this Bill would meet the satisfaction of all concerned here. It has been clearly stated both at the beginning and the end.

**Mr. Speaker:** I have heard the asides from the sitting position concerning guests in the House. Let us continue to show guests in the House that we behave in this House. Please! Let us hear the Minister in silence.

**12.10 p.m.**

**Brig. The Hon. J. Theodore:** Thank you, Mr. Speaker. Maybe, according to the Member for Diego Martin Central, I have to be invited to come here. When I am invited I feel it my duty to appear. It is a pity I am not in a position to refuse because of the behaviour which is being exhibited here.

**Hon. Member:** The Constitution gives you a right to be here.

**Brig. The Hon. J. Theodore:** As has been pointed out to me, the Constitution gives me a right, as a member of Government, to be here.

Let us get back to people for whom I have some respect. The Member for Laventille East/Morvant, as I pointed out, said at the beginning of his contribution that they had no difficulty whatsoever in supporting this legislation in its entirety and were giving total and wholehearted support to the principle of it. The hon. Member followed through with some very meaningful and positive suggestions and observations which will obviously lead to an Act which will meet the satisfaction of all parties concerned, especially the members of the protective services.

I trust that all the queries which have been raised have been satisfied. I thank my colleagues, the Minister of Legal Affairs and the Attorney General, for dealing very explicitly with the points of law raised. I do not purport, like some other people, to be legally trained. I do appreciate all the help I can get in those areas.

Without taking the debate any further, I appreciate the contributions made. I would like to feel that I am always welcome here and I would certainly look forward to coming back. As far as this Bill is concerned, I trust that it will meet with the satisfaction of all parties.

I beg to move.

**Mr. Maharaj:** Mr. Speaker, there is an amendment which must be drafted, with consultation. Can we defer it until after the lunch break? We can take lunch at this time and come back within one hour.

**Mr. Speaker:** The sitting of this House is now suspended for one hour for the lunch break.

**12.13 p.m.:** *Sitting suspended.*

**1.15 p.m.:** *Sitting resumed.*

**Mr. Speaker:** Hon. Members, when the House was suspended, we had before us the hon. Minister of National Security who had moved that the Bill to provide for the payment of compensation to officers of the protective services who suffer injury or die in circumstances arising out of and in the course of employment with the state be read a second time.

*Question proposed.*

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

*House in Committee.*

*Clauses 1 to 3 ordered to stand part of the Bill*

*Clause 4.*

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

**Brig. Theodore:** Mr. Chairman, I beg to move that clause 4 be amended by deleting the words "illness or" instead of "such illness" as stated in the list of amendments which was circulated.

It will now read:

- (b) "in respect of personal injury, within one year of the date on which such personal injury was sustained."

**1.25 p.m.**

**Mr. Hinds:** I recall that during the contribution of the Member for Couva South reference was made to the query raised regarding the possibility of latent injury; and he made submissions in that respect. For the benefit of recall and for the benefit of the record, I would like to hear again what was the response to this, because if we proceed with this as amended, it would not reflect the concern that was raised. I really want to hear what the Attorney General's response is on that point.

**Mr. Maharaj:** Mr. Chairman, what I said in respect of clause 4 was that the hon. Member had raised the point that having regard to the one-year limitation, that if there were injuries which did not show up within a year and which, in effect,

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showed up after the year, the person might be affected by being denied any redress in respect of that.

I indicated to him that that is the law with respect to all injuries in Trinidad and Tobago at the present time, but that the Government was looking at the Limitation Act and was committed to bringing legislation to reform the limitation period in order to bring it into line with what exists in some other developing countries.

One of the measures is that the courts would have the discretion to extend the period of limitation where there are injuries which did not show up at the particular time, but where evidence can show that they relate to the act of negligence or the impugned act. Under the present law, the statute of limitation in respect of any action against the State is one year, but under clause 4. we are breaking with that a bit, in that respect of death we are saying four years to bring it on par with respect to ordinary litigation, or litigation against ordinary individuals.

The Limitation Act is in the process of being drafted, and when it is passed it would obviously apply to situations like these.

**Mr. Hinds:** I am very grateful to the Member.

*Question put and agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

*Question proposed,*

*Clauses 5 to 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed, That clause 13 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, with respect to clause 13, may I respectfully ask that this clause not be considered at this stage since the amendment to this clause is being typed. It deals with whether any officer was involved in any illegal activity that gave rise to the injury—that particular aspect of it is being typed.

Can we proceed with the other clauses and come back to it? I do apologize to Members.

**1.35 p.m.**

**Mr. Chairman:** I take it that hon. Members will not have any strong objections to proceeding to clause 14 and coming back to clause 13 at a later stage.

*Assent indicated.*

*Clause 13 deferred.*

*Clauses 14 to 16 ordered to stand part of the Bill.*

**Mrs. Robinson-Regis:** Mr. Chairman, I just wanted to find out from the Member for Couva South if the proposed amendment to clause 13 will in any way affect what is in clause 16, because clause 16 refers to clause 13. It would not?

**Mr. Maharaj:** No.

**Mrs. Robinson-Regis:** All right. Thank you.

*New clause 17.*

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

**Brig. Theodore:** Mr. Chairman, I beg to move that the entire clause 17 be deleted and substituted by a new clause 17 which reads as follows:

Compensation  
otherwise awarded

17. In awarding compensation for injury or death under this Act, the Committee shall take into account any damages awarded to an officer or his beneficiary in respect of the same injury or death."

*New clause 17 read the first time.*

*Question proposed, That the new clause 17 be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause 17 be added to the Bill.*

*Question put and agreed to.*

*New clause 17 added to the Bill.*

*Clauses 18 to 22 ordered to stand part of the Bill.*

*Clause 13 recommitted.*

**Mr. Chairman:** We shall now go back to clause 13 before we take the Schedules. There is an amendment to clause 13(3) by the hon. Minister of National Security which I think is before you.

**Brig. Theodore:** Mr. Chairman, we are requesting that we delete the existing clause 13(3) and substitute a new clause 13(3) (a) and (b) which reads as follows:

- “13 (3) In hearing a claim, the Committee shall determine—
- (a) whether the injury to, or death of the officer was caused by his participation in any type of illegal activity and whether any compensation is payable under the circumstances; and
  - (b) the proportion of contributory negligence if any, on the part of the officer and shall apportion compensation accordingly.”

**Mrs. Robinson-Regis:** Clause 13(3).

**Mr. Maharaj:** May I intervene. Since this is an amendment which was passed to me whilst the debate was going on I would like to suggest that in order to make it more effective we say in 3(a) “whether the injury to, or death of the officer was caused and to what extent by his participation in any type of illegal activity and whether any compensation is payable under the circumstances.”

So that after “cause” we insert “and to what extent”.

**1.45 p.m.**

**Mrs. Robinson-Regis:** Mr. Chairman, can I just indicate that, including those words “and to what extent” does not really add anything to the proposed amendment, and in any event, it would be assumed that whoever was dealing with the compensation matter, the members of the committee would look at the extent to which the involvement contributed to the injury or death. I do not think it really adds anything to the proposed amendment. As a matter of fact, it takes away from the former elegance of the proposed amendment.

**Mr. Robinson:** Except that if one does not deal with the extent to which it is caused, then one does not enter into degrees of causation; and cannot separate causes and deal with the extent to which one element entered into the picture, as against other elements.

**Mrs. Robinson-Regis:** My argument is that, once the committee has the facts before it, it will of necessity have to deal with causation and, consequently, the extent to which any single incident or series of incidents contributed to the person’s death or injury would, of necessity, come into play whether or not we included those words. It would, of necessity, because the facts would be before the



committee and consequently, they would have to deal with the issue of causation, depending on what the circumstances were.

**Mr. Robinson:** Mr. Chairman, this makes it explicit. That the committee is obligated as a matter of law to deal with the extent, as distinct from mere causation, to separate elements or degrees, so to speak, which would not be the case if it were left *simpliciter* as cause.

**Mr. Hinds:** Mr. Chairman, I would like to ask the Minister to consider this concept of illegal activity. I could quite easily envisage a situation where a member of the protective services, for example, a police officer could be acting maybe contrary to a regulation, but not necessarily illegally. There are regulations that govern the operation of the police service.

**Mr. Maharaj:** Standing orders?

**Mr. Hinds:** Yes, but that will not necessarily mean that he is acting illegally. A police officer, for example, is expected to keep the length of his hair a certain way. It must not be more than a half-inch long, if my memory serves me right.

**Hon. Member:** Are you breaching the regulations now?

**Mr. Hinds:** No, no. I am no longer a police officer, and I enjoy the freedom to grow my hair. *[Interruption]* At any rate, Mr. Chairman, if for example because he has hair that is more than a half-inch long and it gets stuck in some piece of equipment and causes him harm, that is easy to envisage. A man may be close to a machine and his hair is more than the length that the regulation dictates; it gets stuck in that machine, he sustains injury. One cannot say that he was acting illegally. Therefore, it will pose a problem in terms of the determination of the committee on the basis of this wording. I am simply saying, therefore, that I want the Members on the other side to consider that illegal activity restricts, if you like, those possibilities; and I would like you to take it into account in these deliberations.

**Mr. Robinson:** Except, Mr. Chairman, that if his hair is longer than is legally allowed, that is an illegal activity.

**Mr. Hinds:** This is the point I am making. Let me give another example. A police officer, when he is leaving on patrol, is told that he should patrol a particular area, but he finds himself somewhere else on a frolic of his own, as it were. That may not be illegal; it may not be contrary to any law in Trinidad and Tobago,

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common or statute. In those circumstances, by way of example, it would pose some difficulty for the committee in terms of assessing contributory negligence. That is the point I am making.

**Mr. Robinson:** Mr. Chairman, discussion is not on illegal activity but on negligence. Is that so?

**Mr. Hinds:** No, I am dealing with 3(a) here, and I am saying that the use of the term “illegal activity” here restricts—

**Mr. Robinson:** But you talked about negligence a while ago.

**Mr. Hinds:** Well yes, because it says:

“In hearing a claim, the Committee shall determine whether the injury to, or death of the officer was caused, and to what extent, by his participation in any type of illegal activity and whether any compensation is payable under the circumstances;”

He may not be involved in illegal activity, but he may have been—

**Mr. Robinson:** That does not apply if it is negligence. It applies to illegal activity.

**Mr. Maharaj:** Mr. Chairman, if I may assist, this is really to cover situations where the officer might have been involved in illegal activity which resulted in injury. Therefore the court is now given the power to determine whether the officer was involved, and to what extent; and there may be a situation where, even if he was involved, it was to such a minimal extent, that the court may decide that there would not be a bar to his getting injury benefits. It gives the discretion to the court, and if he is dissatisfied there is an appeal to the Court of Appeal. Where the state is dissatisfied, there is an appeal to the Court of Appeal.

*Question put and agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

*First Schedule ordered to stand part of the Bill.*

*Second Schedule.*

*Question proposed, That the Second Schedule stand part of the Bill.*

**Brig. Theodore:** Mr. Chairman, we have an amendment that we have circulated to amend the Second Schedule at paragraph (d) (i). This amendment will

take the form of deleting the words “hostilities (whether war be declared or not), civil war, rebellion, revolution”.

*Question put and agreed to.*

*Second Schedule, as amended, ordered to stand part of the Bill.*

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

*House resumed.*

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

**1.55 p.m.**

#### **PATENTS BILL**

*Order for second reading read.*

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. President, I beg to move,

That a Bill to make provision in respect of future patents and applications for patents; for the protection of inventions, to give effect to certain international conventions on patents and for connected purposes be now read a second time.

Mr. Speaker, as we approach the year 2000; as we approach the 21st Century, we see unfolding before our eyes, a new age, a new era. We see the world shrinking before our eyes as we enter the high tech electronic age; we see the hon. Prime Minister with his laptop computer and so many others with computers. We see a shrinking world, as we speak in one place we can hear our words broadcast across the globe in a couple of seconds. As incidents occur in one place, they can be relayed in seconds across the entire continent as we are witnessing a globalized economy.

No more in Trinidad and Tobago are we isolated; no more are we insulated from world events. Indeed, we cannot afford to be isolated and we cannot afford to be insulated from what is taking place in the rest of the world. Within this changing scenario, in the countdown to the 21st Century, this Government has embarked on a progressive legislative agenda so as to facilitate the absorption of advanced technologies and the stimulation of domestic innovative activity in order to contribute to the development of Trinidad and Tobago and so to place Trinidad and Tobago firmly on the world map.

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The legislative package to reform and revise intellectual property law of which the Patents Bill is but a part, will be, in my respectful view, part of the legislative agenda that would place Trinidad and Tobago firmly within the world economical environment.

When we speak about intellectual property there are many who do not understand, and permit me a few moments, Mr. Speaker, to briefly explain what it is we mean when we talk about intellectual property rights and intellectual property. I am sure the Member for San Fernando West, with the very pleasant smile that he has, would fully appreciate and understand what is meant by "intellectual property rights".

Mr. Speaker, basically, intellectual property rights are exclusive rights that are conferred by law to an individual, enterprise, corporation or any entity for the product of that individual, enterprise or corporation for the product of his or its intellectual property.

Products of the intellect can take many forms as we know, and those that would be protected include, scientific inventions, industrial designs, signs of a purely commercial value or trademark, a trade secret on the one hand; or they may be in the form of a literary work. It may be in the form of an artistic work, a musical work; for example, we think of calypso and chutney as ready examples in this land of ours.

What intellectual property law does is to confer on the individual the exclusive right of exploiting, assigning, of transmitting and contracting out the creations of his intellect. Those creations would have to be in some form as expressed in a legally admissible format and, in some cases, are subject to registration procedures.

Through the enforcement of such rights a person is therefore to regulate the use of the creation, invention or whatever it may be, for example of a musical work or an invention, and they can also regulate the commercialization of the product as for example a compact disc which would contain the creation of the intellect.

In other words, in the same way that a person owns land or a person may own a car or any other item of person or property, and the law provides protection for those tangible rights and ownership, provides protection and grants the individual exclusive rights to exploit the land or car in terms of selling it, renting it or importing a car or exporting a car as it may be, in the same way with this

intellectual property the law provides protection for the exclusive exploitation, assignment, transmission and the contracting out of novel creations of the intellect.

We may look at intellectual property law in two categories. One has to do with an area which is known as industrial property and the other is the law relating to copyright and labelling rights.

Mr. Speaker, if I may, with your permission, indicate that a bill dealing with copyright and labelling rights to revise our existing Copyright Act is at present being prepared by the Attorney General's Department and that is in the final stages of drafting and would come to the Parliament shortly. The package of bills before this House includes the Patents Bill, the Industrial Design Bill, the Layout-Designs (Topographies) of Integrated Circuits Bill, the Geographical Indications Bill, and the Protection Against Unfair Competition Bill. There are other Bills that would come shortly to Parliament that are in their final stages of drafting by the Attorney General's Department, that is a bill on trade marks and a bill on the protection of plant varieties. These, we hope, would be laid shortly. As I said, all these bills dealing with intellectual property have to do with what is termed as "industrial intellectual property".

### **2.05 p.m.**

In my respectful view, these Bills, when enacted, would put in place legal and administrative framework to protect inventions or creations in the scientific, technological and industrial fields, and, on the other hand would also protect distinctive signs which distinguish goods or services in commerce. Further, the protection of scientific, technological, commercial and industrial creations would be supplemented by another set of provisions contained within the protection against the Unfair Competition Bill which is also on the Order Paper.

That Bill creates a set of basic rules of honesty and fair dealing in economic competition. It seeks to protect the honest entrepreneur from acts of unfair competition and the consuming public from misleading acts and practices. Why should we protect intellectual property? Why should this country take steps to speed up that process? We need to understand, first of all, that protection of intellectual property is obviously not an end in itself.

In our respectful view, and I am sure in that of the previous administration, and as I would indicate, they had taken certain steps with respect to legislation governing intellectual property. The Member for Diego Martin Central would take

his bow. As I said, this side is never stingy in giving credit where it is due. Measures were begun by the previous administration.

In terms of international agreements which had been entered into on April 15, 1994, an agreement known as the Treaty for Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement was signed by the Government of Trinidad and Tobago. Within that agreement provisions were made for local laws in Trinidad and Tobago to implement and put in place legislation dealing with intellectual property laws. Thereafter on September 26, 1994 a memorandum of understanding was signed between the Government of Trinidad and Tobago and the Government of the United States, basically carrying the same types of provisions for implementation/enactment of local legislation dealing with intellectual property laws, and to some extent seeking greater protection for intellectual property than the TRIPS agreement had done.

The bilateral agreement which was signed between Trinidad and Tobago and the United States of America reduced the time-frame which was set by the TRIPS agreement which was five years from the signing in April 1994. We would have had five years basically within which to implement our local laws. When the bilateral agreement was signed later in September it reduced that five-year period. We undertook within the bilateral agreement to have the local legislation, not just put in place but enacted and implemented within two years. This was done by the previous administration in terms of acceding to these various agreements.

That meant that legislation dealing with intellectual property locally has to be enacted and implemented prior to September 26, 1996. When this Government came into office steps had to be taken to hasten the drafting of the legislation. At this stage, I would like to pay special tribute to certain members within the government departments and private attorneys who have given from 1987—if I am not mistaken—unstintingly of their time, creative ability and intellect with respect to helping with the intellectual property legislation at every stage of its drafting.

I make special mention of Mr. Brian De Gannes, attorney-at-law who voluntarily gave of his time in order to have this legislation put into place so that it could be here today. I also pay tribute to the work done by Miss Deborah Dade who is also a private attorney-at-law who voluntarily gave of her service and continues to do so. I also give tribute to Miss Mezena Kadir who is our assistant registrar in charge of the intellectual property registry. She continues to work night and day to ensure that we can meet the deadlines to put this legislation into place.

To Miss Kadir we say thank you. I also pay special tribute to Mr. Malcolm Spence who is also attached to the intellectual property office. They have worked long evenings, late nights and all day in order to bring this legislation in place. It would be remiss of me if I did not mention the hon. Attorney General who ensured that the legislation was drafted. I thank him that we could have this legislation brought to the House today to ensure that we can have it passed, enacted and implemented before the deadline date.

From 1994, when that agreement was signed, it was four years, and then it came down to two years to 1996. Within the past eight months if I may so, the Attorney General's department together with the assistance of the Law Commission and the legal drafters in the Chief Parliamentary Counsel's department have worked unstintingly on this legislation. Again, I say thanks to all those persons.

I come back to the question as to why we need to put this intellectual property legislation into place. I am saying that it is therefore part of our thrust in terms of meeting our international obligations within the deadlines set by international agreements. There are also more important considerations. These have to do with the encouragement of creative activity in this country, industrialization, investment and honest trade. These pieces of legislation including the Patents Bill, with which we are specifically concerned at the moment, are designed to enhance the quality of life for all of us in Trinidad and Tobago. There are several reasons for Government's purpose in enacting this package of legislation.

An industrial property system protects innovation and creative expression. It is a helpful precondition to creating and using new technology and therefore, it would boost economic growth and aid development. A strong system of intellectual property rights is indispensable to technological development and advancement.

There are several other very important reasons why this legislation is necessary at this time. It would:

Seek to create an environment to encourage the people of Trinidad and Tobago to channel creative energies into areas which are productive and profitable in ways that would redound to the benefit of the nation as a whole.

Provide strong protection for the creativity of our people in all areas of human endeavour.

Make a contribution to the national Treasury.

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Improve our understanding of the technology which is being created and used by other nations.

Improve access to new technology which is making a growing contribution to the lives of people internationally.

Improve the cost of access technology thus making more efficient use of domestic savings for investment.

Encourage greater investment in the manufacturing sector, research and development in areas which can be profitably commercialized.

Deepen trade relations in the global market place.

Place Trinidad and Tobago in a favourable position to meet our obligations under the international treaties and conventions to which we are party.

The package of bills, including the Patents Bill, when enacted would put in place the legal and administrative framework for the protection of intellectual property.

**2.15 p.m.**

The Bills seek to protect intellectual property and to secure intellectual property rights, firstly, by the establishment of an intellectual property office as a new entity entrusted with the responsibility for the administration of all the laws related to intellectual property and for the rendering of patent information services to the public. This office will be responsible for keeping a register of patented inventions, industrial designs, layout designs of integrated circuits and trade marks. If we look at Part II of the Patents Bill, we would see the provisions establishing the International Property Office.

Secondly, the package of bills seek to protect and secure intellectual property rights by conferring on the individual, the corporation or entity, property rights with respect to his or its intellectual property, or patented invention, registered industrial design, layout design or trade mark and that means giving that person or corporation or entity the exclusive rights to deal with, exploit, assign, transmit or contract out that particular item of property. Mr. Speaker, if we look at Part X of the Patents Bill we would see the conferring of these exclusive rights on the owner or propriety of the particular item of intellectual property.

Thirdly, the Bills seek to protect intellectual property rights by setting up a framework for civil/judicial procedures, that is, making provisions for the



individual to seek redress for infringements of his intellectual property rights by way of civil actions in the High Court. It also seeks to provide the redressed remedy of an injunction to stop the infringement of a right. We can see this in Part XII of the Patents Bill, the civil/judicial framework that is set up there for the protection of intellectual property and in case of patents, for patented property.

The Bills also seek to make harsher remedies available to the judicial authorities, such as ordering the removal of infringed goods from the market without compensation to the owners of those infringed goods. In Part XVII of the Patents Bill, as in the other Bills in the package, there are provisions to establish penal procedures and sanctions which include prison sentences, heavy fines, as well as confiscation, seizure, and destruction measures for infringing goods and instruments used in the commission of crimes. The Bills create criminal offences for infringements of the intellectual property rights and these offences are punishable by fine and imprisonment.

Fourthly, the whole framework of protection for intellectual property rights is further supplemented by the Protection Against Unfair Competition Bill which seeks to put into place basic rules of honesty and fair dealing in economic competition. Yet further, protection will be accorded to intellectual property in this country by consequential and further amendments which will need to be made to the Customs Act and to the Evidence Act, which will help to strengthen enforcement provisions where there are breaches of intellectual property rights.

If we look more specifically at the Patents Bill, clause 2 of the Bill defines a patent as “the title granted to protect an invention”, and clause 8 provides that a patentable invention must be new, involve an inventive step and must be capable of industrial application.

Like so much of the legislation in this country, the law pertaining to the issuing and ministering of patents can no longer comfortably meet the requirements and obligations of today’s environment and today’s international trade corporations and trade markets. The present law on patents, the Patents and Designs Act, which was Act No. 10 of 1900, which can now be found in Chap. 82:83 of our laws, is based upon ordinance No. 25 of 1867, amended the existing law. The present Bill, the Patents Bill, 1996, seeks to replace that derived law, which is on our statute books today, and to introduce a modern patent law in this country.

The new law is intended to apply to future patents and applications for patents. The proposed enactment is necessary as a step preparatory to the accomplishment

of the objectives of providing impetus to scientific and technological development as well as to the rapid industrial growth of Trinidad and Tobago, heavily dependent as this country is on science-based industry in oil, natural gas and other fields.

This Bill also gives us the opportunity for this country, as a member of the international union for the protection of industrial property, to secure maximum benefits from being party to what is known as the Patent Co-operation Treaty, 1970 to which this country has become a signatory. The international convention provides means whereby patents can be obtained in any or all of the states which are signatories on the basis of a single international application which is filed and processed centrally. This convention established the main principles that signatories to the convention agree to apply to their treatment of intellectual property in each of the countries.

There are two main types of patent systems which have co-existed internationally. Trinidad and Tobago inherited and maintains what is known as the simple registration system. The other system is known as the full examination system. The 1996 Bill, with which we are at present dealing in this honourable House, is proposing in essence that Trinidad and Tobago stop using the simple registration system and begin to use what is known as the full examination system. It would be interesting to consider the difference between the two systems so that we can appreciate the benefit from using the full examination system.

First of all, Government considers it in the public interest that technologies of all types should be developed and improved. Secondly, Government considers it in the public interest that the more significant of these advances, called inventions, should be fully disclosed and brought into the public domain to prevent the wastage of effort and resources that might be cause for duplication.

A patent system is designed to accomplish both these objectives. It does so by granting to the person responsible for the invention the opportunity to profit from the application of his intellect through a monopoly right within the territory of the state for a specified number of years in exchange for full public disclosure. At the end of the specified number of years, this legislative monopoly right ceases and the invention will pass into the public domain.

The main difference between the simple registration and the full examination systems lies in what is known as the presumption of the validity of the information disclosed. In the simple registration system the state relies upon a declaration by

the person applying for the patent to determine the novelty, the ingenuity and the utility of the technological advance that is being disclosed. In the simple registration system, it depends on the individual's declaration. Should a person dispute the validity of the applicant's declaration, that person's only recourse would be to litigation and the cost of such action may many times deter any valid opposition being raised when an applicant would make an application under our present system.

So, too, where the time for completion of due process is beyond the time-frame for industrial competitiveness, the competitiveness in the economic world may be lost if delays are experienced because litigation is involved to determine the validity of an invention. The result is that under this simple registration system, the disclosed information cannot sincerely be presumed by the public to be valid. One implication of this is if a person cannot presume validity where patents have been granted, there is a higher cost to the acquisition of new technology and a consequent lowering of the competitiveness of investors and entrepreneurs.

**2.25 p.m.**

On the other hand, the full examination system in this, the state, determines through its own resources the validity of the information provided by the applicant. It does so by ensuring as far as is feasible that the invention described by the applicant meets the criteria of novelty, inventiveness and industrial applicability before awarding the patent. In order to do this, the state must have reasonable access to information on the state of the art in a wide range of technological areas. It must also use personnel acquainted with the level of skill in each of these areas and an understanding of how these skills can be applied in practice. The state having applied the resources in this way, allows the public the fair presumption that the information made available to it is valid, thus saving time and money and thereby improving the competitiveness of entrepreneurs operating within the territory.

The international community, unlike us in Trinidad and Tobago, recognized the importance and advantages of a full examination system many years ago, and in 1970 established what I mentioned before, the Patent Co-operation Treaty. This treaty to which we have now become a party—and when I say now, it was within the time of the last administration that this treaty was acceded to—essentially provides its members with access to a search and examination system that would be acceptable to them in terms of the presumption of validity. It does not however,

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remove the sovereign right of member states to actually grab the patent. This right will still be embodied in the local laws of each member state.

In 1984, the Government of Trinidad and Tobago recognized the advantages of the full examination system and at that time hired an international consultant to help draft a new Patents Bill. Those efforts resulted in a 1988 Patents Bill and that first proposal led to changes to our patents legislation. Also, during that same year in 1988 Trinidad and Tobago became a member of the Paris Convention. However, before the 1988 Patents Bill could be introduced into Parliament, there were a number of things taking place around the world and a number of initiatives which impacted upon what has now resulted in the 1996 Patents Bill.

Internationally, in 1993 the Uruguay Round of the General Agreement of Trade and Tariffs (GATT) included significant discussions on trade related aspects of intellectual property rights. Locally, the Government was pursuing a bilateral trade agreement with the United States and I had mentioned this before as a hopeful precursor to our entry into NAFTA. This eventually resulted in a Memorandum of Understanding between the United States and Trinidad and Tobago that had significant implications for our intellectual property legislation.

As I had mentioned before, the TRIPS agreement was signed on April 15, 1994 and the bilateral agreement with the United States was signed on September 26, 1994. Before these agreements were actually signed, the local Chamber of Industry and Commerce established a committee to review the national legislation on intellectual property and they set up what has been called an Ad Hoc Committee to review intellectual property laws. These persons have been drawn from all areas and they have continued to contribute to the development of the intellectual property laws of this country, and I want to once again mention the members of that Ad Hoc Committee, some of them have remained on the present committee which looks at intellectual property laws in this country. They are:

Mr. Brian De Gannes

Miss M. Kadir

Miss Wendy Faye Thompson

Mrs. Olive Ramchand

Mrs. Christine Raghubar

Mrs. Helen Ross-Dick

Mrs. Debra Dade

Mrs. Llewelyn Mc Intosh

Mr. Malcolm Spence

Mr. Brian De Gannes was chairman of that Ad Hoc Committee and Mrs. Debra Dade was the secretary. That committee worked with Government with a mandate to look at intellectual property laws as a whole and to look at, as well, the 1988 Patents Bill that had been prepared. The committee set up a subcommittee and I would like to have a look at the members of that subcommittee because that committee looked at the Patents Bill and, as I said, draws from members in different walks of life which is important in terms of the final result that is before this House today.

There were three subcommittees to look specifically at the Patents Bill; the Legal Committee, the Administrative Committee and the Technical Committee. The Legal Committee comprised Mrs. Olive Ramchand as its chairman, there was a Mr. Bain who was the president of the Inventors Association; there were two attorneys-at-law, Mr. Anthony Guerra and Mr. Brian De Gannes, and Miss M. Kadir from the intellectual property registry who was the Government's representative on that subcommittee.

The Administrative Committee to look at the Patents Bill comprised Mrs. Kadir as chairman; Dr. Bartholomew who came from the Inventors Association; Mr. Bain from the Inventors Association; Mr. Sandy from the Registrar General's Department; there was a representative from the O & M Division of the Office of the Prime Minister and there was a representative from the Chamber of Industry and Commerce, Mrs. Camina Beard.

The Technical Committee comprised Dr. Narine and Mrs. Primus from NIHERST; a representative from CARIRI; Dr. Charles, an engineer from the Engineering Association of Trinidad and Tobago; a representative from ECLAC; and a representative from the Faculty of Natural Sciences. These persons with the requisite technical skills were able to look at that 1988 Patents Bill and after much consultation and the tremendous assistance from the World Intellectual Property Organization, the committee presented the Attorney General in 1993 with a Bill that became known as the Patents Bill, 1994. So there was the 1988 Bill which had been revised, and then there was the Patents Bill, 1994 which has been further revised.

Before the Bill could be introduced into Parliament [*Interruption*]*—*Mr. Speaker, you see when we give them credit where credit is due, they do not just say "thank you", but they start arguing with us. We are making it very clear that they entered into agreements and that we are bound by those agreements and this

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Government will honour them where we find them fit and proper, and they will bring benefits to the citizens of this country. So I will ask the hon. Member, through you, Mr. Speaker, to take his credit and stop the argument. He will have his turn eventually to make his argument and put his points before this House.

So there was the 1988 Patents Bill and then there was the 1994 Patents Bill. Before the 1994 Bill could come to Parliament, international agreements were finalized and signed and again I refer to the TRIPS agreement and the Bilateral agreement as well as the Patent Co-operation Treaty. By the Patent Co-operation's Treaty, Trinidad and Tobago became a receiving office for international patent applications.

The Law Commission again requested the assistance of the Ad Hoc Committee and the World Intellectual Property Organization to make amendments to the Bill. The Law Commission, and the legal drafting department of the office of the Attorney General with the result of wide consultation with the members and the persons that I have mentioned before, and the present members of the Intellectual Property Bills Committee which comprises the hon. Attorney General; the hon. Minister of Legal Affairs; Justice Guya Persaud, the chairman of the Law Commission; Mr. Brian De Gannes, the chairman of the Ad Hoc Committee to review intellectual property laws; Mr. Ramnath, Permanent Secretary in the office of the Attorney General; Miss Kadir, the Deputy Registrar General, intellectual property registry; Mr. Bagoutie, Director of the Law Division, Department of the Law Commission; Mr. Macintyre, Parliamentary Counsel in the Chief Parliamentary Counsel's office; Mrs. Debra Dade who is the secretary of the Ad Hoc Committee; Mrs. Green, from the legal drafting department and Mr. Malcolm Spence who is the technical industrial property officer attached to the intellectual property registry. These persons and the efforts put in by them have resulted in the Patents Bill, 1996.

At the same time whilst the drafting of the legislation was taking place and the amendments were going on, Government has been moving to strengthen the intellectual property registry, and with the assistance from the world intellectual property legislation, a project was commenced which is due to be completed in September 1996 identifying the needs of that registry and the needs to transform that registry into a small but very modern intellectual office.

At this point, may I indicate that the regulations that should accompany the Patents Bill, 1996 have been drafted, and they are before the Legislative Review

Committee of the Attorney General's office and should be laid in Parliament very shortly.

**2.35 p.m.**

Mr. Speaker, if we look at the Bill itself, clauses 3, 4 and 5 establish the Intellectual Property Office and entrust it with the responsibility for the administration of all laws relating to intellectual property, and for the rendering of patented information services to the public.

"Clause 6 reflects the highly confidential nature of the information which comes the way of employees in the Intellectual Property Office in the discharge of their official duty. They are debarred from using information (obtained within their work in that office) for personal gain, and they are expected to be completely impartial and trustworthy. In order to inspire confidence in the public mind, restrictions are imposed on their personal utilization of the facilities of the office, including a permanent obligation of secrecy in regard to the passing on of confidential information which comes to their knowledge in their official capacity. Any contravention of the secrecy provision is made punishable, on summary conviction, by a fine."

Clause 7 affirms the rule of natural justice by affording a party aggrieved by the exercise of the Controller of a discretionary power, an opportunity to be heard."

Clauses 8—12 in Part IV of the Bill set out the substantive law and patentability. Clause 8 sets out the three basic requirements for patentability, namely: novelty, inventive step, and industrial applicability. These concepts are dealt with in detail in clauses 9, 10 and 11.

Mr. Speaker, I could go through each clause, but I am sparing the honourable House the time that this would take. I trust that they would bear with us as we go through the major points within the specific Bill. Of course, the Explanatory Note would be very useful for Members of the honourable House if they would take the time to have a look at it.

Clauses 8—12, and later on clause 24, outline briefly the expected functions of the patent examiners. Examining for novelty, Mr. Speaker, requires access for up-to-date information. Examining for an inventive step defines the calibre and prior training required of the patent examiner. Examining for industrial applicability suggests the level of experience previously attained.

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Mr. Speaker, as an example, the German Patent Office generally requires of its examiners that they have the equivalent of a Master of Science Degree in the relevant technical subject, and that they have a minimum of five years working in industry, and they undergo a minimum of 18 months supervised in-house training as a patent examiner.

Although this Patents Bill, 1996 addresses, primarily, the administration of patents, we should bear in mind that the Intellectual Property Office that is being established within this piece of legislation, will be required to administer the other areas of intellectual property, especially in the areas of trade marks and service marks. The examination of these marks normally require less demand in tertiary level type qualifications but, at the same time, they require a greater degree of specialist in-house training.

Controllers will be expected to take decisions that will be considered judicial in nature, in examining an invention which is brought to them, a layout design or whatever it may be, and as such they must be required to have good grounding in the practice of the law in Trinidad and Tobago, so that the experience and level of personnel that is required in the Intellectual Property Office, will be quite vital when we come to deal with implementation of the legislation that is being put into place.

Mr. Speaker, Part V of the Bill deals with the right of any person, including natural persons, corporations and unincorporated bodies of persons to apply for and obtain a patent.

Part VI deals with the making of an application for a patent on the prescribed form, payment of fees, formalities of the examination, search and substantive examination of such application, and as a result thereof the refusal of the grant of a patent.

Now clause 29, which is relatively new, suggests a greater volume of accounting activity to manage a new fee structure. This is later supported by clause 87, which requires the controller to submit an annual report to be laid in Parliament by the Minister, and that report must contain an audited account of moneys received and paid.

The payment of moneys is a new function of particular importance in the new legislation, Mr. Speaker. Under the obligation of the Patent Co-operation Treaty, the Intellectual Property Office will be obliged to transfer moneys to the



international bureau of the World Intellectual Property Organization and the International Search and Examination Authorities selected by the applicant in a timely manner, so that we can ensure the property rights of the applicant.

Mr. Speaker, one would expect that growth, particularly in the area of patent processing and information dissemination, will take place over the next few years. We need the time required for training intellectual property staff, and we need to hire additional staff.

I am pleased to say that we have taken some proposals to Cabinet already with respect to staffing for and implementation of this legislation, and Cabinet's decision will be guided by the outcome of the debates in the Parliament when this legislation should become law.

It should be noted that there is an expected increase in the revenues from the intellectual property system. Many of the new services are, therefore, to pay for themselves and will pay for the infrastructure that is being put into place.

In conclusion, Mr. Speaker, the Patents Bill, 1996, in our respectful view, is a significant requirement for the improvement in the attractiveness of Trinidad and Tobago as an investment location. Its implementation is a requirement for the deepening of trade relations in the global market place. It improves a system that is self-sustaining, and it makes a contribution to the national treasury. It improves the cost of accessing technology, thus making more efficient use of domestic creative energies, and sailings for investment. It allows for the improved understanding of the technologies being created and used by other nations. It is designed to encourage greater investment in the manufacturing sector. It is designed to encourage greater research and development investment in areas that can be profitably commercialized.

It is the result of wide consultation with the relevant interest groups over several years. It places Trinidad and Tobago in a favourable position to meet its obligations unto international treaties and conventions. Finally, Mr. Speaker, it creates an environment that should encourage the people of Trinidad and Tobago, as I said before, to channel their creative energies into areas that are productive and profitable.

With those words, Mr. Speaker, I thank you, and I beg to move.

*Question proposed.*

**Mr. Kenneth Valley** (*Diego Martin Central*): Mr. Speaker. I want to congratulate my Friend from Siparia for a good performance.

Mr. Speaker, I want to take issue with the hon. Member especially with respect to the opening where she attempted to give the impression that this body, or this package of legislation is new, all coming in the last eight months, a copyright legislation, the patent—"heck" the first part of your speech, the patent copyright trade marks. But I think she corrected that later on, very much later on, when she indicated that the patent legislation, in fact, had its genesis way back in 1984.

**2.45 p.m.**

**Mrs. Persad-Bissessar:** Thank you for giving way hon. Member. I would just like to indicate, and the record will reflect that, that was not what was said on this side, Mr. Speaker.

**Mr. K. Valley:** Mr. Speaker, the record would indicate it is not a big point. I think it was corrected later on making the point that in fact it is really a continuum that one had to revise the legislation, especially the patent legislation, to take into consideration the happenings of the Uruguay Round of GATT as well as commitments under the bilateral treaty agreement. I want also to join with the Member for Siparia in congratulating the team that worked on this legislation headed by Mr. De Gannes, including Miss Kadir as well as Mrs. Deborah Dade, with whom I worked very closely, along with my former colleague at the Ministry of Trade and Industry, Mr. Hinds, who really worked quite well with respect to the intellectual property agreement with the United States which was signed in September of 1994.

Mr. Speaker, quite frankly, this is appropriate legislation. It is relevant. It is timely. It is a requirement for Trinidad and Tobago to participate in the global economy of today.

So that we on this side have no problem whatsoever with the legislation. Our hope, however, is that given the technical nature of the legislation, at the committee stage, we would see it fit to have it sent to a joint select committee so that the experts can really look at this legislation rather than we as laymen spending time and passing the clauses in the bill knowing not what we are passing. So that really is my only comment with respect to the legislation, that it should be sent to a joint select committee. My feeling is that if one wants to meet a certain deadline, that would also assist the Senate because, as one knows, this legislation must also be passed in the Upper House.

Mr. Speaker, the fact situation is that the last round of GATT—the Uruguay Round of GATT—saw for the first time this concept of Intellectual Property Rights and Trade and Financial Services being highly played by the developed countries. And, of course, that is so because as one knows most developed countries today are depending more on the service sector for growth in GDP rather than in manufacturing.

What has been happening, quite simply, is that the developing countries have been taking over the manufacturing industries where labour costs are lower, so that one found the manufacturers setting plants in developing countries. Therefore, as the first countries, or the developed countries, moved to services, they saw the need to protect that area to avoid another Japan or Taiwan or what have you.

And quite frankly this type of legislation in a sense disadvantaged Third World countries or developing countries. But there is a trade-off. As the old people say, there is no free lunch. What we get really is access to large markets. While the developed countries want to protect services, intellectual property rights and so forth, we want to attract their manufacturers to locate in our country to sell the goods back to them and to other countries. And if we want to gain that type of market access, yes, we have to trade.

As a fact, in terms of the research and development that has been spoken about with respect to software—Trinidad and Tobago perhaps not even in the infant stage—that is well developed in the developed countries and we want to protect that, Mr. Speaker. So that there is the concept of the trade-off. We want market access because of law, labour cost and so forth. We can be a manufacturing base, while the developed countries want to heighten protection with respect to intellectual property rights and so forth. So that that is the trade-off one made at the GATT.

We have stated in Trinidad and Tobago for some time what our developmental policy ought to be. We have said, quite clearly, that what we want to do is to position Trinidad and Tobago as a gateway. And I was extremely pleased, Mr. Speaker, to see Caricom accepting the concept of our model agreement. Of course, had this legislation been in place I might have wanted to patent that idea about two years ago.

My colleagues are well aware that the whole concept of the model agreement portrayed with Third World countries is born of this Government. Moving away from the concept where one listed the products which would enter markets duty

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free and moving to the concept of an exception listing with a carve-out for the less developed countries, has now not only been accepted by Caricom, but Caricom has gone further and identified countries with which they want to enter into discussions. And I want really to congratulate my successor of trade for carrying that ministry. I cannot congratulate him, Mr. Speaker, for getting into fights with prime ministers. I do not think one ought to do that.

Mr. Speaker, if that is what we want to do one sees quite clearly how important this legislation is for us because by passing this legislation we are doing something quite bigger. We are in fact allowing for the market access into other countries, into developed countries, the United States, Europe and so forth.

For example, Mr Speaker, before the Uruguay Round there was a particular problem with respect to entry into Europe where they attempted to use technical barriers to trade, having standards as well as testing and certification procedures, which created unnecessary obstacles to trade. So that while before the Uruguay Round countries, or developing countries were said to have been receiving preferential treatment into these markets, in fact, those developed countries had all types of non-trade barriers, or non-tariff barriers preventing free entry into those markets.

With the GATT one moved to the whole concept of reciprocity with respect to developing countries and with that reciprocity came the concept of the trade in Intellectual Property Rights and Financial Services.

So that, Mr. Speaker, I really do not believe that one needs to spend any length of time on this legislation. We are fully in agreement with the principle of the legislation. We do not feel of ourselves—all of us—that we have the expertise to determine on the wisdom of each particular clause. We suggest that the detailed examination of the clauses be done by a joint select committee, after which the legislation can be passed well in time for the September deadline.

Thank you, Mr. Speaker. [*Desk thumping*]

**2.55 p.m.**

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I must thank the Opposition for its support for this piece of legislation, in principle, but I would ask the Opposition to consider and reconsider its stand in this matter, in light of the following facts. That the Opposition in Government on September 6, 1994 entered into a Memorandum of Understanding between the Government of

Trinidad and Tobago and the Government of the United States of America concerning Protection of Intellectual Property Rights. Under Article I of that Agreement it states that:

“Each Party shall provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to protect and enforce intellectual property rights do not themselves become barriers to legitimate trade.

It also states:

“To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Agreement and the substantive economic provisions of the Geneva Convention...”

And so forth.

Under Article 18 of the Agreement: “Entry into Force and Final Provisions.”

“Effective upon signature, each Party agrees to submit any legislation and issue any regulations necessary to carry out fully the obligations of this Agreement within 12 months from the signing of this Agreement, and to enact and implement such legislation and give effect to such regulations within 12 months thereafter.”

Which means that by September 6, 1996 the legislation must not only be enacted, but must also be implemented.

Now the principles contained in this Bill are those contained in Article 6 of the Memorandum, which sets out all the intellectual property legislation; it sets out the policy considerations which must be enacted; and the World Intellectual Property Organization has been part and parcel of assisting countries in drafting this kind of legislation. Some of it is model legislation.

**Mr. Valley:** Mr. Speaker, for the avoidance of doubt, I am saying that we support the legislation. But since this legislation has to go to the Senate also, if we want to ensure that we meet the deadline, we should have a joint select committee work on it quickly. If the Minister is convinced that he is not going to have any difficulty upstairs, and that the legislation would, in fact, meet the deadline, then I have no problem, because this is legislation which we wanted when we signed the GATT. We knew what we were doing and we knew these were conditions, so that we have no difficulty with the legislation. All I am saying is that I do not think that

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a committee of the whole House is really the appropriate body to examine the legislation, clause by clause. That is the point I was making, Mr. Speaker.

**Hon. R. L. Maharaj:** Mr. Speaker, I am responding to his suggestion, and I want to show that it is not reasonable at this time because it would put the national interest in jeopardy. When this administration took office it did not have any of this draft legislation. It did not. *[Interruption]* No. I am saying, on the record, they did not have the draft legislation. As a matter of fact, this administration in a short space of time had to take every step to have this legislation. And tribute has been paid to the members of the Committee.

The previous government knew of the principles and policy of this legislation. As a matter of fact, pages 9 to 13 contain the policy considerations of the Patents Bill. We do not only have to pass the Bill, we have to effect the regulations within the time-frame, and to implement the legislation. This Patents Bill had been introduced in the House of Representatives on April 1, 1996. We are now in the month of July. The Opposition had April, May and June to study this Bill—three months. Is the Opposition saying that it does not have the expertise to determine whether the provisions of this Bill meet the policy considerations? If time had permitted, there would be no objection to that course, but there could be a problem, and therefore we have to deal with the matter and we will deal with the Senate if the situation arises. But on this occasion—

**Mr. Valley:** We have no fight, you know.

**Hon. R. L. Maharaj:** I am not fighting. Mr. Speaker, I am merely responding to the request to refer it to a joint select committee of Parliament. If it is done that way, the Bill would not be passed in time; it would not be implemented in time, and there would be a whole package of legislation which would not be implemented. *[Interruption]*

Mr. Speaker, I regret to say that we really cannot agree to the course which has been advocated, and I wish to assure the Opposition that, notwithstanding their having it for three months, having regard to all that has been mentioned, so many experts have looked at it, including the World Intellectual Property Organization, we have looked at it, again and again, and we can still look at it, clause by clause, as we go through the Bill this afternoon.

Thank you very much, Mr. Speaker.

**Mr. Fitzgerald Hinds** (*Laventille East/Morvant*): Mr. Speaker, as indicated earlier by the Member for Diego Martin Central, for obvious reasons, we support the measure before this House. I am very proud simply because, as has been made clear earlier from both sides, notwithstanding all the criticisms that have been levelled at us, our administration saw these measures as a small part of a larger world-class vision that we held and espoused for Trinidad and Tobago.

The fact that this legislation is before this honourable House is indicative of yet another fact that, contrary to what many people might think and contrary to the vision that other people hold of Trinidad and Tobago, we are truly in the league of test cricket, Mr. Speaker. Obviously our days for village cricket are long gone. Mr. Speaker, this package is set in the context of that vision. The world is clearly on the move. Trinidad and Tobago must be on the move with it. When we negotiated and settled the Intellectual Property Agreement with the United States, as the Members for Siparia and Diego Martin Central indicated, we assumed certain obligations and this package really is to cause us to harmonize our domestic legislation—to bring it into harmony with our international obligations.

Mr. Speaker, the existing legislation, the Patents and Designs Act, Chap. 82:83, is inherently inaccurate. It simply does not meet the needs of a modern society in this very modern world. This was passed since 1911, and the fact that we have measures before this House dealing exclusively with the question of Patents, as opposed to patents and designs in one package, is evidence that we have recognized that the legislators operating in the environment of 1911, did not take into account the fact that—*[Interruption]*

I am hearing a corrective from across the floor, which I take on board.

**3.05 p.m.**

Mr. Speaker, our concern largely has to do with the question of implementation of the measures. We know, as a party that has been in government for many years, that it is one thing to put legislative framework in place but it is yet another thing to motivate the citizens of our society to implement the measures in the manner which we foresee and, indeed, expect.

**Mr. Singh:** It is because you lack moral authority.

**Mr. F. Hinds:** I am hearing from the other side the concept of morality. I hope to keep this debate well within the confines of what is before us, but when one hears "morality" coming from the other side, it immediately causes one—

**Mrs. Robinson-Regis:** To be in shock.

**Mr. F. Hinds:** Not only to be in a state of shock, but it causes Members of this House to take note. *[Interruption]* I do not propose to be distracted, but Members on that side must never speak about morality; immorality, yes, but not morality.

People of this country will abhor the things that they would have seen and indeed, read about over the last two months in the local government elections campaign. The face of politics in this country will be changed forever by the conduct of the Members on that side. We on this side hope to keep our standards very high for the benefit and interest of Trinidad and Tobago as we did when we agreed with the United States of America, and as we thought out this package which is now before this honourable House.

Mr. Speaker, on the question of implementation, one must take note of the fact that the present registry—headed by a hard-working individual that we have heard about this afternoon in this House—is woefully inadequate to deal with the tasks that lie ahead. For an example, I want the Minister of Legal Affairs, the Member for Siparia, to recognize, as I am sure she does, that at the moment that registry is staffed with one qualified technical officer. If this legislation is to fulfil the role that we expect, and is to generate economic activity, and consequently employment, then one would expect that the Government—having seriously taken those objectives—would ensure that that department is properly and adequately staffed so as to perform its work.

Mr. Speaker, the reality is that if for any reason, sickness or otherwise, one professional happens to be away from that office, everything would immediately stop. That cannot be considered world-class and I urge the Government to direct resources to rectify that position immediately.

There is clearly a need for at least another attorney-at-law in that department for the same reason as I described a moment ago.

Mr. Speaker, the office of that registry is located on Frederick Street, between a number of commercial enterprises. I have had the pleasure of seeing the Intellectual Property Registry in London, and it is a mighty building, properly fortified and largely away from the commercial environment.

The point is, if the records that are to be put together and kept at that very important registry are to be respected and preserved, what we must take into



account is the location of this office. Though difficult and in the face of trying economic circumstances, I urge the Government to seriously consider perhaps rehousing that important office because it would be of no consequence if having painstakingly put together the facility and accumulated important records they were to go in a cloud of smoke.

Mr. Speaker, in Trinidad and Tobago we have seen situations where many things are not done, not because of any malicious purport, but simply because of the difficulty. As has been made clear in an earlier debate before this House this afternoon, if we put Trinidad and Tobago first, as we on this side always do, the Government would look seriously at rectifying that and other problems.

Mr. Speaker, the Bill before us increases the protection that a patent is to enjoy to 20 years. When an individual registers his intellectual property in the present circumstances he enjoys the protection and the monopolistic use for 14 years, but the Bill proposes an extension to 20 years. That was part of the agreement that we arrived at in the intellectual property treaty and it is good to see that it finds a place in this legislation.

Coming back to the question of implementation, I foresee a very busy office, where citizens of Trinidad and Tobago would visit at regular intervals to make enquiries on behalf of persons who have registered patents there. Consequently, there is need for a well spaced public research area. This, again, renders the present facility woefully inadequate. It is clear that there is need, not for the manual records that we now have, but for a computerized database, possibly with remote access from other offices—law offices—and perhaps, and indeed, even from people's homes. All this is a part of the world-class vision that this legislation, arising out of the agreement, hopes to achieve. This legislation, as the Member for Siparia correctly pointed out, is a rather technical and specialized piece of legislation, and one does not want to dwell far too much on each of the clauses, so I would content myself—and I hope that the House contents itself also—with the broad outline as was expressed by the Member for Siparia.

Mr. Speaker, notwithstanding that, the suggestion made by the Member for Diego Martin Central would have gone a long way in dealing with that question. There are many Members on both sides of this House who must vote on this legislation notwithstanding that it has been laid so long ago, who would perhaps not understand one quarter of the technical aspects of this Bill.

**3.15 p.m.**

Another very important consideration which this administration contemplated was that patents office should eventually move from dependence on the state to being entirely self-financing. That is the situation which exists in developing countries, including the United States with whom we entered into this memorandum of understanding. The matters which come under this legislation are so highly specialized, that a tremendous amount of accumulated wisdom and experience is required over time in order to function effectively.

As it stands—I hope that the Member for Siparia would take note—that registry falls within the establishment. Consequently, it is subjected to the toings and froings, if you like, of the normal goings on in the public service. That is to say that a person working in that registry could be transferred on an acting appointment to any other ministry, and immediately, that threatens the accumulated wisdom and experience that department ought to have. If this registry went on, as exists in the developed world, the United Kingdom, the United States, Germany and France, to become self-financing and to a large extent independent, then it would no longer be subjected to that kind of movement in the public service in general. Over time it would certainly accumulate the wisdom and experience and perform more effectively and efficiently. It would then also be able to generate its own income freeing itself from being a burden, if you like, on the public purse.

The World Intellectual Property Organization—which has been alluded to by the Member for Siparia and I think the Member for Diego Martin Central—recognizing the growth in activity in the field of intellectual property around the world offers training to citizens of countries like ours as we move into that realm. We do not access many of the courses and training opportunities offered by this organization. I urge the Minister while that facility is not yet an independent and self-reliant one to ensure that all courses which are offered by World Intellectual Property Organization are accessed by citizens of Trinidad and Tobago including the people who staff that office. It is very important.

Persons who act for law firms and other bodies that will oversee, manage and operate the whole business of intellectual property also need to be trained; people who would do research here and report. Quite recently, I had to lend an opinion to someone living in the United States who wanted to register a patent in Trinidad and Tobago. You would find agents who would have to do that and they too deserve the training to which I have made reference.

The Government should also seriously consider scholarships so that young citizens of Trinidad and Tobago in particular would acquire the necessary information to operate in this world of intellectual property. While I am on this question of young people in the society, I make reference to a fact that came to my knowledge many months ago. This I am sure could be replicated several times across the country. It is an outstanding performance by a young student. I think she attended Holy Name Convent. Her name is Danielle McClean. She wrote the CXC.

**Mr. Speaker:** I take it that you are still talking on the matter.

**Mr. F. Hinds:** Most definitely, Mr. Speaker.

I am corrected that it is St. Joseph's Convent. The point I am making is that this legislation, as the Member for Siparia pointed out, opens up a whole new world and new vistas for the young people of Trinidad and Tobago by way of employment. When we have people of the calibre of the one I have just described, this legislation offers an opportunity. When many of our young citizens are told and come to believe that employment is a problem in Trinidad and Tobago, I want it to be known across this nation that as simple as this legislation appears to be, it offers a whole new world in terms of employment opportunities into the future. I simply made reference to show that there are quite capable citizens in Trinidad and Tobago.

**Mr. Sudama:** That includes yourself.

**Mr. F. Hinds:** I would like to think so.

I am dealing with the question of implementation of these measures. I refuse for obvious reasons to get into too much of the technical aspects of the Bill. The previous administration set the whole motion in train and the momentum continues. This legislation is indeed good for Trinidad and Tobago. As has been pointed out, it is very good for the citizens particularly the young. Consequently, as has been made clear from this side, we support entirely these measures and commend forcefully to the Government that it continue to work closely with the people who staff that patents office as it stands at the moment. Consider seriously the question of staffing and providing them with the right facility including perhaps a new location. We are keen to see the provisions of this legislation put in place and the benefits which are expected to flow from it. We know it is good for

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Trinidad and Tobago. We support the measures and commend them to all of Trinidad and Tobago.

Thank you.

**Mrs. Eulalie James** (*Laventille West*): Mr. Speaker I join this debate with a short intervention. Firstly, in this light I have to support the Bill in principle and perhaps it is in order that I congratulate the hon. Minister of Legal Affairs on this occasion. Trinidad and Tobago continues to invite much needed foreign participation in our economic development. It is only proper that we seek to harmonize and protect the intellectual property regime by upgrading our legislation in line with international standards.

Our friends who should see it fit to invest and assist our economy must, among other things, appreciate that we would take the necessary steps to protect their products.

**3.25 p.m.**

Mr. Speaker, I note that the Bill seeks to create a regime intended to meet the stated objective—that of protecting intellectual property, local and international. I am pleased that the draftsman spent considerable time on the interpretation clause. Clause 2 is a very helpful stage of interpretation to the commercial man. I am aware that the courts are always free to interpret properly various words and phrases used in an Act of Parliament and it is not bound by the meanings and interpretation clauses, but it is helpful for the commercial man to be able to appreciate very early various legal terminology in legislation which affect his business.

In Part II of the Bill, I note that a whole new office is created. No longer is the Registrar General in charge and no longer is there a Registry. We are talking in terms of a controller and an office. Part III of the Bill sets out the function of the controller and his staff, but it is clause 7 which is very important. It gives the applicant for a patent the right to be heard when even an adverse decision is to be pronounced. That is the notion of national justice which is entrenched in this Bill.

Part IV of the Bill sets out what are patentable inventions. In clause 9 of the Bill the draftsman went further to explain what is meant by inventive steps and what is meant by industrial application. I think it is very helpful that the draftsman exercised great foresight in order to minimize litigation and to ensure some certainty in commercial dealings which is so crucial to economic development.

In Part V, the Bill sets out to express who are entitled to a patent. They are persons alone or jointly. The Bill speaks of any person, so I am of the view that a corporate entity can so apply and that no one is debarred from applying. I find clause 6(1) draconian. I do not see why an employee, legitimately and legally in possession of his invention, should be debarred from protecting his product simply because he is employed in the office of the controller of patents. It is as if to say that the Registrar General does not have the right to register a parcel of land which he acquires legally and which is legitimately his.

In an attempt to prevent potential theft or unlawful dealing with property belonging to another, one class of persons is protected whilst another is penalized. It should be the case that more vigilance is exercised by the controller when he accepts a patent application from one of his employees and the burden should be a heavy one on the employee to prove that the invention was his originally.

Clause 15 makes it clear that the right to a patent, *prima facie*, belongs to the employer when the employee is in a contract of employment. I say *prima facie* because it is the subject of evidence to the contrary, that is, the terms of the contract of employment, so that one has to look at the terms of the employment.

From clause 18 the Bill introduces a step-by-step statement of the procedure one should follow when applying for a patent. This is something worthy of comment. This Bill does not only set out the law, it seeks to simplify the procedure one should follow. I do hope that the prescribed forms will be simple and user-friendly and that the filing fee will not be beyond the reach of the young inventor who intends to protect a patentable product and who may suffer grave injustice because to patent his invention was beyond his reach.

In Part VIII the Bill seeks to clarify what type of property is a patent. It states clearly that it is personal property with transferable rights so that it is capable of being assigned or mortgaged. The patent is capable of co-ownership.

Whilst I am satisfied with the intention of the Bill and the fact that it is a very lengthy and technical one; and whilst I have to congratulate the draftsman's efforts in this 20-part Bill, intended to create a regime necessary to deal with protection of local and international intellectual property, Mr. Speaker, nowhere is this Bill does the legislation attempt to deal with the frightening situation of our national instrument, "King Pan". Mr. Speaker, can we not protect the pan?

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Simmons in his paper, "Pan and the Panmen, 1959", suggested that the history of the panman could be traced as far back as the 1930s to the famous names like Muscle Rat and Fred Corbin. After 1945, the culture of the steelpan spread rapidly to the neighbouring islands: Guyana, Antigua, Grenada, St. Vincent, St. Kitts, and to the USA and the UK. In 1979, the pan reached China and in 1989, Carnegie Hall.

I am aware that the pan was discovered and it evolved. It continues to evolve. Its 1969 tone is much different from that of 1995, and much more refined, is it not? Mr. Speaker, I am aware that it will be very difficult to identify the actual inventor or deviser of the pan. I am aware that there are arguments as to whether the pan was discovered or invented. Without any doubt, what we know today is that the pan was either invented or discovered in Trinidad and Tobago. The pan is now an international instrument: the only circular musical instrument, 360 degrees of invention, a product to be exploited by anyone with the means to mass produce and market it. I am suggesting humbly that this might be the right time, that this might be the best occasion for this Parliament to consider carefully the question of protection for the pan.

In its present form, this Bill operates from the conventional point of view and it seems to be accepting the argument that it is too late to patent the pan or that the actual deviser of the pan is not accurately identifiable as if to say that the pan is not patentable.

### **3.35 p.m.**

Mr. Speaker, historians have agreed on many issues. Could there not be an agreement as to who is the most likely person we can identify as the actual deviser? Does the Act not envisage one or more inventors, joint inventors or co-inventors? There is also the argument that the steelpan can be proclaimed the national treasure of Trinidad and Tobago. To ensure some means of protection—I am not too familiar with the terms of making this workable—a team of competent persons could be mandated to examine the feasibility of same.

When we study the colourful history of the steelpan, or the evolution, if you like, when one thinks of Bar 20 which is now Casablanca, Destination Tokyo which is now Carib Tokyo, Hell Yard, which is now All Stars; the pan pioneers who were probably our forefathers, the slaves of yesteryear did not believe that the bamboo-bamboo that they used to beat then would emerge to be the most indigenous instrument of the 20th Century. This pan moved from the 1940s where

the parade used to be held in the Dry River, to performances par excellence at the Jean Pierre Complex—music festivals of the highest quality. *[Desk thumping]* And a steelband Desperadoes, which I have the privilege to represent, is one of the top bands in that area.

**Hon. Member:** In the world.

**Mrs. E. James:** World class. Mr. Speaker, it has even reached the stage where pan is played in churches. We also could name a few of the tuners who have, overtime, invented. Tuners like Bertie Marshall who did the spiderweb pan. We have men like Anthony Williams, Ellie Mannette and Neville Jules to name a few.

**Miss Nicholson:** Rudolph Charles.

**Mrs. E. James:** And of course, we had the great Rudolph Charles. Is it really too late to protect the pan? I cannot accept that it is too late.

Mr. Speaker, as I am about to sit, I beg the Minister responsible for Legal Affairs to give some consideration to the concerns I have raised here this afternoon. This Parliament should consider in whatever form it may be, the device to protect "King pan".

Thank you. *[Desk thumping and applause]*

**Mr. Speaker:** Hon. Members, it is necessary to advise a gentleman in the audience who is a stranger, that notwithstanding the applause of the Members of the House, he is not permitted to join in. It is a no no, please.

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Speaker, permit me to thank hon. Members for their very comprehensive contributions, and I must give special congratulations to the Member for Laventille West *[Desk thumping]* for the sterling contribution she has made here this afternoon. I am sure she would not mind, but we on this side always say that the power of the other side is on that end of the Bench. *[Laughter and desk thumping]*

**Mr. Maharaj:** I agree with that.

**Hon. K. Persad-Bissessar:** Mr. Speaker, as I said, I thank the hon. Members for their contributions and their support for those very important pieces of legislation that are before the Parliament. I understand that the suggestion has been made that it should go before a joint select committee and the Attorney General has already indicated our reasons why we would not be so minded.

If I may remind hon. Members further, in my contribution at the start of the debate, I indicated the wide range of personnel and expertise of persons who have worked on the drafting of this Bill, so that in view of the deadlines that we have to meet and the fact that several persons from several walks of life with tremendous expertise and ability have gone through this, what is now the present Bill before the House since 1984, there seems to be no need for this Bill to be referred to a joint select committee.

Further, with respect to the issue raised by the hon. Member for Laventille East/Morvant on the modernization of the registry to include automation of data bases on remote access, I am very happy to report to this honourable House that since he was last there, when they were in office, and since we had taken up office, these data bases and remote access devices are in place and are operational. [*Desk thumping*] Those that are still to be put in place, we have taken all steps for the implementation of this legislation.

He raised several matters in terms of staffing and location of the office, space and so forth but these are matters that are being addressed. As I have said before, we have taken certain documents to the Cabinet but, of course, the Cabinet sometimes cannot pre-empt the Parliament, so that when the Parliament passes the legislation, Cabinet then has the benefit to enact it. We will be able to approve the implementation procedures with respect to this particular piece of legislation and the others dealing with intellectual property. We have addressed our minds to what is necessary for the implementation of the legislation and we have started to put those measures into place.

Finally, on the issue of pan, I want to say to the hon. Member for Laventille West, and indeed to all hon. Members, that this Government is committed to protecting the things that are Trinidadian and the things that are Tobagonian.

**Mr. Robinson:** And Tobagonian.

**Hon. K. Persad-Bissessar:** I am sorry, I did say so, but I will repeat it—things Trinidadian and things Tobagonian. I was not allowed to finish, Mr. Speaker. For the things that belong to Trinidad and Tobago and are of Trinidad and Tobago we will take all the steps that are necessary. A particular appeal was made by the hon. Member with respect to the pan. Mr. Speaker, it is a pity, and I do not want to use this to score any points, but with the greatest respect to the hon. Member, for years the other side was in office and they are now appealing to this side to take those steps that they had failed to take.



**Hon. Member:** Great compliment, great compliment.

**Hon. K. Persad-Bissessar:** Yes, that is a tremendous compliment for the Members on this side that they were unable to do it and they are now appealing to us to put that in order.

Mr. Speaker, under the legislation, there is nothing that precludes any individual who believes that that individual, corporation or group has an invention to make an application to have it patented whatever it may be. It may well be in terms of law. In other words, the patent office may not have determined with respect to the issue of the pan and therefore, I am saying that it is open to persons to make such an application. It is regrettable that Members who belong to a party that had been in government for so long are asking us to do what they failed to do with respect to the pan. It is regrettable because after a certain number of years an invention goes into what is known as a public domain, so that it may not be possible to patent it, but there is nothing in the legislation that precludes anyone from making an application to patent any particular invention.

**3.45 p.m.**

If it should turn out that the patent office and the searches and so on determine that the pan has passed into the public domain, then that still does not preclude inventiveness in terms of the pan. For example, for any new inventiveness with respect to the instrument, "pan", an application can be made to patent that new movement.

I am informed that a Trinidadian in Canada has been seeking assistance in Trinidad and Tobago with respect to new things that he has invented in relation to the pan, Mr. Speaker. *[Interruption]* You are saying there are two of them, but we are aware of one Trinidadian who resides in Canada at the moment who is seeking to have his invention in relation to the pan dealt with, patented and protected in some way.

So in response to the hon. Member for Laventille West, through you, Mr. Speaker, I am saying that the pan, the calypso, the chutney, and the things that are so much our culture in this country can be protected under the intellectual property legislation, but proper procedures have to be followed. That is why it is so essential that we do not send this legislation to a joint select committee to spend months; instead, we should sit in the Parliament and pass this piece of legislation that has been in the making since 1984.

*Patents Bill*  
[HON. K. PERSAD-BISSESSAR]

*Tuesday, July 09, 1996*

With those words, I thank hon. Members for their contributions, and I beg to move.

*Question proposed.*

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

*House in Committee.*

*Clauses 1 to 91 ordered to stand part of the Bill.*

**3.55 p.m.**

*Question put and agreed to, That the Bill be reported to the House.*

*House resumed.*

*Bill reported, without amendment; read the third time and passed.*

#### **INDUSTRIAL DESIGNS BILL**

*Order for second reading read.*

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Speaker, I beg to move,

That a Bill to provide for the protection of industrial designs and for related matters, be now read a second time.

**Mr. Speaker:** No long talk.

**Hon. K. Persad-Bissessar:** No long talk, Sir.

Mr. Speaker, like other areas of intellectual property for which the state provides protection through legislation, the most important objective is to encourage commercial application of creative effort. In this Bill, the Industrial Designs Bill, 1996, Mr. Speaker, attention is focused on creative designs using industry to try to achieve some competitive advantage over procedures or suppliers of identical or similar goods. The Bill seeks to protect the intellectual property embodied in such design.

**4.05 p.m.**

Legislation for the protection of industrial designs for the purpose of product differentiation emerged about the same time as the industrial revolution. The first law in the United Kingdom with this objective was targeted at the textile industry, the designing and printing of linens, cottons, calicos and muslins from 1787. As techniques of mass production were applied to other areas of manufacture, the scope of relevant legislation expanded.

The definition of a design in the current Patents Act, No. 10 of 1900, found in Chap. 82:83 of our laws and many of the relevant provisions in that Act are indeed derived from the Designs Act, 1842 of the United Kingdom. Like much of our other legislation, it no longer comfortably meets the requirements and obligations of Trinidad and Tobago, as I said before, in this global international trade environment. The Industrial Designs Bill, 1996 was therefore developed by the Law Commission with tremendous assistance from the United Nations World Intellectual Property Organization; the Ad Hoc Committee to Review the Intellectual Property Laws of Trinidad and Tobago; the Deputy Registrar General responsible for the Intellectual Property Registry, also a member of the Committee; the Technical Industrial Property Officer attached, on contract, to the Registry; the Legal Drafting Department of the Attorney General's Department. The final draft, which is the Bill before us, was produced by the Chief Parliamentary Counsel's Department.

Mr. Speaker, it is critical to understand that the protection this Bill seeks to provide is for visible aspects of a product that are in no way related to utilitarian functions. The protection provided by design legislation is not for the product itself. The product and those elements of the product that are required in the design for the purpose of attaining the technical result are more appropriately protected under legislation which was just passed, the Patents Bill.

It is partly for this reason that a separate Bill, in the form of this Industrial Designs Bill, has been created. Clause 3 of the Bill reflects specification of the design. The best known contemporary example of an industrial design, Mr. Speaker, is the shape of the Coca Cola bottle, registered in Trinidad and Tobago in 1937. Bottles and other containers are significant areas of application of an industrial design effort. Other lesser known examples are the Gillette safety razors, safety razor handles, calico textile designs; Vono bed-frames; Unilever soap tablets; Dunlop tyre profiles; and the well-known Adidas football, Mr. Speaker.

*Industrial Designs Bill*  
[HON. K. PERSAD-BISSESSAR]

*Tuesday, July 09, 1996*

It is also important to note that a design must be applied to utilitarian articles and this is described in Clause 3(1) as “a product of industry or handicraft”, in order for it to gain protection. This is one of the main features of industrial design protection. Without this feature, design protection would be more appropriately sought under copyright legislation, Mr. Speaker. In this legislation you are looking at utilitarian articles. In the context of copyright legislation, another feature of industrial design legislation, the widest scope of the rights accorded to the proprietor is a validly registered industrial design. Whereas copyright legislation affords the creator the right to prevent copying of the work, industrial design legislation accords to the proprietor, the owner, the exclusive right to prevent unauthorized use or exploitation of the design in industrial articles. This means that infringement of industrial design rights takes place even if there has been no deliberate copying. Under copyright law there is infringement only in reproduction of the work in which the copyright subsists. In seeking to ensure that there is no lacuna amongst the rights that exist for a particular creation, clause 9(4) states clearly:

“The owner of a registered industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to...”

and this allows for the cumulation of protection, as opposed to the co-existence of protection. That is to say, a creator can invoke, for example, the protection of either the copyright law or the industrial designs law, at his choice. The creator can further continue to claim copyright protection after the expiration of the term of protection of the industrial design protection. Any other rights that may exist or be acquired are also thus protected.

Although the Bill identifies universal originality as the main criteria for the protection of a design, clause 4, (1), (2) and (3) requires the controller of the Intellectual Property Office to only examine the formality of the application to determine whether the design satisfies the definition required and to determine that it is not contrary to good order and morality.

As with copyright, to determine if a design creation is universally novel is unlikely to be cost effective. The burden of proof is therefore placed on the applicant if proof is required, for example, by the Court. The existing Intellectual Property Registry currently carries out a simple registration procedure similar to that provided in the new legislation. *[Interruption]* Thank you, Member for Diego Martin West. We know you are the true leader on that side.

The staff, therefore, have the relevant experience and expertise to implement this Bill. The only additional requirement for the implementation of this Bill would be a minimum of training. This training will form part of the routine in-house training that is carried out regularly within the Registry. It is envisaged that the staff will be transferred to the new Intellectual Property Registry created by the Patents Bill and referred to in this Bill.

Mr. Speaker, the other provisions of this Bill are adequately described in the Explanatory Note preceding the Bill, and I would commend to hon. Members that they read the Explanatory Note to the Bill.

In conclusion, the Industrial Designs Bill, 1996 seeks to provide for the protection of the competitive edge that producers in Trinidad and Tobago may attain through the creation of designs for use by industry. It is designed to channel the creative capability of people in Trinidad and Tobago into an application that can be exploited commercially in the competitive international trade environment. It meets the requirements of recent international agreements, which are aimed at improving trade. Finally, Mr. Speaker, it further improves the attractiveness of Trinidad and Tobago as an investment location.

Mr. Speaker, I thank you. I beg to move.

*Question proposed.*

**Mr. Colm Imbert** (*Diego Martin East*): Mr. Speaker, may I say that this Bill is part of a group of Bills which go together with the Patents Bill, as indicated by the hon. Member for Siparia. [*Interruption*] It arises out of work done by the former administration and we on this side understand that there is a deadline for this legislation and other pieces of legislation which fall under the general rubric of intellectual property.

Mr. Speaker, we on this side support this legislation. I wish to caution, however, that this piece of legislation is a double-edged sword. To borrow the language of the Member for Tobago East, "it is not as simple" as the Member for Siparia has made out. In fact, Mr. Speaker, this will allow persons in the industrialized countries, the metropolitan centres, and so forth, to register their designs in Trinidad and Tobago, thereby preventing citizens in Trinidad and Tobago the free or unrestricted use of these products or designs.

**4.15 p.m.**

In the past, through ignorance or whatever, persons in Trinidad and Tobago and many other developing countries, have been taking advantage of the loopholes in existing law or the absence of law with regard to patents, copyrights and so forth. As a result, a number of businesses will be affected by this legislation. They will now have to comply with the patent and copyright requirements and may find themselves spending more money in the pursuit of their business interest. This is a double-edged sword. It may adversely affect a number of businesses and persons in Trinidad and Tobago who surreptitiously, or who through ignorance, were taking advantage of designs and products in other countries, so it is not a panacea or completely beneficial to us in Trinidad and Tobago.

Nevertheless, for our own inventors and local designers it does provide protection which hitherto was not available, at least not in this form. If one looks at clause 4, for example, it states clearly that an industrial design is registrable if it is new. Clause 4(2), I think, would cause much work for the lawyers among us. I do not know why every time the Attorney General brings legislation to this House one sees more and more work—briefs and fees—for the lawyers.

Mr. Speaker, clause 4(2) is relevant:

"An industrial design is new if it has not been disclosed to the public anywhere in the world by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration."

This means that our pan would be protected under this legislation since it has been in use for a long time in Trinidad and Tobago and the example brought by the Member for Siparia with regard to persons from a foreign country seeking to register a design of a steelpan instrument is only relevant if that instrument was not in use—and since we are talking about the national instrument—before in Trinidad and Tobago. The protection in clause 4(2) allows our products, once they have been published or in use, to be protected. This is a noteworthy aspect of the legislation.

We on this side are in overall support of all of the similar type pieces of legislation that are before the Parliament today, such as the Bills that would flow in due course, the Layout-Designs (Topographies) of Integrated Circuits Bill, the Geographical Indications Bill and so forth. They are all part of the whole move

which was in train for at least the last 10 years. We in the PNM are not going to take credit for work that has been in train in the country since the early 1980s, throughout the mid-80s and towards the end of the decade. This is work that has been in train in Trinidad and Tobago, as the Minister pointed out, since 1984. It all forms part of a package of legislation designed to achieve two things: to bring us up to the standards required by international agreements in the whole question of trade reform; the whole question of allowing Trinidad and Tobago to trade in the international market place without undue hindrance.

However, I wish to sound a word of caution that there will be some adverse affect on our local businessmen, local manufacturers and so forth, but I do believe that this will be balanced in the long run by the protection that will be afforded to our local inventors and creators.

Without saying anything further, Mr. Speaker, I support the legislation.

Thank you.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

*House in committee.*

*Clauses 1 to 26 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the House.*

*House resumed.*

*Bill reported, without amendment; read the third time and passed.*

**4.25 p.m.**

**LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS BILL**

*Order for second reading read.*

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** I beg to move,

That a Bill to provide for the protection of layout-designs (topographies) of integrated circuits be now read a second time.

*Layout-Designs Bill*  
[HON. K. PERSAD-BISSESSAR]

*Tuesday, July 09, 1996*

This is another of the package of industrial intellectual property legislation which is necessary with respect to fulfilling our international obligation. Members have had the benefit of the Explanatory Note of the Bill and of reading it.

Thank you.

*Question proposed.*

**Mr. Colm Imbert** (*Diego Martin East*): Mr. Speaker, I wish to make a brief intervention. As the Member for Siparia has pointed out, this Bill is one of a number of Bills dealing with copyright and intellectual property. Although this Bill could be viewed as industrial design in a sense, it is here because there is a very large industry in the whole area of the design of integrated circuits. As you are aware, there have been significant advances in electronic technology over the last 10 years. As a result, it is necessary to bring this legislation at this time.

The definition of “integrated circuit” is:

“A product, in its final form or an intermediate form in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.”

This is for the benefit of Members on the other side who seem blissfully ignorant of the true purpose of this piece of legislation.

This piece of legislation seeks to protect the designers of electronic integrated circuits. This is necessary because of the rapid expansion in the electronic industry, the computer industry and the whole exposure in computer and electronic hardware. One may find that this may be an area where there is the greatest incidence of theft, unauthorized copying and pirating.

Persons in the metropolitan countries are very serious about this. This is a very profitable industry in the United States. When one looks at the companies such as IBM and the individuals involved—such as Bill Gates whose net worth I now understand exceeds \$27 billion—one would see the level of resources and the level of input in this area. This aspect of intellectual stands alone rather than being part of an industrial design because it is a highly specialized area in which a large number of persons are working at the same time.



In different countries the advances in integrated circuit technology take place on a day-to-day basis. One may find that technology which is relevant today would become redundant next week because of the development of new technology. One simply has to look at the whole computer industry where just a few years ago the computer chip technology was in its infancy and the speed of these integrated circuits and computer micro processor was nothing as it is today. Ten years ago, computers were operating at 10 and 12 megahertz. Now there are computers operating at 100 megahertz and within the last two years we have seen the emergence of the pentium micro processor all within a very short period. This is why this is such a sensitive area of intellectual property. There is a lot of money to be earned and lost in this area. Because of the fact that technology is changing so rapidly, the need for copyright is even more demanding and exacerbating.

I simply wish to inform this House of the intent behind this legislation since the hon. Member was unable to do so—not through any fault of her own—and to indicate that once again we support this legislation.

Thank you.

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Speaker, this Bill as the hon. Member has said, is a very important piece of legislation which has been brought to this House. It has been necessitated with respect to international obligations because of the rapid advances which are made in the development of integrated circuits. We see that these circuits are being used daily as part of our life. These circuits are becoming far more complex in their layouts as the capacity of the material in which they are embedded increases.

The Bill seeks to assure protection of any intellectual effort that will further develop with respect to these circuits. We on this side believe that by introducing this legislation and having it brought to this House, it would provide further incentive to the creative efforts in the area of technology. The expected results would obviously be with respect to a better investment climate and improvement in the access to and dissemination in the state-of-the-art technology. The opportunity would thus be improved for the people of Trinidad and Tobago to apply their own creativity in fields such as these.

The developments in this area have been exceedingly rapid. It is only seven years ago in 1989, that the international community concluded an agreement on intellectual property rights associated with layout-designs dealing with integrated circuits. That treaty is known as the Washington Treaty.

**4.35 p.m.**

I have mentioned before the Trips Agreement, which was concluded in 1994 and it was within the framework of the Uruguay Round of GATT. Through Article 35, the application of the Washington Treaty is mandatory for members of the World Trade Organization and we are a member.

Layout-designs (topographies) of integrated circuits refer to the arrangement of elements, the components one of which must be active, that is power consuming, and these are interconnected and embedded in some material in two or three dimensions hence the inclusion of the word “topographies” in this piece of legislation. These elements are often known to people in the field of electronics. For this and other reasons existing systems for the protection in the fields of copyright, industrial designs and patents could not be appropriately applied. This is why we have had to bring a separate Bill with respect to these types of circuits.

Again, the drafting of this legislation was with the assistance of the World Intellectual Property Organization, the assistance of the committee chaired by Mr. Brian De Gannes and the secretary, Mrs. Debra Dade; Dr. Brian Copeland of the Faculty of Engineering, UWI; Dr. Narine of NIHERST; Miss Kadir, the Deputy Registrar General responsible for our intellectual property registry; and Mr. Malcolm Spence of that registry. They worked in conjunction with the Law Commission and with the legal drafting department in the Attorney General’s Office to have this Bill before this honourable House today.

There are two major aspects of this Bill which are important and helpful in terms of differentiating the system of protection described from the other areas of protection in this field of intellectual and property rights. These are the exceptions from infringement of reverse engineering—and I am sure that the Member for Diego Martin East would be very aware of reverse engineering. Reverse engineering describes the practice when an existing product is evaluated and analyzed for the purpose of acquiring the technology to produce the product or one very similar to the original, and exploiting it commercially.

The second important aspect of this Bill has to do with the exception from infringement—as I said before, the first was reverse engineering—the provision for the commencement of the 10-year period of projection to begin from the date of the first commercial exploitation, that is, the priority date.

This Bill allows, through clause 6(3)(d), the protection of the results of reverse engineering where the resulting layout-design meets the criteria for being considered original. Clause 4(1) deals with that, Mr. Speaker. The result of this exception to infringement is that the exploiter of a reversed engineered product is not required to negotiate for the permission of, and therefore need not pay royalties to, the right holder of the original layout-design to use that layout in his product.

Mr. Speaker, this differs from the Patent Protection Systems which incorporate the concept of dependent patents where patented invention is developed out of a major prior patent and requires the permission of the holder of that patent for commercial exploitation. Both approaches are designed to encourage developments that build on the existing state of the art.

Another important aspect of the Bill related to layout-design (topographies) of integrated circuit, Mr. Speaker, is the date of commencement of protection. The Bill allows the filing of an application for protection, such protection, to begin from the date of the first commercial exploitation of the layout-design even where this exploitation first took place as much as two years before the date of application. In essence, upon making application as described, the right holder can claim damages for infringements that occurred, not only from the date of application, but additionally from the date of the first commercial exploitation and right holders layout-design anywhere in the world. Such disclosure would, in the case of many other relevant systems of protection deny the applicant the protection being applied for.

It should be noted that there is great emphasis in the Bill on the exploitation of intellectual property for commercial purposes. Clause 6(3)(a) allows the acts otherwise considered to be infringements to be carried out without the authorization of the right holder if the product containing the protected layout-design is for personal use or to be given as a gift. The inflow into Trinidad and Tobago of a product containing such technology can thus never be practically stymied.

It should be noted that the Bill recognizes the difficulties that exist in determining whether or not a product contains an illegally produced copy of the layout-design. It allows in clause 6(3)(d) for the equitable settlement of such innocent infringement.

*Layout-Designs Bill*  
[HON. K. PERSAD-BISSESSAR]

*Tuesday, July 09, 1996*

Finally, the Bill places the discharge of the functions related to the application in the hands of the Controller of the Intellectual Property Office, which office, Mr. Speaker, was established under the Patents Bill, 1996 which was passed in this Parliament earlier today. The functions are related to a simple registration system and does not require the substantive examination of the layout-designs. See clause 9(2). This greatly simplifies the requirements for implementation as no additional staff was required. Application requirements are identified in clause 8 of the Bill.

Clause 12 provides the opportunity for an interested person to apply to the court to have the registration of a layout-design cancelled on the several grounds identified. The significance of the cancellation is that its effect is retroactive to the date from which protection was afforded.

The other provisions of the Bill, as I indicated at the start of my contribution, are amply set out in the Explanatory Note, and so I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

*House in committee.*

*Clauses 1 to 20 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the House.*

*House resumed.*

*Bill reported, without amendments, read the third time and passed.*

**4.45 p.m.**

#### **GEOGRAPHICAL INDICATIONS BILL**

*Order for second reading read.*

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Speaker, I beg to move,

That a Bill to provide for the protection of geographical indications and related matters be now read a second time.

This Bill is another in the package of industrial intellectual property legislation. The term “geographical indications” is relatively new and this piece of legislation is

new to our jurisdiction for the kind of protection it seeks to give to intellectual property rights. This term “geographical indications” refers to names which are associated throughout the world with products of a certain nature and quality, as for example, there is champagne coming from that particular place, tequila from Havana and so forth. Geographical indications can acquire a very high reputation and thus may be valuable commercial assets. For this very reason they are often exposed to misappropriation, counterfeiting or forgery, and a protection, national as well as international, is highly desirable.

Wrongful use of geographical indications is contrary to honest practices in industry and trade, where misleading purchases of the goods for which the indications are used and the persons who wrongfully use such indications secure an unfair advantage over their competitors.

Geographical indications can contribute to the reputation of a product, it creates goodwill among consumers and it can assist immensely in terms of export promotion.

An “indication of source” means any expression or sign used to indicate that a product or service originates in a country, region or specific place.

An “appellation of origin” means the geographical name of a country, region or specific place which serves to designate a product originating therein, the characteristic qualities of which are due exclusively, or essentially to the geographical environment including natural or human factors or both.

It is important to highlight the differences between “indications of source” and “appellations of origin”. “Indications of source” is mainly the requirement that a product be designated. While “appellation of origin” must have certain characteristic qualities which are due to the geographical environment including human or natural factors. In other words, the use of an appellation of origin requires a quality link between the product and its area of production. This qualitative link consists of certain characteristics of the product which are exclusively or essentially attributable to its geographical origin, for example the climate of that area, the soil and traditional methods of production.

Mr. Speaker, appellations of origin on the other hand, the use of an indication of source on a given product, is merely subject to the condition that the product originates from the area, and from that place, and that is designated as an indication of source.

*Geographical Indications Bill*  
[HON. K. PERSAD-BISSESSAR]

*Tuesday, July 09, 1996*

Members would have had the benefit of the Explanatory Note of this Bill. As I said before, just like the other Bills in the package, criminal sanctions are provided as well as a civil provision or mechanism to prevent infringements.

I beg to move.

*Question proposed.*

**Mr. Colm Imbert** (*Diego Martin East*): Mr. Speaker, again we support this legislation which is part of this whole process of intellectual property copyright, patents and so forth, and essentially as the Minister whom I must commend for presenting this Bill, unlike the one before, made the point that we are dealing with two issues here, and I will give two examples. A situation where a product is made in Japan, for example, where there is simply the requirement that it in fact comes from Japan, and take a type of wine “champagne” which should come from the Champagne region in France. These are the two aspects of this legislation that we are not just dealing with country of origin but in the case where the actual geographical indication of the product gives that product some prestige or value, because it is indicated that it comes from a particular part of the world, a particular region, or country in the world. For example, microchips originating from Silicon Valley in California, United States, would have a certain prestige and value whereas—

**Hon. Member:** Seasoning from Paramin.

**Mr. C. Imbert:** —and seasoning from Paramin will have prestige and value.

**Mr. Narine:** Macaroni from China.

**Mr. C. Imbert:** Macaroni from China, whether made in San Fernando or not—but, the fact is one must ensure that these two aspects are clearly understood by the persons who have to implement this legislation because the point must be made. It is all very well to pass all of this intellectual property legislation in a rush in order to meet certain deadlines for international agreements and so forth, but the bureaucracy and the machinery that will be required to enforce this legislation to deal with nuances such as the nuance that the Member for Siparia has pointed out, where there is a country of origin and then there is actual geographic indication lending value to a product. It is very important and I urge the Government and the Minister of Legal Affairs to ensure that the bureaucracy is in place so that there can be proper investigations and examinations of all products, checking the

geographical indications and so forth, to ensure that the purpose and intent of the Bill is fulfilled.

On that, may I simply say, once again, that we on this side support not just this Bill, but the entire package of Bills which are designed to bring Trinidad and Tobago's copyright and intellectual property legislation up to par with that in the rest of the world, particularly in the developed countries. We support it and we trust that the Government would put in place the necessary machinery to allow citizens of Trinidad and Tobago to achieve and derive maximum benefit and advantage from these pieces of legislation.

Thank you, Mr. Speaker.

**Hon. K. Persad-Bissessar:** Mr. Speaker, I thank the hon. Member for Diego Martin East for his contribution. Let me assure him that if he were not so busy listening to his own voice he might have heard what I said previously. We have started to put in place machinery with respect to the implementation of the legislation and it would be ready by the deadline, which is September of this year. Whilst he sat in the government and for all those years, when they signed the agreement in 1994, they failed to take steps for the implementation of the legislation. As I have said before on several occasions, the machinery has been put into place.

Mr. Speaker, I beg to move.

**4.55 p.m.**

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

*House in committee.*

*Clauses 1 to 20 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the House.*

*House resumed.*

*Bill reported, without amendment; read the third time and passed.*

**PROTECTION AGAINST UNFAIR COMPETITION BILL**

*Order for second reading read.*

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Speaker, I now beg to move,

That a bill to provide for the protection against unfair competition be now read a second time.

Mr. Speaker, this is a very important piece of legislation, and has to do with the setting up of honest trade practices in this country to deal with deterrents of misrepresentation, and deterrents of unfair competition.

Members have had the benefit of the Explanatory Note. In my winding up if any issues are raised by hon. Members on the other side, I would be very happy to respond to those, and to deal with any matters pertaining to this Bill.

I beg to move.

*Question proposed.*

**Mr. Colm Imbert (Diego Martin East):** Mr. Speaker, this is a very important piece of legislation which will protect us in Trinidad and Tobago, particularly with regard to the importation of products under false designations.

All of the legislations we have discussed today would, perhaps, prevent the recurrence of the incident during the last local election where the olympic song was used without permission by a particular political party. If these laws were enforced at that time, that particular political party might have been subject to serious penalties. So that one of the good things that will come out of this legislation—no, no, no, we are talking about unfair competition here.

This Bill makes it an offence to misrepresent products that come from a certain company or manufacturer to the national community in Trinidad and Tobago. It plugs all the loopholes that exist at present, and make it absolutely clear to all and sundry exactly what this whole concept of unfair competition is all about.

I hope that in her winding up, the Member for Siparia will clarify any issues that have been raised especially this whole concept of misleading election advertising.

I thank you, Mr. Speaker.



**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Speaker, I thank the hon. Member for his contribution. There are no issues that have been raised.

I beg to move.

**5.05 p.m.**

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

*House in committee.*

*Clauses 1 to 9 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the House.*

*House resumed.*

*Bill reported, without amendment; read the third time and passed.*

#### ADJOURNMENT

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I beg to move the adjournment of the House to Friday, July 12, 1996 at 1.30 p.m.

Mr. Speaker, I express thanks to the Opposition for the support it gave to the Government and the speed with which that support was given, and that is notwithstanding the contributions of the Member for Diego Martin East. We were able to pass six pieces of legislation in this House today. It must be history in Trinidad and Tobago that this House has passed six pieces of legislation.

**Mr. Panday:** Government of national unity! After good elections!

**Mr. Valley:** Mr. Speaker, would the hon. Leader please inform the House what business we would be transacting on Friday?

**Hon. R. L. Maharaj:** Much obliged.

Mr. Speaker, we shall debate the following Bills: the Public Assistance (Amdt.) Bill, Chap. 32:03; the Old Age Pension (Amdt.) Bill, Chap. 32:02; and the State Lands (Regularization of Tenure) Bill.

*Adjournment*

*Tuesday, July 09, 1996*

**Mr. Valley:** Mr. Speaker, the hon. Leader is extremely ambitious.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 5.15 p.m.*